HIDDEN LIVES AND HUMAN RIGHTS

IN THE UNITED STATES

Understanding the Controversies and Tragedies of Undocumented Immigration

History, Theories, and Legislation

Lois Ann Lorentzen, Editor

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Volume 1: History, Theories, and Legislation

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Introduction

Lois Ann Lorentzen

> Few of their children in the country learn English. . . . The signs in our streets have inscriptions in both languages. . . . Unless their importation could be turned they will soon so outnumber us that all the advantages we have will not be able to preserve our language, and even our government will become precarious.
>
> —Benjamin Franklin, 1753 (cited in Nevins 2008, 111)

As I write this introduction, Congress debates immigration reform. A series on undocumented immigrants[1] seems timely. Yet the national debate is not new, but merely the latest version of a deep societal ambivalence toward immigrants. Although on the one hand the United States prides itself on being a "nation of immigrants," on the other the "illegal alien" has loomed large in immigration laws and public opinion throughout U.S. history (Ngai 2004). Benjamin Franklin's remarks about German immigrants sound surprisingly "modern." Few today would question whether or not people of German ancestry are fully "American." Yet some, similar to Franklin centuries ago, question whether the foreign born, especially the undocumented, should be full members of the country, fearful of what a "new American nation" might look like (Resnick 2013).

Thirteen percent (40.4 million people) of the U.S. population in 2011 was foreign born (Batalova and Lee 2012). Four percent (roughly 11.2 million) of the country is unauthorized. The unauthorized make up nearly 5.5 percent of

the U.S. workforce (Pew Hispanic Center 2013). Two-thirds have lived in the United States for over a decade; 46 percent are parents of minor children (Taylor et al. 2011). Contrary to the stereotype of a migrant as a single male, the unauthorized are "families with children" (Passel, quoted in Resnick 2013). Whereas 21 percent of nonmigrant households are couples with children, 47 percent of undocumented households are (Resnick 2013).

The undocumented are for the most part working people with children who have lived in the United States for a decade or longer. Yet public debates on immigration reform emphasize national security, border control, amnesty, English competency, economic impact, and the need to punish "law breakers." Missing is a discussion of basic rights denied to people, based on their legal status, who *live here.* Unauthorized immigrants are here; they are neighbors, workers, and parents, part of the fabric of our life together.

I recently returned from the Nogales, Arizona/Nogales, Mexico border, where I interviewed migrants who had been deported from the United States. Many had spent time in detention centers, one of four adults were parents of U.S. citizen children, and most had lived in the United States for many years. They told heartbreaking stories of dangerous desert crossings, sexual abuse in detention centers, lack of legal assistance, verbal and physical abuse by authorities, and great sadness at being separated from loved ones. As we left a shelter run by Catholic priests and nuns on the Mexican side of the border, a young woman, her husband, and their six-month-old baby were about to cross the desert in 104-degree heat to join family members in the United States. The price many migrants pay to reside in the United States is often high, and I worried about this young family's ability to survive the dangerous journey ahead of them.

Many don't survive. Earlier this year I listened to Raquel Rubio-Goldsmith's chilling account of the unidentified remains of migrants in south-central Arizona. Between 1990 and 2012, 2,238 bodies were found in this corner of the United States, a period coinciding with increased border security: fences and walls as well as more Border Patrol. The actual number of deaths is "certainly higher than the numbers based on actually recovered bodies and official counts" (Nevins 2008, 22). The Pima County Office of the Medical Examiner in Tucson, which "handles more unidentified remains per capita than any other medical examiner's office in the United States," has been unable to identify a third of the bodies recovered (Mello 2013; Binational Migration Institute 2013). Heat exposure from traveling through the desert is the most likely cause of death. Joseph Nevins and Luis Alberto Urrea graphically describe the deaths, and compassionately tell the life stories of people who have died crossing the desert (Nevins 2008; Urrea 2004). Many of those who have died were crossing for the second or third time, attempting to rejoin

families after deportation. Deportation as a strategy for immigration control is rarely "voluntary," but involves involuntary, painful family separations and the willingness to again attempt dangerous desert crossings.

Few seem to think that deportation of all unauthorized immigrants is either desirable or feasible. Yet deportation of migrants has increased during the Obama administration. A record 400,000 people were deported in 2012, a not insignificant portion of the estimated 11.2 to 11.5 million unauthorized immigrants in the United States. Tanya Golash-Boza (2013) makes the remarkable claim that "by 2014 President Obama will have deported over 2 million people—more in six years than all people deported before 1997." Some 23 percent of "criminal deportees" were deported after traffic violations, and 20 percent for immigration crimes such as illegal entry or reentry. Similar to what I discovered through my informal interviews in Nogales, Mexico, the study found that from July 2010 to December 30, 2012, one-quarter of all deportations were of parents with U.S. citizen children living in the United States (Golash-Boza 2013).

No matter what type of immigration reform one favors (or doesn't), the question of how people are treated must be asked. Separation of young children from their parents and death in the desert don't fit a national image of welcome, fair treatment, equal protection, and human rights.

WHOSE RIGHTS?

> Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. (Universal Declaration of Human Rights, Article 2)

The United Nations General Assembly passed the Universal Declaration of Human Rights in 1948. The declaration defined a wide range of rights, including *civil rights* (protection from discrimination and freedom of expression, speech, religion, assembly, the press, movement), *political rights* (right to a fair trial, due process, assembly, vote, petition, self-defense, and freedom of association), and *social and economic rights* (i.e., the right to equal pay, the right to work, the right to education, food, housing, medical care). Article 2, quoted above, affirmed the idea that governments were not justified in excluding groups of people from rights, based on (among other things) national or social origin or status of a country to which a person belongs. Yet for

the undocumented, "both the law and popular opinion deem them somehow different from the rest of us, and not eligible for the rights and privileges that 90 percent of the population enjoys (Chomsky 2007, xiii). The coupling of rights with citizenship challenges the alleged universality of human rights.

The first justification for denying rights is noncitizenship. The unauthorized are in a paradoxical (impossible?) situation. As Cymene Howe writes, "undocumented migrants cannot claim full citizenships in the country to which they migrate because they are effectively betwixt and between—that is, in a liminal condition of nation state membership" (2009, 45). Yet for the unauthorized, it is virtually impossible to obtain U.S. citizenship, which would afford them rights, because normal "migration channels for undocumented migrants are largely foreclosed due to migrants' illegal status" (45). Full rights "belong" to citizens; undocumented migrants are not citizens, yet paths for citizenship are (for the most part) closed because they are unauthorized.

The liminal condition described by Howe becomes further complicated when "unauthorized" becomes framed as "illegal." Residing in the United States without authorization or "documents" is a civil rather than a criminal violation. "Mere undocumented presence in the United States alone, however, in the absence of a previous removal order and unauthorized reentry, is not a crime under federal law" (ACLU 2010).[2] Yet public discourse frames the unauthorized as "criminal." The inaccurate use of terms like *illegal immigrants* or *aliens* "effectively criminalize[s] individuals for entering or residing in a country without the sanction of the national government" (Nevins 2008, 13).

Unauthorized immigrants, then, are not allowed to claim full rights because a) they are not citizens, and b) they are criminals, deemed to be justifiably outside the protection of the law (although *citizen* criminals can still claim protection). Mae Ngai provides a historical account of how immigrants became "illegal aliens," thus justifying their exclusion from the United States.[3] Changing laws and policies have transformed residents, and even citizens, into "illegals." Chinese who were recruited in the 1860s to work in California agriculture became undesirable and were then denied entry and status through the Chinese Exclusion Act of 1882. Japanese American citizens *became* Japanese by edict of the U.S. government during World War II (although German American citizens did not *become* Germans). Mexican workers were recruited in 1942 under the Bracero Program and upon its repeal in 1964 became illegal from one day to the next (although they continued to labor). A new subject was created "whose inclusion in the nation was a social reality but a legal impossibility—a subject without rights and excluded from citizenship" (Princeton University Press n.d.). As Aviva Chomsky writes, "To those included in the circle of rights, the exclusion of others has always seemed justified, so much so as to be virtually beyond the bounds of discussion" (2007, xii).

RIGHTS DENIED

What are human rights violations experienced by the undocumented in the United States? I have already mentioned death, forcible separation from family members, sexual violence/abuse in detention centers, and lack of legal protection. Undocumented migrants, especially those in transit, are vulnerable to human trafficking. An estimated 14,500 to 17,500 people are trafficked into the United States every year (Polaris Project n.d.). Unauthorized people are especially vulnerable once in the United States because they lack legal status and protection. The undocumented face a wide range of human rights issues that may affect many aspects of their lives:

Family life. Numerous treaties signed by the United States express the international human right to family unity. The United Nations Human Rights Committee contends that states should restrain from deporting individuals if doing so would destroy family unity. "They may not be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence" (UN Office of the High Commissioner for Refugees 1986). Yet many families live with the constant fear that they will be separated from their loved ones. Four and a half million children live in "mixed-status" families, generally with citizen children and at least one undocumented parent. Mixed-status families risk "losing" one or both parents to deportation. A woman I met in Nogales, Mexico, had lived in the United States for twenty years when she was deported after being stopped for a missing taillight. She left behind four citizen children. In her case, a parent was still in the home to care for their children. Others are not so fortunate. The Applied Research Council found that children have ended up in the foster care system, although they *have parents*; a conservative estimate was "that there are at least 5100 children currently living in foster care whose parents have been either detained or deported" (ARC 2011, 4). The report concluded, "Whether children enter foster care as a direct result of their parents' detention or deportation, or they were already in the child welfare system, immigration enforcement systems erect often-insurmountable barriers to family unity" (4).

Workplace violations. Unauthorized laborers disproportionately experience labor and workplace condition violations, including wage exploitation and nonpayment, unsafe working conditions, greater risk of on-the-job injuries that go unreported and uncompensated, unhealthy work conditions due to pesticides and toxic chemicals, child labor, and fear of organizing. Farmworkers easily work ten-hour days, often in temperatures of 90 degrees and above. Nannies, house cleaners, and caregivers, called the "invisible workforce," are especially vulnerable to abuse and exploitation, given that their work happens in private rather than public spaces. Unauthorized migrants also make significantly less money than working U.S. citizens. The median household income for undocumented families (2007 figures) is $36,000, compared to $50,000 for U.S.-born residents (Passel and Cohn 2009). A 2004 study reported that while one in three working citizens received less than twice the minimum wage,

two of every three undocumented workers did (Passel, Capps, and Fix 2004). For some the situation is even worse. The average wage for a farmworker is $11,000 per year; many may work a piece-rate pay system. Domestic work is characterized by low pay and no (or few) benefits, and the undocumented make 18 percent less than U.S.-born domestic workers (Burnham and Theodore 2012).

Legal protection. As noted previously, during deportation proceedings immigrants are often denied due process of law and/or access to counsel. They also may face arbitrary detention and crowded and unsanitary detention facilities (Human Rights Watch 2010). Immigrants, whether authorized or not, have the right to freedom from arbitrary detention. In 2011, 429,000 immigrants were held in detention centers (ACLU n.d.). The average length of stay is thirty-seven days (Immigrant Justice 2011), although I have met many immigrants who spent up to a year in centers. Most will not have access to a lawyer, interpretation services, phone calls to their families, and other taken-for-granted rights of citizens. A recent study of deportees at the U.S.-Mexico border found that fewer than one in five had contacted their consulate because they were unaware they had the right or were denied access even after making a request (Danielson 2013).

The preceding are but a few of the numerous human rights concerns of the unauthorized. Given the complexity and breadth of the human rights issues faced by undocumented immigrants, scholars, policy makers, and activists from a wide variety of disciplines must be engaged. The three volumes of *Hidden Lives and Human Rights in the United States: Understanding the Controversies and Tragedies of Undocumented Immigration* offer contributions from the top immigration scholars in the United States in disciplines including anthropology, communications, demography, economics, education, gender and race studies, geography, history, journalism, law, political science, psychology, public policy, social work, sociology, and religious studies.

Volume 1, *History, Theories, and Legislation,* locates unauthorized immigration in the context of U.S. history, including legislative history and demographic trends. It explores laws, policies, reforms, media narratives, and public opinion concerning national security, voting, amnesty, gender, and border control at community, state, national, and international levels. At a macrolevel, contributors explore the impact of globalization on immigration to the United States, international migration regimes, and theories of immigration. At a more personal level, the dangerous journeys faced by many migrants, the impact of state laws on the daily lives of undocumented immigrants in Arizona, and difficult family planning decisions faced by Mexican immigrant women as they are sexualized, similar to immigrant women before them, are described. The volume clearly shows that macro/structural decisions affect the daily lives of millions. The theories, laws, and perceptions of who "belongs" have real-world consequences.

Volume 2, *Human Rights, Gender/Sexualities, Health, and Education,* places human rights violations faced by unauthorized immigrants in the context of a "criminalization" framework that justifies (implicitly or explicitly) deportation, detention, border violence, human trafficking, and family separation. The contributors show that being undocumented is literally bad for one's physical and mental health. They take us inside the worlds of young people as they try to adapt to life as undocumented, the daily lives of families who are divided by borders, the challenges the undocumented face as they try to become part of communities, and of college students trying to succeed academically. The challenges faced by the undocumented are made even worse for some groups, such as multiply marginalized LGBTQ immigrants.

Volume 3, *Economics, Politics, and Morality,* explores the economic impact of immigrants both in the United States and in their countries of origin, including the labor the unauthorized perform. As noted previously, undocumented immigrants make up roughly 4 percent of the U.S. population, but nearly 5.5 percent of its workforce, concentrated in the lowest wage jobs. The unauthorized are disproportionately represented in certain occupations, such as farm work (25%), grounds keeping and maintenance (19%), construction (17%), food service (12%), and production (10%) (Passel and Cohn 2009). One-third of all domestic workers (elder care, child care, house cleaning) are undocumented (Burnham and Theodore 2012). Day laborers congregate on street corners to be hired for short-term and dangerous work. The contributors to this volume show the human face behind these numbers, the unjust working conditions, and paths forward. The role of civil society, migrant hometown associations, religious groups, the sanctuary movement, and advocacy groups in humanizing the immigration regime are explored in this volume, as well as the values and morality that underlie current immigration legislation and policy.

The three volumes that comprise *Hidden Lives* share the perspective that the immigration "crisis" is a crisis of human rights and how we live together. The contributors weave stories of real people with their analyses. The "undocumented" include people who have lived in the United States for many years, have citizen children, work here, and are deeply tied to communities.

I have been honored to collaborate with the contributors to *Hidden Lives.* They are excellent scholars and on the forefront of policy making and action on the behalf of the unauthorized. They are a smart, engaged, compassionate group; their collective wisdom, scholarship, and experience are profound.

When I decided to edit *Hidden Lives,* a few colleagues questioned using the word "hidden." Certainly undocumented migrants are more "visible" than ever. They are visible in the popular imagination as the illegal border crossers; the targets of numerous state laws; and the subjects of congressional

debates, electoral politics, popular media, and vigilante groups. The preceding may be seen as *involuntary visibility.* Yet the huge demonstrations of 2006 in reaction to HR 4437 (Sensenbrenner Bill) that rocked the nation represent a massive *voluntary* grabbing of visibility.[4] Jorge Antonio Vargas, a Pulitzer Prize–winning journalist, famously "came out" as undocumented and was featured in a *Time* magazine cover story (Vargas 2011, 2012). The DREAMers[5] also self-consciously make themselves visible, when some might argue it is in their self-interest to remain hidden.

However, this series is about *human rights* and undocumented immigrants. What is still hidden to most people (although certainly not to the unauthorized) is a litany of human rights abuses, fear, and vulnerability. Hidden are the detention centers, the countless deaths while crossing the border, the separation of parents from their children, the lack of basic protection while on the job, the absence of due process during legal proceedings; in short, the basic rights taken for granted by citizens. The contributors to these volumes shine light on hidden areas of the daily lives of undocumented immigrants. They demonstrate a wide range of human rights issues, while showing "the human face of unauthorized immigration" (Marquardt et al. 2011).

NOTES

1. There are debates about terms. Most see *illegal immigrant* as pejorative, and *illegal alien* even more so. The Associated Press banned the use of both terms in 2013. Some scholars, policy makers, and activists prefer the term *unauthorized* rather than *undocumented* immigrant. They observe, correctly, that many immigrants do indeed possess "documents," so it is not technically correct to call them undocumented. Given that the term *undocumented immigrant* is more widely used and recognizable, these volumes (although not all contributors) refer to undocumented immigrants.

2. The distinctions between civil and criminal are often conflated in public debate and popular perception. Illegal entry and reentry after a prior removal order are considered crimes. Living "unauthorized" in the United States, however, is a civil violation (ACLU 2010). A 2006 study by the Pew Hispanic Center estimated that "[a]s much as 45% of the total unauthorized migrant population entered the country with visas that allowed them to visit or reside in the United States for a limited amount of time."

3. She points out that the category of "illegal" didn't exist before the 1920s, because there weren't laws to break (Ngai 2004).

4. The Border Protection, Anti-Terrorism and Illegal Immigration Control Act of 2005 (HR 4437), also known as the Sensenbrenner Bill due to its sponsorship by Wisconsin Republican representative Jim Sensenbrenner, passed the House but was defeated in the Senate. The bill, among other things, would have made it a felony to assist undocumented immigrants. The near passage of the bill inspired massive

protests in 2006, including a protest march of up to 500,000 people and a nationwide day of protest on April 10, 2006.

5. DREAMers is a term used to describe people who would qualify for a path to citizenship under the proposed (and once defeated) legislation The Development, Relief, and Education for Alien Minors (DREAM) Act.

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1

Undocumented Migration to the United States: A History

Mae M. Ngai

Migration is as old as human history. It is a human response to the conditions of life, whether an aspiration for economic improvement; a quest for refuge from persecution, war, or disaster; a longing to be with loved ones; or a restlessness of the spirit. As such, it has always been difficult for states to control.[1]

Only in the modern era did it become standard practice for states to impose restrictions on immigration. In the early modern period, long-distance migration was integral to the trading networks and settlements that accompanied the expansion of "core" societies: Europe to the Americas and China to Southeast Asia, for example. These migrations may be understood as part of the building of Old World empires. Restrictions mostly pertained to domestic mobility and exit; freedom of movement was a right acquired in Europe with the emergence of capitalism, as peasants became unshackled from their places of birth and servants from the authority of their masters. By the nineteenth century the nation-state had become the dominant mode of political organization, especially in Europe and the Americas. National states began to regulate immigration as part of their efforts to control their labor markets and the ethnoreligious composition of their populations. Although many states relaxed restrictions on exit, they erected barriers to admission. It is a paradox of modern history and law that liberal nation-states the world over recognize the individual right to exit

yet uphold the right of nations to refuse entry to anyone who may come knocking at the door.

Undocumented migration is a corollary to restrictive policies; in this sense, it is a common feature of modern immigration. The assumption in public discourse that unauthorized entry is anomalous and exceptional creates a logic whereby undocumented migration is deeply misunderstood. It is seen as a problem caused by the migrants themselves, who are imagined as suffering from individual character defects (lawbreakers). The solution to the problem is seen as greater law enforcement (stop them from entering; remove those who are unlawfully present). Left unexamined is the law itself, which is not fixed or timeless, but the product of historical contingencies and political alignments. This chapter reviews how American immigration policy shifted from one that was normatively open (i.e., open with some exceptions) to one that is normatively closed (closed with some exceptions) and in the process created the problem of undocumented immigration.

THE OPEN DOOR

In the United States immigration was unregulated until the late nineteenth century and numerically unrestricted until the 1920s. Until that time there were no visas, green cards, or passports; no quotas or queues; no border patrol. With a few exceptions, there were no illegal aliens.

Indeed, it may be argued that before the 1820s the people who came to America were not "immigrants"—that is, they did not come with the intention of joining an existing society. They are better understood as colonists and settlers (and the dependent laborers—indentured servants and slaves—that they brought with them or purchased upon arrival). The colonists who came to North America in the seventeenth and eighteenth centuries sought not to "assimilate" with natives (whom they characterized as savages), but to establish, in place of native societies, replicas of the Old World; hence the names New Spain, New France, New Netherland, and New England.

After the United States was founded, immigration continued to be important for the peopling of the new nation. But there were no federal laws regulating it. The U.S. Constitution was written without mention of immigration. It only called upon the Congress to enact a uniform law for naturalization. The Alien and Sedition Acts, passed in 1798 as a reaction to the French Revolution, extended the waiting period for naturalization from five to fourteen years and allowed for the detention of subjects of enemy nations and the deportation of persons considered by the president to be dangerous. These acts were the first U.S. internal security laws; they were extremely controversial at the time, and Congress allowed them to expire within a few years. For present purposes it is

notable that the alien and sedition laws did not seek to regulate or curtail immigration itself. Congress's reluctance to do so—and the absence of federal regulation over immigration in general—reflected the nation's division between free and slave states. Slaveholders opposed any federal authority over the mobility of their slaves. The only federal legislation pertaining to immigration was a series of Passenger Acts, passed from 1819 to 1855, which set standards for merchant vessels carrying passengers to American ports.

The territories of the old Northwest encouraged immigration to spur settlement, offering new arrivals easy access to land and voting. Yet during this period newcomers from Europe, like the colonists who came before them, considered themselves to be not immigrants, but pioneers and settlers who came to build a new nation. They tended to call themselves emigrants, emphasizing their continued identification with their countries of origin (Gabaccia 2006).

European emigrants faced growing nativism in the antebellum period, particularly Irish and German Catholics. Refugees from Ireland, which was devastated by the great potato famine (1845–1852), concentrated in cities, where they drew criticism for their poverty and religious difference. The xenophobic and anti-Catholic Native American Party (also known as the Know Nothings) made a splash in the 1850s, but its momentum was short-lived. The slavery question and the Civil War quickly superseded the immigration issue.

FEDERAL REGULATION AND CHINESE EXCLUSION

In 1875 the U.S. Supreme Court ruled that regulation of immigration was a matter for the federal government, not the states (*Chy Lung v. Freeman* 1875). Soon Congress began to pass laws that sought to regulate immigration in ways that reached far beyond the scope of the Passenger Acts. These new laws targeted designated classes of immigrants as undesirable and excluded them from admission. The previous laws had held the steamship companies responsible for the conditions of passage, but the principle and practice of exclusion targeted the individual migrant. In doing so, the first restrictive laws constituted the grounds for creating the nation's first illegal immigrants.

The first exclusion laws aimed at the Chinese. An anti-Chinese movement had emerged in California in the 1850s among Euro-Americans, who opposed foreign competition in the gold-mining districts. Local and state laws barred Chinese from first ownership of mining claims, testifying in court against whites, and other rights. During the long recessionary period of the 1870s anti-Chinese agitation assumed new urgency as an urban labor movement. Under the banner "the Chinese must go!" the California Workingmen's Party

blamed Chinese labor for undercutting the wages and standard of living of white Americans. They asserted the falsehood that Chinese workers were "coolies," held by indenture or debt peonage, a condition of servility that was imagined to be an inherent racial trait. Using the potent and familiar language of "free labor" against "slavery," the anti-Chinese movement succeeded in gaining passage of myriad local and state measures that harassed and discriminated against the Chinese, but California could not exclude them from entering. Only the federal government could do that.

Standing in the way of a national Chinese exclusion law was the Burlingame Treaty between the United States and China, signed in 1868. The treaty encouraged trade and friendship between the two nations. American missionary and business interests in China benefited directly from provisions recognizing freedom of religion and free immigration, but in the treaty language of reciprocity, those rights also extended to Chinese immigrants and residents in the United States.

The first restrictive U.S. immigration law, the Page Act of 1875, sought to curtail Chinese immigration by forbidding the admission of contract labor and "Mongolian" prostitutes. In this way it skirted the terms of the Burlingame Treaty, which pertained to "free immigration." The Page Act sought to exclude the Chinese, imagined as an unfree race of coolies and prostitutes. It was successful in deterring Chinese female immigration—not because all Chinese women were prostitutes, but because Chinese women would not submit to the offensive interrogation procedures. The Page Act was not able to keep out male laborers because they were not, in fact, contracted or indentured. Further agitation on the part of the anti-Chinese movement pressured Washington to renegotiate the Burlingame Treaty in 1880 to allow for a temporary suspension of immigration. Congress passed the first Chinese exclusion law,[2] barring from admission all Chinese laborers for ten years, in 1882. The act also barred Chinese from naturalization. It was renewed in 1892 and made permanent in 1902. The Chinese exclusion laws were the first, and only, immigration laws in the United States that explicitly named a group for exclusion on grounds of racial difference. They remained in force until 1943, with grave and long-term consequences for Chinese and other Asians (Japanese, Koreans, and South Asians were also excluded by various laws in the early twentieth century) (Hing 1993).

The Chinese exclusion laws produced America's first illegal aliens. Strictly speaking, Chinese who entered the country in violation of the exclusion laws were not "undocumented." Rather, they used false identities that were certified by documentation created by the immigration bureau or the courts. Some men gained admission as merchants, purchasing a partnership in a mercantile firm and gaining a certificate attesting to their exempt status. Their

status also enabled them to bring their wives and children. Many more entered as the sons of Chinese who claimed they were born in the United States and hence citizens. Conveniently, the San Francisco earthquake and fire of 1906 destroyed the city's birth records, making these claims difficult to disprove. A son was born in China but claimed citizenship by derivation from his father, who was said to have sired him while on a visit from California. All this would be explained to a judge in federal district court, who without contravening evidence more often than not discharged the son with papers certifying his status as a U.S. citizen. In turn such men enabled the admission of more sons, and so on, creating several generations of "paper sons." It has been estimated that half the Chinese population in America by the mid–twentieth century were paper sons and their families, living with false identities in the shadows of a community already marginalized by legal, occupational, and residential discrimination.

The Chinese exclusion laws also had a lasting influence on the philosophy and structure of American immigration and naturalization policy. Chinese exclusion occasioned the doctrine of national sovereignty as the foundation of immigration law and Congress's plenary (absolute) power over its regulation. The U.S. Supreme Court, ruling in a series of test cases brought before it protesting the constitutionality of the exclusion laws, established that aliens had no rights in matters of admission and removal. It considered the regulation of immigration to be incident to the nation's sovereignty and part of its conduct of foreign relations, along with declaring war, making treaties, and repelling foreign invasion. In *Chae Chan Ping*, the "Chinese Exclusion Act" (1889), the Court wrote:

> It matters not in what form [foreign] aggression and encroachment come, whether from the foreign nation acting in its national character, or from vast hordes of its people crowding in upon us. . . . If, therefore, the government of the United States, through its legislative department, considers the presence of foreigners of a different race in this country, who will not assimilate with us, to be dangerous to its peace and security, their exclusion is not to be stayed because at the time there are no actual hostilities with the nation of which the foreigners are subjects. The existence of war would render the necessity of the proceeding only more obvious and pressing. (*Chinese Exclusion Case* 1889)

By establishing national sovereignty as the doctrinal basis for unchecked state power over Chinese immigration, the Court created a general policy. For that reason Justice David Brewer dissented in the *Fong Yue Ting v. U.S.* (1893) deportation case, acknowledging that the absolute power of the state to expel unwanted aliens was "directed only against the obnoxious Chinese, but if the power exists, who shall say it will not be exercised tomorrow against other classes and other people?"

The Chinese exclusion cases carved out a discrete legal domain for immigration matters, creating two different realms of rights: those in the Constitution, enjoyed by all persons territorially present, including aliens, and those in the area of immigration, in which aliens have no rights. For immigrants these two realms exist in tension with each other, one promoting inclusion, the other exclusion. Indeed, they invariably overlap (Bosniak 2008). Aliens' lack of rights in immigration matters arguably undermines their constitutional rights. One can easily imagine, for example, that one's freedom of speech is compromised if one can be deported for expressing views considered inimical to the state's interest. The tensions and contradictions between these two different realms of individual rights underlay racially differential treatment of different groups: Europeans tended to be treated in terms of inclusion and Chinese in terms of exclusion.

In the same year in which Congress passed the Chinese exclusion act, 1882, it also passed the country's first general immigration law. It established certain classes of persons deemed excludable, but unlike the Chinese exclusion laws, it was aimed at individual attributes: convicts, lunatics, idiots, and those liable to become a public charge. It also levied a 50 cent head tax on all aliens landing at U.S. ports to defray the cost of inspection. Over the course of the next several decades the list of excludable categories grew to include paupers, prostitutes, persons with loathsome and contagious diseases, the feebleminded and insane, persons involved with narcotics, polygamists, and anarchists. The excludable categories reflected concern over admitting people who would be unable to work and could become public charges, as well as the late-nineteenth-century belief, derived from Social Darwinism and criminal anthropology, that the national body had to be protected from the contaminants of social degeneracy.

Enforcement was extremely weak. Inspection upon arrival sought to identify excludable persons and to deny them admission, but little could be done if they evaded detection and entered the country. Subsequent discovery was commonly the result of hospitalization or imprisonment, yet no federal law existed mandating the removal of alien public charges. It was not until 1891 that Congress authorized the deportation of aliens who within one year of arrival became public charges from causes existing prior to landing, at the expense of the steamship company that had transported them. Congress otherwise established no mechanism and appropriated no funds for deportation.

It is noteworthy that the law specified a one-year statute of limitation on deportation. Congress gradually expanded that period over the next several decades. The Immigration Act of 1917 established harsher sanctions, extended the period of deportability to five years, removed all time limits for aliens in

certain classes, and for the first time appropriated funds for enforcement. The new, harsh law was applied to immigrant anarchists and communists in a sweep of postwar vengeance against radicalism and labor militancy, culminating in the Palmer Raids in the winter of 1919–1920. Some ten thousand alleged anarchists were arrested, with roughly five hundred ultimately deported.

Asiatic exclusion and the Red Scare notwithstanding, the American immigration system was still an open one. There were no numerical limits on immigration, and Europeans were governed by a system that contemporaries called "individual selection." The Immigration Service deported only a few hundred aliens a year and between 1908 and 1920 an average of two or three thousand per year, mostly aliens removed from asylums, hospitals, and jails. Less than 1 percent of the twenty-five million arrivals from Europe between 1880 and World War I were turned away. Notably, mere entry without inspection was insufficient grounds for deportation. The statute of limitations on deportation was consistent with the general philosophy of the melting pot: it seemed unconscionable to expel immigrants after they had settled in the country, acquired families and property, and become members of the community.

FROM REGULATION TO RESTRICTION

The unskilled workers who emigrated from eastern and southern Europe to the United States at the turn of the twentieth century comprised a vast army of labor for the nation's industrialization and for building the infrastructure of its cities. They shoveled pig iron in steel mills, sewed shirtwaists in factories, and dug tunnels for sewer and subway lines. At the same time, however, demands for restricting immigration emerged among native-born white Americans, who associated immigrants with the spread of urban slums and class conflict. New England elites as well as native-born craft workers considered the new immigrants to be unassimilable, backward peasants from the "degraded races" of Europe, incapable of self-government. The American Protective Association, formed in 1887, was anti-immigration and anti-Catholic, and boasted 2.5 million members at its peak in the mid-1890s.

The restrictionists' efforts to curtail immigration were largely unsuccessful before World War I. But during and immediately after the war a confluence of political and economic trends impelled the legislation of immigration restriction. First, wartime nationalism produced a feverish sentiment against presumably disloyal "hyphenated Americans." Although war nationalism was aimed principally against German Americans, it provided a popular basis of support for the restrictionist movement against eastern and southern Europeans. Second, in the economic realm, by 1920 the country simply no

longer needed the same levels of mass immigration. Industrial capitalism had matured to the point where economic growth could come more from technological advances in mass production and labor discipline than from continued expansion of the manufacturing workforce. Finally, the international system that emerged with World War I gave primacy to the territorial integrity of the nation-state, which raised the borders between nations. For example, the introduction of passport controls in Europe and the United States, begun as an emergency wartime measure, became without exception the norm in regulating migration.

In the early 1920s support in Congress for restriction became overwhelming. Not all supporters were 100 percent Americanists, but few could resist the combination of nativism, job scarcity, and antiradicalism that fueled the politics of restriction. After passing an emergency measure to restrict immigration in 1921, Congress passed the Immigration Act of 1924 (also known as the Johnson-Reed Act), which represented a seminal break in American immigration policy. The era of the open door emphatically ended, replaced with a regime of quantitative and qualitative restrictions that were unprecedented in their scope and ambition. Most important, the law established a numerical ceiling on admissions, set at 155,000 per year. Adjusting for population, this number has barely risen over time. Although the manner in which the total is distributed among countries has been subject to controversy over the years, most Americans remain committed to the principle of numerical restriction. In addition, the new system generated various instruments of enforcement, including the requirement of a visa for entry, inspection at a designated port of entry, and the formation of a land border patrol. It is from this combination of numerical restriction, documentation, inspection, and border surveillance that the "undocumented migrant" was born.

The qualitative nature of the new regime may be understood as a three-pronged border policy: one directed at European immigration, the second directed at Asia, and a third for countries of the Western Hemisphere.

The policy for Europe was *restriction.* The method for allocating the total number of visas for entry was based on a hierarchy of racial desirability. Although nativists often spoke in the language of race to disparage immigrants from eastern and southern Europe (called, variously, the "lesser white races," "degraded races of Europe," etc.), the quotas were written in the race-neutral language of "countries" and "national origins." Quotas were distributed among countries in proportion to the number of white Americans who could trace their ancestry to each country in the 1920 census. This not only reflected a conservative impulse—to freeze, as it were, the national-origin composition of the population as it existed in 1920—it was also deeply flawed on its own terms, conceptually and methodologically. A long history

of intra-European mixing made it impossible to determine the "national origin" of the white population. A "quota board" mandated by Congress to allocate the quotas used statistical alchemy to grant 65 percent of the total to Great Britain, Ireland, western Europe, and Scandinavia. The remaining 35 percent went to the countries of southern, eastern, and central Europe, from which had come the most recent wave of mass migration. So, for example, Great Britain and Northern Ireland's quota was 65,721; Germany's was 25,957; and Ireland's was 17,853. In contrast, Italy's quota was 5,802; Poland's was 6,523; Hungary's was 869; and Greece's was 307.

The policy for Asia was *exclusion.* After Congress passed the Chinese exclusion laws, various measures excluded other Asians, but these were piecemeal, and in the case of the Japanese, part of a diplomatic agreement that exclusionists thought was weak. The 1924 act perfected Asiatic exclusion with comprehensive, statutory exclusion. Like the "national origin" concept, this was done by euphemism, excluding from entry all "aliens ineligible to citizenship." That concept was not explicitly elaborated in the 1924 law; it derived from two rulings made by the U.S. Supreme Court in the early 1920s, in *Takao Ozawa v. U.S.* (1922) and *U.S. v. Baghat Thind* (1923), which determined that Japanese, South Asian Indians, and all Asians were not "white" and therefore not eligible for naturalization under existing naturalization law, which held out that privilege to "white persons" and "persons of African nativity and descent." The requirement that one must be "white" to naturalize dated to the first U.S. naturalization law of 1790 (specifically, "free white persons of good oral character"). The law was amended to include persons of "African nativity and descent" after the Civil War as a gesture to the former slaves (whose own citizenship was affirmed by the Fourteenth Amendment). No one seriously believed that the "Negroes of Africa" would immigrate, explained a federal judge in 1880, "while the Indian and the Chinaman were in our midst, and at our doors and only too willing to assume the mantle of American sovereignty."[3] Armed with the Supreme Court's rulings that Asians were not "white," Congress legislated a comprehensive Asiatic exclusion policy that did not have to speak its name.

The policy for the countries of the Western Hemisphere was both open and closed. These countries were exempted from numerical restriction. Congress was reluctant to place quotas on Canada and Mexico, because it considered an open immigration policy important for its relations with its neighbors. It wished to protect American business interests in Canada, Mexico, and Latin America, which might be jeopardized by retaliatory quotas on American travelers. In the Southwest agricultural interests relied on Mexican labor, and policy makers believed Mexican immigration was seasonal and hence of little long-term demographic consequence.

While exempting countries in the Western Hemisphere from numerical quotas, the 1924 act did impose upon all immigrants, regardless of origin, the same general requirements for admission: a visa and inspection at a formal port of entry. The visa fee and head tax were burdensome for many migrants, especially Mexicans, who also hated the inspection regimen for laborers at U.S.-Mexico immigration stations, which required mass bathing, delousing, medical-line inspection, and interrogation. Many Mexicans chose to avoid the expense and humiliation of inspection by informally crossing the border, as they had done for decades. But their presence in the United States was now considered unlawful, for they had entered without a visa and without inspection. They were the iconic undocumented migrants.

Soon it became impossible for Mexican workers to obtain a visa, even if they wanted one. In 1929 the U.S. State Department issued administrative rules to deny visas to Mexican laborers, save for those with prior residence in the United States. This administrative restriction was a concession to nativists, who had lobbied for a Mexican quota. It enabled the United States to maintain an official posture of friendship to Mexico, while practicing restriction on the ground. However, the demand for labor in the lower Rio Grande Valley of Texas and in southern California, where industrial agriculture had taken off, continued to draw Mexican workers across the border. In general the growers of the Southwest found that they could benefit from undocumented migration: it helped keep wages low and labor militancy at bay. Rather than exclude Mexicans, immigration policy welcomed them, but only as an inexpensive, disposable labor force, desired for work in the fields but undesirable for inclusion in the polity. The policy for the countries of the Western Hemisphere might be summarized thus: *an open border, easy to cross, but only without documents.*

DEPORTATION AND THE MAKING AND UNMAKING OF ILLEGAL ALIENS

Though differently conceived, the European, Asian, and Western Hemisphere policies each generated undocumented migration: any European who entered in excess of his or her country's quota, any Asian, and any Mexican who failed to go through inspection. In addition, individual grounds for exclusion, such as disease and the infamous liable to become a public charge (LPC), remained in force. Illegal immigration, a relatively minor problem before World War I, was now a mass phenomenon and spurred the development of deportation machinery. A contemporary observed that "extensive use of the power to expel" began in 1925 and that deportation quickly became "one of the chief activities of the Immigration Service." To make expulsion more efficient, in 1927 the service

allowed undocumented migrants without criminal records to depart voluntarily, thereby avoiding the time and expense of formal deportation proceedings. In 1928 the Immigration Bureau requested a tenfold increase in its annual deportation budget.

The number of aliens expelled from the United States rose from 2,762 in 1920 to 9,495 in 1925 to 38,796 in 1929. "Aliens without proper visa" was the single largest class of deportees, representing one-half of the total number of formal deportations and the overwhelming majority of voluntary departures by the late 1920s. This shift in the principal categories of deportation engendered new ways of thinking about illegal immigration. Legal and illegal status became, in effect, abstract constructions, having less to do with experience than with numbers and paper. One's legal status now rested on being in the right place in the queue—if a country has a quota of *N,* immigrant *N* is legal, but immigrant *N* + 1 is illegal—and having the right documentation, the prized "proper visa." The qualitative aspects of admission were rendered less visible after 1924, when the visa application process took place at U.S. consular offices abroad. In 1924 the Immigration Service terminated line inspection at Ellis Island because medical exclusions were determined abroad. Thus, upon arrival immigrants' passports and visas were inspected, not their bodies. The system shifted to a different, more abstract register, which privileged formal status over all else.

The illegal alien who is abstractly defined is something of a specter, a body stripped of individual personage. The mere idea that persons without formal legal status resided in the nation engendered images of great danger. Having succeeded in legislating restriction, anti-alien animus shifted its focus to the nation's interior, with the goal of expelling the undocumented. The nativist Madison Grant, who had advocated tirelessly in the 1910s for restriction, called for alien registration "as a necessary prelude to deport on a large scale." Positive law thus constituted undocumented immigrants as criminals, both fulfilling and fueling nativist discourse.

Prohibition supplied an important cache of criminal tropes, the language of smuggling directly yoking illegal immigration to liquor running. The California Joint Immigration Committee described illegal aliens as "vicious and criminal," comprising "bootleggers, gangsters, and racketeers of large cities." In this narrative, aliens were not only the subjects (the smugglers) but also the objects, the human goods illegally trafficked across the border. In 1927 the Immigration Bureau reported that the "bootlegging of aliens" was a "lucratively attractive field of endeavor for the lawlessly inclined," emphasizing that "the bootlegged alien is by all odds the least desirable. Whatever else may be said of him: whether he be diseased or not, whether he holds views inimical to our institutions, he at best is a law violator from the outset"

(Commissioner General of Immigration 1927, 15–16). This view that the undocumented migrant was the least desirable alien of all denotes a new imagining of the nation, which situated the principle of national sovereignty in the foreground. It made state territoriality—not labor needs, not family unification, not freedom from persecution, not assimilation—the engine of immigration policy.

Territoriality was highly unstable, however, precisely because restriction had created illegal immigrants within the national body. This was not an entirely new phenomenon—it had existed since Chinese exclusion—but in the late 1920s illegal immigration assumed a different nature and scale. Undocumented migrants now comprised all nationalities and ethnic groups. They were numerous, perhaps even innumerable, and were diffused throughout the nation, particularly in large cities. An undocumented migrant might be anyone's neighbor or coworker, possibly one's spouse or parent. She might not even be aware of her own illegal status, particularly if it resulted from a technical violation of the law. She might, in fact, be a responsible member of society: employed, taxpaying, and, notwithstanding her illegal status, law abiding. Even if she were poor or uneducated, she might have a family and community ties and interact with others in ways that arguably established her as a member of society.

If it was difficult to differentiate undocumented migrants from citizens and legal immigrants, that difficulty signaled the danger that restrictionists had imagined—in their view, the undocumented were an invisible enemy in America's midst. Yet their proposed solutions, such as compulsory alien registration and mass deportations, were problematic exactly because undocumented migrants were so like other Americans. During the interwar period a majority of political opinion opposed alien registration on grounds that it threatened Americans' perceived rights of free movement, association, and privacy. The problem of differentiation revealed a discontinuity between illegal immigration as an abstract general problem, a "scare" discourse used at times to great political effect, and undocumented migrants who were real people known in the community, people who had committed no substantive wrongs.

Yet if the undocumented were so like other Americans, the racial and ethnic diversity of the population further complicated the problem of differentiation. We might anticipate that undocumented migrants from Europe and Canada were perceived and treated differently from those of Mexican or Asian origin. In fact, the racial dimensions of deportation policy were not merely expressions of existing prejudice. Rather, they derived from differences in restrictive policy and from the processes of territoriality and administrative enforcement that were not in the first instance motivated or defined by race.

During the 1920s growing numbers of undocumented Europeans entered surreptitiously over both the Canadian and Mexican borders. Belgian, Dutch, Swiss, Russian, Bulgarian, Italian, and Polish migrants enlisted in agricultural labor programs in the Canadian west, only to arrive in Canada and immediately attempt entry into the United States, at points from Ontario to Manitoba. The Federal Bureau of Investigation reported in 1925 "thousands" of immigrants, "most late arrivals from Europe . . . coming [in from Canada] as fast as they can get the money to pay the smugglers" (Blackman 1925). The most heavily traveled route for illegal European immigrants was through Mexico. The commissioner general of immigration noted, "Long established routes from southern Europe to Mexican ports and overland to the Texas border, formerly patronized almost exclusively by the diseased and criminal aliens, are now resorted to by large numbers of Europeans who cannot gain admission because of passport difficulties, illiteracy, or the quota law" (Commissioner General of Immigration 1923, 16).

By the late 1920s, however, surreptitious entry by Europeans had declined. The threat of apprehension and deportation was one factor. Europeans also found alternate means of legal entry. They could go to Canada (which had no quota laws) and be admitted legally from there into the United States after five years. The evidence suggests that this was a popular strategy: the proportion of lawful admissions from Canada of persons not born in Canada increased from 20 percent in 1925 to more than 50 percent in the early 1930s. Increasingly, European immigrants already legally residing in the United States acquired naturalized citizenship, which enabled them to bring over relatives as nonquota immigrants. In 1927 more than 60 percent of the nonquota immigrants admitted to the United States were from Italy, with the next largest groups coming from Poland, Czechoslovakia, and Greece. By 1930 the onset of the Great Depression curtailed immigration from Europe, both legal and illegal.

During the 1920s the Immigration Service deployed more and more of the Border Patrol to the U.S.-Mexico border to deal with European, Chinese, and Mexican illegal entries. The active agricultural labor markets in Texas and California drew Mexicans in large numbers, and as mentioned previously, many preferred to avoid formal inspection. During the late 1920s the number of undocumented Mexicans deported skyrocketed—from 1,751 expulsions in 1925 to more than 15,000 in 1929—mostly for entry without a proper visa.

The first officers of the Border Patrol serving on the U.S.-Mexico border area were recruited from among local cowboys, skilled workers, and small ranchers; many were associated with the Texas Rangers. They were known to be "a little too quick with a gun, or given to drinking too much, too often." Although

officially the Border Patrol was charged with enforcing civil, not criminal, laws and was not trained as a criminal law enforcement agency, its work assumed the character of criminal pursuit and apprehension. In response to complaints from white Americans who were interrogated by discourteous patrolmen or arrested without warrant, in 1929 the Immigration Service discontinued the "promiscuous halting of traffic" in the border area, acknowledging that it was "dangerous and probably illegal." It trained officers to act with civility, courtesy, and formality when dealing with migrants and citizens. These conventions were especially apt for dealings with Anglo citizens, ranchers, immigrants arriving from Europe, and "high-class tourists" from Canada. But the quasi- and extralegal practices associated with rancher vigilantism and the Texas Rangers suited the needs of the Border Patrol in the Southwest, particularly when it involved patrolling large expanses of uninhabited territory far removed from Washington's bureaucratic oversight. The Border Patrol functioned in an environment of increased racial hostility against Mexicans; indeed, it helped constitute that environment by aggressively apprehending and deporting increasing numbers of Mexicans. Patrol officers interrogated Mexican laborers on roads and in towns, and it was not uncommon for "sweeps" to detain several hundred immigrants at a time. By the early 1930s the Immigration Service was apprehending nearly five times as many suspected illegal aliens in the Mexican border area as it did in the Canadian border area.

Moreover, many Mexicans entered the United States through a variety of means that were not illegal but comprised irregular, unstable categories of lawful admission, making it even more difficult to distinguish between those who were legally in the country and those who were not. Mexicans living in Mexican border towns who commuted into the United States to work on a daily or weekly basis constituted one category of legal entry. Others entered legally as "temporary visitors" to work for an agricultural season and then returned to Mexico. According to one estimate, 20 to 30 percent of Mexican entrants during the 1920s and 1930s were classified as nonimmigrants—that is, as nonresident aliens intending to stay from six months to a year. The service did not require a passport or visa for such entry from Canada, Mexico, or Cuba, as long as one paid a refundable head tax. Immigration policy had thus constructed classifications of entry that supported local and regional labor markets but were also perceived as opportunities for illegal immigration. The instability of these categories led officials to cast additional doubt and suspicion on Mexican migrants.

Mexican immigration abated during the 1930s, owing to the policies of deportation and administrative exclusion, as well as a lack of employment caused by the Depression. As economic insecurities among Euro-Americans inflamed racial hostility toward Mexicans, efforts to deport and repatriate

the latter to Mexico grew. The movement did not distinguish among legal immigrants, the undocumented, and American citizens. Mexican Americans and immigrants alike reaped the consequences of racialized foreignness that had been constructed throughout the 1920s. In addition to deportation, local and state authorities sought to restrict the movement of Mexicans and Mexican Americans. Los Angeles and other California cities and towns erected "bum blockades" to keep indigent migrants from entering. In Texas Anglos demanded that the International Bridge be closed from 6:00 p.m. to 10:00 a.m. to keep local commuters from Juárez from coming to work in El Paso.

The most common method used to expel Mexicans from the country was "voluntary" repatriation, sponsored by local and state governments. Led by Los Angeles county relief agencies, local authorities throughout the Southwest and Midwest repatriated more than 400,000 ethnic Mexicans in the early 1930s. Calculating that it cost less to transport a Mexican family across the border than to keep it on relief, county welfare bureaus sent trainloads of Mexicans to the border, where Mexican government officials received them. An estimated 60 percent were children or American citizens by native birth; many spoke English and had been in the United States for ten years or more. Some agencies tried to depict repatriation as an act of benevolence, and a number of the first repatriates took the opportunity of free transportation to return to Mexico. But increasingly the repatriates departed with anger and bitterness as welfare officials resorted to abuse and harassment in allocating relief to push people to accept repatriation. Mexican repatriation during the Depression was a racial expulsion program exceeded in scale only by the Native American removals of the nineteenth century. But with a population of 1.4 million, Mexicans were too numerous to be completely removed; moreover, their labor was still needed for farming, mining, and railway maintenance work throughout the Southwest.

At the same time that Mexicans and Mexican Americans were being deported and repatriated during the late 1920s and early 1930s, the volume of deportations of European immigrants also increased. These illegal aliens comprised unauthorized border crossers, visa violators, and those who had entered lawfully but later committed a deportable offense. Many had already settled in the country and acquired jobs, property, and families. Unlike Mexicans, these Europeans were accepted as members of mainstream white society. But if their inclusion in the nation was a social reality, it was also a legal impossibility. Resolving that contradiction by means of deportation struck many as simply unjust. In a sense the protest against unjust deportations stemmed from the fact that European and Canadian immigrants had come face to face with a system that had historically evolved to justify

arbitrary and summary treatment of Chinese and other Asian immigrants. Justice Brewer's warning in *Fong Yue Ting* had come true. During the 1930s a movement of legal and social advocates sought to reform deportation policy to allow for administrative discretion in deportation cases. Just as restrictive immigration policy and deportation had "made" illegal aliens, reformers sought to "unmake" illegal aliens by suspending orders of deportation and legalizing their status.

The reform movement followed a logic that distinguished deserving from undeserving illegal immigrants. This logic challenged the social norms of the late nineteenth and early twentieth centuries, which attributed social undesirability to innate character deficiencies rooted in race, gender, or "bad blood." New ideas about environmental causes of social degeneracy and crime led contemporaries to view deportations for LPC on grounds of female dependency, fornication, or theft as excessive and inappropriate. By the early 1930s the Immigration Service was tempering its use of the LPC clause to deport. This mostly benefited Europeans and Canadians, who had comprised the vast majority of LPC deportation cases. The courts also made refinements in deportation law, eliminating, for example, criminal misconduct from the public-charge category, on the logic that the LPC should not be used to deport people for petty crimes that were not themselves deportable offenses.

The administration of Franklin D. Roosevelt was sympathetic to demands for administrative discretion in deportation cases, but congressional action was slow in coming. Lacking statutory authority, Secretary of Labor Frances Perkins creatively used existing provisions in the immigration law to suspend deportations and legalize the status of certain illegal immigrants in so-called hardship cases. The secretary invoked an obscure clause of the Immigration Act of 1917, the Seventh Proviso to Section 3, which allowed "aliens returning after a temporary absence to a relinquished domicile of seven consecutive years may be admitted in the discretion of the Attorney General and under such conditions as he may prescribe." The proviso was intended to assist aliens who were temporarily out of the country when the 1917 act was passed and who, for reasons often technical in nature, found themselves excludable upon their return. Perkins's innovation was to use the concept "returning after a temporary absence" to apply to aliens who had not yet departed and to include in its scope illegal aliens. In practice it allowed immigrants in the United States without a visa to be "pre-examined" for entry while in the United States, leave the country as a "voluntary departure," proceed to the nearest American consul in Canada and obtain a visa for permanent residence, then reenter the United States formally as a legal admission. Perkins argued that the program was intended to provide relief

from hardship that would result from the separation of families. In effect she reverted to the central principle of pre-1924 policy inherent in the statute of limitation on deportation, the idea that immigrants who had settled in the country should not be expelled.

The Immigration Service thus suspended state territoriality in order to unmake the illegal status of certain immigrants. The "pre-examination" program, as it was known, was eventually routinized and written into the Code of Federal Regulations. It was initially meant for undocumented immigrants with longtime residence, who had a U.S. citizen spouse or children and whose illegal status resulted from technical error. It quickly extended to immigrants with criminal convictions. By the late 1930s Perkins (1940) had regularized the status of hundreds of criminal aliens, defending the practice on grounds that the crimes committed "amounted only to violations of law committed many years ago and were counterbalanced by long periods of good moral conduct and useful service in the community."

But even while expanding the program to criminal aliens, the Labor Department restricted the privilege of pre-examination to Europeans. Asians did not qualify because they were categorically excluded from immigration. Mexicans were not initially excluded, but the Immigration Service soon limited the program to aliens going to Canada. In 1945 it explicitly restricted pre-examination to "other than a citizen of Canada, Mexico, or any of the islands adjacent to the United States." This policy appeared to be race neutral, but it was irrelevant for Canadians, who did not need special permission to enter Canada. The intention was to categorically deny relief to Mexican and Caribbean migrants. The racism of the policy was profound, because it denied, a priori, that deportation could cause hardship for families of non-Europeans. In stressing family values, moreover, the policy recognized only the intact nuclear family residing in the United States and ignored transnational families. It failed to recognize that many undocumented male migrants who came to the United States alone in fact maintained family households in their home countries, and that deportation would cause hardship for their families.

For Europeans, however, the policy was clearly a boon. Pre-examination became the official and routine procedure for adjusting the status of Europeans who were not legally present in the United States. By the early 1940s it was also used to adjust the status of refugees from European fascism who had come to the United States in the 1930s on tourist visas. Between 1935 and 1959 the Immigration and Naturalization Service processed nearly fifty-eight thousand pre-examination cases and granted approval in the vast majority of them. After 1940 the INS began to suspend orders of deportation when Congress gave the attorney general the authority to do so as part of the Alien

Registration Act. This was a concession granted in exchange for alien registration, which had long been opposed but passed as a wartime measure. The 1940 law allowed for the suspension of deportation in cases involving aliens of good moral character if deportation would result in "serious economic detriment" to the alien's immediate family.

A rough estimation suggests that between 1925 and 1965 some 200,000 illegal European immigrants successfully regularized their status through these various measures. The formal recognition of their inclusion in the nation created the requisite minimum foundation for acquiring citizenship and contributed to a broader reformation of racial identities taking place, a process that reconstructed the "lower races of Europe" into white ethnic Americans.

At the same time, walking (or wading) across the border emerged as the quintessential act of illegal immigration, the outermost point in a relativist ordering of illegal immigration. The method of Mexicans' unlawful entry could thus be perceived as "criminal" and Mexicans as undeserving of relief, even as Europeans with criminal convictions were receiving suspensions of deportation and legalizing their status. Combined with the construction of Mexicans as migratory agricultural laborers, both legal and illegal, in the 1940s and 1950s, that perception gave powerful sway to the notion that Mexicans had no rightful place on U.S. territory, no rightful claim of belonging. The basic principle of immigration law doctrine that privileged Congress's plenary power over the individual rights of immigrants remained intact. The contradiction between sovereignty and individual rights was resolved only to the extent that the power of administrative discretion made narrow exceptions to the sovereign rule. That European and Canadian immigrants had far greater access to discretionary relief meant that they could, as legal aliens, more readily enjoy the rights that the Constitution afforded all persons. The improbability that Mexicans would receive relief tended to confine them to the domain of immigration law, where sovereignty, not the Constitution, ruled. Indeed, in the context of immigration law that foregrounded territoriality and border control, and in the hands of immigration officials operating within the contingencies of contemporary politics and social prejudices, enforcement and its exceptions served to racialize the specter of the illegal alien.

CIVIL RIGHTS AND GLOBAL RESTRICTION

After World War II criticism of the national origin quotas grew. The United States had fought a war against fascism and racism, and the blatant discrimination of the quota system offended European ethnic communities in the United States as well as America's Cold War allies around the world. It would

take some twenty years to repeal the national origin quotas, although some important reforms were made in the late 1940s and 1950s. These included the first laws allowing for the special admission of refugees and the end of Asiatic exclusion. With regard to exclusions and deportation, the Immigration and Naturalization Act of 1952 (McCarran Walter Act) enacted both harsher sanctions and more liberal grounds for regularization. The law, which was conceived as a Cold War and internal security measure, added six excludable classes (making a total of thirty-one) and facilitated the removal of aliens with views that were "prejudicial to the public interest."

At the same time, the 1952 law conceded some elements of due process to aliens in deportation hearings: notice, representation by counsel, and the right of cross-examination. It also established new conditions for relief from deportation, providing statutory (i.e., mandatory) relief for aliens who entered with fraudulent documents or by lying to inspectors, if they had long-term residence and immediate family in the United States, although it narrowed the grounds for suspension of deportation in other ways. But creating statutory grounds for relief gave Mexicans meaningful access to legalization. Many Mexicans who had come to the United States as temporary agricultural workers under the so-called Bracero Program and had skipped their contracts were able to legalize their status.

In the late 1950s the INS tried to end the China paper son illegal immigration scheme, because it thought that Communist China was using the system to sneak spies into the United States. It created a "Chinese confession program," by which Chinese paper sons could "confess" their false identities and relations in exchange for permanent residency and naturalization. Confessions revealed some thirty thousand Chinese paper sons and daughters. The program also closed 5,800 slots, that is, paper son identities available for use. Although the confession program benefited most Chinese Americans who applied for relief, the naming of names also enabled authorities to deport paper sons with radical politics.

Cold War politics merged with civil rights politics in the early 1960s to repeal the national origin quotas. A reform movement comprising American Jews, Italian Americans, and other European ethnics opposed the quotas as a badge of social inferiority and likened their struggle to the African American civil rights movement. The Immigration and Nationality Act (also known as the Hart-Celler Act), sponsored by President John F. Kennedy in 1963 and then by President Lyndon B. Johnson in 1964, was passed in 1965 by the largest Democratic Congress elected since the 1930s. It abolished the national origin quotas and replaced them with global quotas based on preferences for family relations (80 percent) and occupational skills (20 percent). It adjusted the overall numerical ceiling to 290,000 per year to account for population

growth since 1924, but it also eliminated the Western Hemisphere exemption, which actually made the total more restrictive than it had been previously. Under the new rules no country could receive more than 7 percent of the total, or 20,000.

Contemporaries and historians alike hailed the Hart-Celler Act as a liberal reform because it repealed the national origin quotas. Certainly for Europeans and Asians—who had been given extremely low quotas after the repeal of exclusion—the law promoted greater inclusion in the nation. But for Mexicans and other Latino/as, the imposition of numerical quotas where none had existed before was illiberal and regressive. In fact, the imposition of numerical quotas on countries of the Western Hemisphere had not been in the original reform bills. Since World War II sponsors of numerous immigration reform bills, as well as Presidents Truman, Eisenhower, Kennedy, and Johnson, had all continued to favor the Western Hemisphere exception on grounds of Pan-Americanism. But in the 1960s there was growing concern among moderates and conservatives that a "population explosion" loomed in Latin America, which they feared would result in too many Latino/a migrants heading to the United States. Those favoring Western Hemisphere quotas argued further on grounds that the exemption was "unfair" to other countries, which obscured the racial antipathies inherent in the first argument.

In the context of the civil rights era's emphasis on formal equality, the argument for "fairness" was formidable. In the early 1960s legal migration from Mexico was about 250,000 a year, including temporary agricultural workers entering under the Bracero Program. That program ended in 1964. But southwestern agribusiness still wanted labor from Mexico, and poor Mexicans continued to regard emigration as a strategy for family subsistence. The 1965 act mandated the formation of a congressional commission to study the question; it recommended labor certification as a "more flexible tool" for regulating Western Hemisphere immigration, and in the event of numerical restrictions, urged a quota of 40,000 per country. Over the objections of the commission, however, a Western Hemisphere–wide quota of 120,000 went into effect in 1968, representing a 40 percent reduction from pre-1965 levels. In 1976 Congress completed the logic of formal equality by imposing country quotas of 20,000 on the Western Hemisphere. It also closed a loophole in the law that had allowed undocumented Mexican immigrants with children born in the United States to legalize their status.

It should have surprised no one that undocumented migration from Mexico and other high-sending nations like China would dramatically increase in the last decades of the twentieth century. In reality, basic "push" and "pull" factors in an unequal world have far outweighed the abstract principle of formal equality. By the late 1970s—that is, within just a few years of the imposition

of country quotas on Mexico—a crisis discourse about the border being "out of control" had emerged. In 1986 Congress passed the Immigration Reform and Control Act, which legalized nearly three million undocumented migrants and established provisions aimed at stopping further unlawful entries, namely greater border enforcement sanctions against employers who hire undocumented workers. The latter were never enforced, but the United States has spent more than $187 billion on border enforcement since 1980, much of it since the 1990s and along the U.S.-Mexico border. The militarization of the border deterred but did not stop undocumented migration. In fact it had the unintended consequence that undocumented migrants from Mexico, who had previously tended to migrate seasonally, stayed in the United States rather than risk apprehension at an increasingly militarized border. By the mid-2000s there were some twelve million undocumented migrants living in the United States (decreasing to eleven million as a result of the 2008 economic recession) (Meissner et al. 2013, 2; Passel and Cohn 2012).

The accretion of the undocumented Latino/a population in the late twentieth century was one part of a general increase in the overall Latino/a population; the undocumented are estimated to be about 30 percent of the total Latino/a population. Latino/as accounted for 16.3 percent of the total U.S. population in the 2010 census (U.S. Census Bureau 2011, 3). The increase in second and later generation Latino/as, citizens by virtue of their birth in the United States, and a trend of naturalization among legal migrants have resulted in increased Latino/a political participation and voice. That influence, along with the "rights revolution" in law and human rights, resulted in some expansion in the rights of aliens to due process in deportation and detention matters during the 1970s and 1980s. The INS also regularized the practice of granting administrative relief in deportation cases by establishing a balance of equities (length of residence in the country, family ties, employment, evidence of rehabilitation in criminal cases, etc.). However, punitive deportation laws passed in 1996 eroded some of these gains: deportation is now mandatory for many offenses, and it has become virtually impossible to secure relief on grounds of hardship. Notwithstanding the backlash against "illegal aliens" and Latino/a communities in general, Latinos/as remain key to future immigration reform. In this sense they reprise the role that white European ethnics played in the long campaign to repeal the national origin quotas in the decades after World War II.

The guiding principles of territoriality and numerical restriction that had framed immigration law since the 1920s became thoroughly naturalized by midcentury. Earlier policies—statutes of limitations on deportation and other ongoing methods of regularizing undocumented migrants, as well as open borders with Mexico and Canada—have become unthinkable in our time, even as economic globalization has eroded other indexes of national

sovereignty, such as trade protectionism. The debates over legalization and border control taking place at the time of this writing reflect differences over whether or not the regulation of immigration can, in fact, be absolute. The history of undocumented migration indicates that it cannot.

NOTES

1. Unless cited below, data and discussion are drawn from the author's book *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton, NJ: Princeton University Press, 2004), especially chapters 1–2 and 6–7. With permission of Princeton University Press.

2. An Act to Execute Certain Treaty Stipulations Relating to Chinese, 47th Cong., Sess. I (1882), ch. 126.

3. *Takao Ozawa v. U.S.,* 160 U.S. 178 (1922); *U.S. v. Baghat Thind,* 261 U.S. 204 (1923).

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U.S. v. Baghat Thind, 261 U.S. 204 (1923).

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2

Undocumented Migration: Magnitude and Characteristics

Karen A. Woodrow-Lafield

INTRODUCTION

The lives of unauthorized immigrants have clandestine aspects, but their presence is a public fact of visibility in the media and popular culture, social science and public health, and political debate over public policy. Individuals may have entered the country illegally or violated the terms of a legal admission, but they are not to be described as "illegal immigrants," because only a court of law may make a determination of commission of an illegal act, and their presence is a civil rather than a criminal violation. A statistical portrait of unauthorized immigrants would seem to be elusive, because they have abundant reasons to obscure their immigration status from authorities and researchers. Nevertheless, demographic analyses have estimated the size and characteristics of the undocumented population for more than three decades.

Terminology in regard to this population has been complicated in social science and journalism (Tenore 2011). The Society of Professional Journalists has passed a resolution against using either "illegal alien" or "illegal immigrant," and the National Association of Hispanic Journalists prefers the use of "undocumented" in reference to the population and particularly objects to the use of "illegal." A "Drop the I-Word" campaign promoted the use of

"undocumented immigrant," "unauthorized immigrant," and "immigrants without papers." Among other descriptors used have been "other-than-legal," "visa overstayer," and "EWI," referring to someone who entered without inspection. The *New York Times* does not ban the use of "illegal immigrant" but encourages using alternatives, and the *Los Angeles Times* uses that phrase interchangeably with "unauthorized immigrant." As of April 2, 2013, the *AP Stylebook* no longer sanctions use of "illegal immigrant" or "illegal" in referring to a person (Colford 2013), and individuals should be described with details appropriate to their circumstances. Specifically, the online version states that "illegal immigration" should refer to entering or residing in a country in violation of civil or criminal law, that "illegal" should be used only to refer to an action, that "illegal immigrant" should not be used, and that "living in" or "entering a country illegally" or "without legal permission" may be used.

In their analyses, demographers refer to the unauthorized or undocumented population, in the sense that these individuals are without documents for appearing in government data sources, because the estimates result from the basic population accounting equation. The adjective "undocumented" is logically associated with the estimation of a residual from comparing the total or survey estimate of the foreign-born population with an estimate of the legally resident foreign-born population, based on documents or administrative records relating to admission for lawful temporary or permanent residence. In the 1970s border apprehension statistics sparked speculation about the number of migrants crossing successfully, as well as "threatening immigration metaphors" in the popular press (Massey and Pren 2012), and several studies attempted to quantify migration that was occurring outside legal auspices. The federal courts validated inclusion of all aliens, including undocumented ones, within "inhabitants," to be enumerated according to constitutional mandate. After the 1980 Census population counts were higher than expected based on births, deaths, legal immigrants, and emigrants, census demographers undertook demographic analysis of 1980 census coverage and constructed a consistent series on census coverage for 1930–1980. Census-level estimates of undocumented aliens were derived using 1980 Census data, and these are regarded as lower-bound estimates of the numbers of undocumented aliens residing in the United States in 1980 (Passel and Woodrow 1984; Warren and Passel 1987). The approach of comparing statistical aggregate populations became a highly useful methodology, although it was subject to concerns about sensitivity to errors and limitations of data and methods (Passel 1991; Woodrow-Lafield 1998a, 1998b, 2012; USGAO 1993; Massey and Capoferro 2004; Massey 2010). Despite critiques, the residual methodology has been the most consistently applied approach and has become the basis of official unauthorized statistics.

Semantically, the census demographers initially referred to the subject population as "undocumented aliens" or "undocumented immigrants" (Passel and Woodrow 1984; Warren and Passel 1987). Subsequently, these demographers used "unauthorized" or "undocumented" in conjunction with "immigrant" or "migrant."

Consideration of the magnitude and characteristics of unauthorized immigrants in the United States requires an understanding of the immigration preference system and immigration policies that have previously affected individuals without lawful status. The Immigration Reform and Control Act of 1986 (IRCA) was meant to solve the illegal immigration problem through provisions for (a) granting legal temporary status for long-term residents and certain agricultural workers, with guidelines for adjusting to lawful permanent residence (LPR); (b) intensifying border enforcement; and (c) imposing sanctions to promote employer responsibility. Historically, individuals have been admitted or adjusted to lawful permanent resident status under the Immigration and Nationality Act (INA) according to principles of family unity, labor needs, and humanitarian criteria. The IRCA program allowed a family member as the principal applicant and other eligible family members as secondary applicants. Additional visas were set aside for family members whose backgrounds were insufficient under IRCA provisions. After enacting IRCA, Congress sought to improve the legal immigration system through the Immigration Act of 1990 (IA1990) and increased legal immigration of workers, family members, and others, creating a diversity-based immigration category. Lawful permanent resident aliens may apply for immigration visas for spouses and children, and naturalized citizens may apply for unrestricted visas for parents, spouses, and children as well as numerically restricted visas for adult sons and daughters and siblings.

This chapter reviews the latest set of estimates for U.S. unauthorized immigrants in the United States, then addresses these statistics in terms of historical studies to quantify net unauthorized immigration to the United States. These estimates are highly useful for public policy and for social science research. Critical questions persist about likely errors and inadequacies of these estimates. The chapter concludes with a discussion of proposed immigration policies as they relate to demographic consequences for the unauthorized immigrant population.

THE OFFICIAL PROFILE OF U.S. UNAUTHORIZED IMMIGRANTS

The current official estimate by the Office of Immigration Statistics (OIS), Department of Homeland Security (USDHS) is that 11.5 million

unauthorized immigrants were living in the United States as of January 2011, a figure that was probably unchanged from the previous year, based on approximately comparable calculations (USDHS 2012a). This section presents that estimate and characteristics in the profile of U.S. unauthorized immigrants; following discussion offers a more nuanced view.

The task of demographic description of the unauthorized population in the United States is not as straightforward as drawing from census surveys for numbers and characteristics; as noted previously, the profile is constructed from comparison of statistical aggregate populations of the total resident foreign-born population and the legally resident foreign-born population, which must be done from existing data sources using various assumptions. The residual thus represents individuals not having documents or authorization for being included in administrative data sources, and only to the extent that they are included in national surveys. The legally resident immigrant population as defined includes all persons who were granted LPR status, granted asylum, admitted as refugees, or admitted as nonimmigrants for a temporary stay in the United States under terms valid as of January 1, 2011, such as students and temporary workers (USDHS 2012a). The unauthorized immigrant resident population is defined as including all foreign-born noncitizens who are not legal residents (USDHS 2012a), many having entered without inspection at the border and others having been admitted temporarily and then stayed past their required date of departure. However, certain aliens remain in the unauthorized category of these estimates despite holding employment authorization documents during processing of their applications for adjustment to LPR status. An estimated several hundred thousand persons who are beneficiaries of Temporary Protected Status (TPS) also appear as unauthorized immigrants, because they cannot be included within the legally resident immigrant population due to data deficiencies. In addition, others classified by default as unauthorized may have eligibility for an immigration visa through a close family member and later move into the legally resident population.

Of the 11.5 million unauthorized immigrants estimated as living in the United States in 2011, the majority, 9.9 million or about 86 percent, had entered between 1980 and 2004 (USDHS 2012a). Those entering recently (2005–2010) accounted for 1.7 million or only 14 percent of the total. More than one-half of the estimated unauthorized immigrants entered during 2000–2004 (3.3 million or 29 percent) and 1995–1999 (3.0 million or 26 percent). Fewer reported entry between 1990 and 1994 (1.6 million or 14 percent) or in the 1980s (1.9 million or 17 percent). The composition of the unauthorized population by period of arrival reflects individuals' timing of arrival for settlement in the United States, but this distribution also results

from transitions from unauthorized status to lawful status and return migration to origins.

Considering country and region of birth or origin, more than three-quarters of the total 11.5 million unauthorized immigrants living in the United States in 2011 were from North America (8.9 million or 77 percent), including Canada, Mexico, the Caribbean, and Central America. The next leading regions of origin were Asia (1.3 million or 9 percent) and South America (0.8 million or 7 percent). The North American region of birth showed the greatest increase in the unauthorized population between 2000 and 2011, about 2.8 million or 46 percent.

Mexico has always been the primary origin of U.S. unauthorized migrants, and in 2011 6.8 million or 59 percent of the estimated unauthorized population was Mexican born. From 2000 to 2011, the Mexican-born unauthorized population increased by 2.1 million, or an annual average of 190,000. The next leading source countries were El Salvador (660,000 or 6 percent), Guatemala (520,000 or 5 percent), and Honduras (380,000 or 3 percent). China (280,000), the Philippines (270,000), India (240,000), Korea (230,000), Ecuador (210,000), and Vietnam (170,000) each accounted for 2 percent. Only 15 percent were from countries other than the ten leading countries of origin. The greatest percentage increase over 2000–2011 was from Honduras. A cautionary note is that certain groups, such as TPS and deferred action cases, are classified as unauthorized due to inadequate data, and El Salvador, Honduras, and Haiti are such countries. There were large increases over 2000–2011 in the Indian, Ecuadorean, Guatemalan, and Salvadoran population estimates.

Demographically, these estimates of unauthorized immigrants display concentrations of males and working-age persons. In 2011, 59 percent of unauthorized immigrants were ages twenty-five to forty-four years, and 53 percent were male. Males accounted for 57 percent of the unauthorized population in the eighteen to thirty-four age group in 2011, while females accounted for 57 percent of the forty-five and older age groups. Before the recession began in late 2007, USDHS (2008) reported 57 percent of the unauthorized population as male and 62 percent of the eighteen to thirty-four year age group as male, probably showing a greater presence of circular migrant workers then.

The geographic impacts of unauthorized migration are relevant for communities, social institutions, and state and federal governments. The USDHS, and previously the USINS, produces state-level unauthorized statistics primarily for purposes of guiding personnel and policy implementation. The official reports on estimates of unauthorized immigrants show California as the leading state of residence of the unauthorized immigrant population

in 2011, with 2.8 million or 25 percent. The next leading state was Texas, with 1.8 million or 16 percent, followed by Florida (740,000 or 6 percent), New York (630,000 or 6 percent), Illinois (550,000 or 5 percent), and Georgia and New Jersey with 4 percent each. North Carolina, Arizona, and Washington had smaller percentages. Those ten states had 73 percent of the unauthorized population in 2011.

The components underlying the derivation of estimates of U.S. unauthorized immigrants are briefly summarized in reports (USDHS 2012a, 2012b). The process of estimating unauthorized immigrants as of January 2011 (USDHS 2012a) began with an estimated 31.3 million foreign-born residents who entered during 1980–mid-2010, based on the 2010 American Community Survey (ACS), and adding 2.3 million for shifting the reference date to January 1, 2011, and for allowing for some undercounts—190,000 nonimmigrants, 500,000 legally resident immigrants, and nearly 1.2 million unauthorized immigrants—considering that foreign-born persons, especially those without authorization, are more likely than natives to be poorly enumerated in the census and national surveys. As of January 1, 2011, the USDHS estimated a foreign-born population of 33.6 million.

The legally resident population estimate of 22.1 million is based on accounting for in-flows of 25.7 million LPRs, refugees, and asylees during 1980–2010, out-flows or estimated emigration of 3.8 million, and estimated mortality of 1.7 million, and in-flows of an estimated 1.9 million nonimmigrants as long-term residents. The estimate of 11.5 million unauthorized immigrants on January 1, 2011, is the residual of subtracting the 22.1 million legally resident immigrants from the total 33.6 million foreign-born persons who entered during 1980–January 2011.

REVIEWING HISTORICAL ESTIMATES OF U.S. UNAUTHORIZED IMMIGRANTS

A useful approach is to review the historical estimates of U.S. unauthorized immigrants. Most estimates of the size and characteristics of the unauthorized resident population in the United States have been made by analysts at the U.S. Census Bureau (USCB), the U.S. Immigration and Naturalization Service (USINS), and the Office of Immigration Statistics (OIS) of the Department of Homeland Security (USDHS); collaborative studies such as the Binational Migration Study; or nonpartisan research organizations, that is, the Urban Institute (UI) and the Pew Hispanic Center (PHC). The demographic estimates of undocumented residents gained acceptance despite the elusiveness of the phenomenon and some uncertainties (Durand and Massey 1992). Table 2.1 illustrates selected estimates of unauthorized

immigrants at various dates, with sources. If multiple sources are given, the first mentioned studies are the basis for figure 2.1; an asterisk (*) denotes some studies that include state-level details and are used for figure 2.2. For assessing undocumented migration for census population programs of census coverage and estimates, 1980 census-based studies quantified net undocumented migration as of 1980, and further analyses of national surveys addressed the question in the 1980s (Passel and Woodrow 1984, 1987; Woodrow and Passel 1990). In contrast to the few published studies with estimates of unauthorized residents in the late 1990s, multiple studies became available after 2000.

Table 2.1
Date and Estimate of Unauthorized Immigrants, with Published Source(s)

1970	700,000	Warren and Passel (1987)
1979	1,724,000	Passel and Woodrow (1987)
1980	2,057,000	Passel and Woodrow (1984),* Warren and Passel (1987), Fay, Passel, and Robinson (1988)
1986	3,158,000	Woodrow and Passel (1990)
1988	1,906,000	Woodrow and Passel (1990)
1989	2,050,000	Woodrow (1991)
1990	2,400,000	Woodrow (1991), Fernandez and Robinson (1994),* Woodrow (1992), see also Warren (1993, 1994, 1997)
1995	4,845,000	Passel (1999)*
1996	5,000,000	USINS (1998a, 1998b)*
2000	8,500,000	USDHS (2006),* Woodrow-Lafield (2001), USINS (2003), Costanza et al. (2002), Passel (2002), Passel, Van Hook, and Bean (2004)
2004	10,300,000	Passel (2005)
2005	10,500,000	USDHS (2006),* Passel (2006)
2006	11,310,000	USDHS (2008)* (supersedes USDHS (2007)
2007	11,780,000	USDHS (2008)*
2008	11,600,000	USDHS (2009),* Passel and Cohn (2009)
2009	10,750,000	USDHS (2010),* Passel and Cohn (2010)
2010	11,600,000	USDHS (2011),* Passel and Cohn (2011)
2011	11,510,000	USDHS (2012),* Passel and Cohn (2012)

* = source for state-level estimates of unauthorized immigrants

The data sources, assumptions, and methodologies of these historical estimates of U.S. unauthorized immigrants are not harmonized, so internal inconsistencies are likely, although there are some similarities among studies and findings. These studies are selective; USDHS estimates are used in figures rather than PHC estimates. The 2010 estimate is a revised figure for comparability with 2010 Census weighting strategies for national surveys. With some caveats, these estimates are shown for illustrative purposes. One caveat is that the USDHS estimates are intended as population-level estimates, but most of the pre-1995 studies gave census-level estimates and generally noted the total unauthorized population as probably greater by one to two million. For example, for 1980, the total unauthorized population was probably 3 million. Later, for 1986, perhaps as many as 5 million were present (Passel and Woodrow 1987). By 1990, the total unauthorized population was estimated at 3.2–3.3 million. Based on these figures, the pattern would be similar and slightly elevated if the point estimates were at population level. Year-to-year comparisons may not be meaningful, but this represents a collection of studies with inherent strengths, weaknesses, errors, and clues. Elsewhere, Passel and Cohn (2010) show ranges on the PHC unauthorized estimates in the 2000s based on consistent methodologies, although the method may account primarily for undercoverage and sampling variability of foreign-born population estimates, with more limited attention to other sources of error.

How meaningful are variations among estimates of the unauthorized immigrant population over the past three decades? Figure 2.1 displays the overall consistent pattern of increasing estimates for the unauthorized population, with the exception of two time periods: post-IRCA and post–Great Recession. The featured estimates display an increasing trend for 1970–2011 after showing a less pronounced peak during the mid-1980s. A superimposed trend line over 1970–2011 would partially reflect more consistent coverage levels over time. With diminishment of immigrants who came in the earlier twentieth century, the ratio of legal to unauthorized immigrants fell below three to one, making the unauthorized presence highly salient for social science researchers (Massey and Bartley 2005). Although not shown here, the legally resident foreign-born population persistently increased over 1970–2010. The unauthorized immigrant population increased from between 2 and 4 million in 1980 (Levine, Hill, and Warren 1985; Warren and Passel 1987) to between 3 and 5 million in 1986 (Passel and Woodrow 1986) and may have declined to between 1.9 and 4.5 million in 1990, when many gained lawful status under immigration policies (Woodrow 1991; USGAO 1993; Espenshade 1995).

After the large-scale IRCA legalizations, growth in the unauthorized population was relatively unremarkable in the early to mid-1990s (Bean et al.

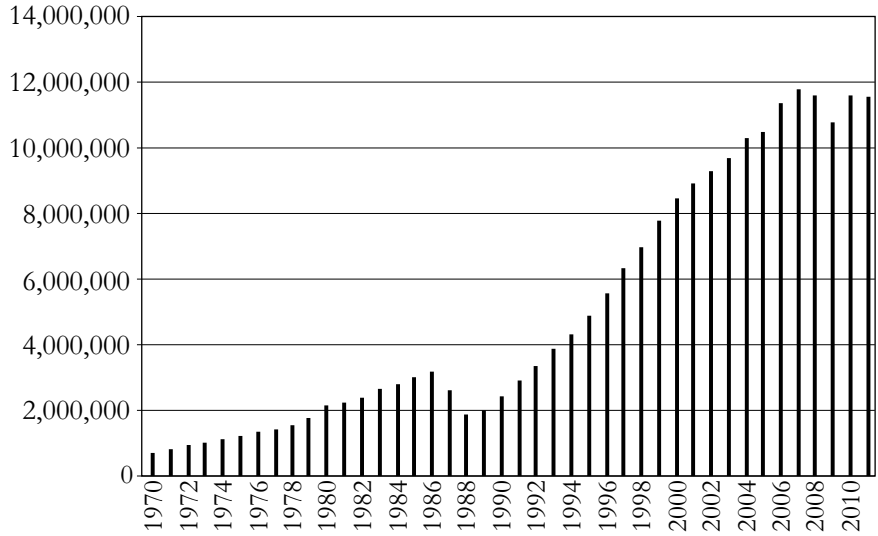

Figure 2.1
Estimates of Unauthorized Immigrants, 1970–2011

1998; Passel 1999), but there was a major shift in the late 1990s. Estimates for the unauthorized population in 2000 were markedly higher, in the range of 7 to 9 million (Passel 2002; Bean et al. 2001; USINS 2003; Costanzo et al. 2002), although by 2006, the official estimate for 2000 was changed from 7.0 million to 8.5 million (USDHS 2006). The estimates for unauthorized immigrants revealed a peak in 2007 of 11.8 million (USDHS 2011) or 12.0 million (Passel and Cohn 2011). Subject to caveats, there seemed to have been a tripling of the unauthorized population after 1990. The reasons are many: social and historical factors during the period, such as increased labor demand, elevated risks of border crossing and reentry, greater family migration, and altered return migration behavior. Even as Mexico-U.S. migration rose in prominence, its decline was anticipated with demographic shifts (Binational Migration Study 1997; Hanson and McIntosh 2009). Since 1990 there has been a sustained decline in the rate of net undocumented migration from Mexico to the United States so that Mexican net undocumented migration fell to around 200,000 per year in 2000, and then to zero by 2008 (Massey 2009, 2010).

Current estimates of unauthorized immigrants show both differences and similarities in comparison with the initial estimates for unauthorized immigrants counted in the 1980 Census (Passel and Woodrow 1984). That study presented a highly detailed profile of the unauthorized or undocumented

population by state of residence, country or region of birth, period of immigration, age groups, and sex. The study differed from later ones in relying on a legally resident foreign population estimate largely based on a 1980 alien registration dataset with high validity for calculations by thirty-nine country categories, fifty states and the District of Columbia, four periods of entry, sex, and thirteen age groups, although categories were restricted for publication. The article included tables showing estimates of legally resident and unauthorized aliens by period and entry for states of residence, estimates for undocumented aliens by country category for states of residence, estimates for undocumented aliens born in Mexico and born in all countries for the fifteen states with the highest estimates of undocumented aliens, total number of aliens and estimate of undocumented aliens by period of entry for the fifteen states with the highest estimates of undocumented aliens, comparison of estimated distributions for selected states and the District of Columbia for legally resident aliens and undocumented aliens born in Mexico and born in all other countries, and age and sex composition of estimated undocumented alien populations counted for selected states (California, New York, Texas, Illinois, Florida, New Jersey, Virginia, Maryland, Arizona, and Washington).

In the 1980 Census most aliens, undocumented and legally resident, reported having entered during the 1970s, and the majority of naturalized citizens reported having entered before 1970. Estimates of undocumented aliens showed concentrations for the entry period 1975–1980. Most of the unauthorized immigrants in the 1980 Census were recent arrivals in the past five years (50 percent) or in the past ten years (75 percent). This contrasts with estimates as of January 2011, when less than one-half (43 percent) of unauthorized immigrants had resided in the United States for the entry period 2000–2010 (USDHS 2012a).

Looking at the 1980 research, that estimate of 2.1 million unauthorized immigrants included 1.1 million Mexicans as 55.0 percent, and the unauthorized estimate represented other origins as Asians, 10.4 percent; other Central Americans, 8.6 percent; Europeans, 7.3 percent; South Americans, 6.2 percent; Caribbeans from Haiti, Jamaica, or Trinidad and Tobago, 4.9 percent; Africans and Oceanians, 4.2 percent; Cubans and Dominicans, 2.2 percent; and Canadians, 1.2 percent (Passel and Woodrow 1984). By 1995 the share of other Central Americans had increased to 15 percent (Passel 1999). This reflected the changing composition as other origin groups had made transitions to legal status through IRCA provisions, while many Salvadorans, Nicaraguans, and Guatemalans remained in limbo about their future.

In 1980 there was a male majority (53 percent) among undocumented residents, for a sex ratio of 1.14. The estimates for undocumented immigrants showed a migrant worker profile, that is, primarily of young adults ages

fifteen to thirty-four years (62 percent), and these age groups were over 55 percent male. There were indications of consistency over time in the age and sex component of entering undocumented immigrant cohorts. More recently arrived cohorts of undocumented Mexican immigrants may have been younger than earlier cohorts, with family migration and settlement occurring in the southwestern states. By 2011 the same proportion was male, but undocumented immigrants were somewhat older, concentrated in ages twenty-five to forty-four. With higher labor supply in the United States relative to Mexico, simulation of cohort-level migration from Mexico to the United States is indicative of a subsiding of Mexican emigration after 2000 (Hanson and McIntosh 2009, 2010). These points are also indicative of future aging of the U.S. unauthorized population, in the absence of immigration policies to permit legalization or promote returns. Those arriving during the 1980s and 1990s as children with unauthorized immigrant parents reached young adulthood, prompting social activism toward public policies for provisional or permanent legal status.

In 1980 the undocumented population was concentrated in the most populated states and in states with large numbers of resident aliens. Most Mexicans (763,000 or 67 percent) were residing in California, and findings by Muller and Espenshade (1984) were similar. Texas (147,000 or 7 percent) and Illinois (101,000 or 5 percent) had the next highest numbers of Mexicans. Most of the Central American (177,000) and South American (128,000) unauthorized immigrants were residing in three states—California (79,000 and 23,000, respectively), New York (43,000 and 37,000, respectively), and Florida (12,000 and 16,000, respectively). New York and Florida were where most of the unauthorized Cubans, Dominicans, and Caribbeans appeared to be residing. Later, IRCA specifically authorized adjustment to permanent residence status for Cubans and Haitians who had entered without inspection and continuously resided here since January 1, 1982, so according to immigration law, few Cubans living in the United States more than a year are at risk of being unauthorized (USDHS 2006).

California generally showed a higher proportion of the total and Mexican undocumented population than of total and Mexican legally resident aliens. Subsequently, the immigration reform policies had considerable transformational effects for California's immigrant population, including dispersion across nontraditional states (Durand, Massey, and Parrado 1999; Durand, Massey, and Charvet 2000; USINS 1992). On the other hand, the state of Texas had a lower proportion as undocumented than as legally resident for Mexican aliens, reflecting the long history of Mexican migration and settlement in Texas and frequent crossing facilitated by proximity. In Texas the IRCA programs resulted in fewer legalizations than anticipated on the basis of estimates.

In 1980 the proportion of the noncitizen population that was undocumented was high, at one-quarter. Although in most states there were at least twice as many legal resident aliens as undocumented aliens, in California, New York, Illinois, Texas, and Arizona, undocumented aliens outnumbered legally resident noncitizens. The composition of mode of entry was more border crossers or EWIs (60 percent) than visa overstayers (40 percent). For California, Texas, Florida, and Arizona, states with a high demand for workers, the percentage of undocumented among aliens entering in 1975–1980 was large and higher than the percentage among aliens who entered before 1975. For the northern and eastern states of New York, New Jersey, Massachusetts, Maryland, and Virginia, a reverse pattern prevailed, with smaller proportions undocumented for the recent period than for the pre-1975 entry period, probably because Mexican unauthorized immigrants were less represented in those states at that time. Those states showed more non-Mexicans who were more likely to have entered lawfully, stayed for a year or more, and become undocumented as overstayers. Historically, there were Bracero Mexican farmworker migrants settling in northeastern states, but many—an estimated one million persons of Mexican ancestry—were repatriated or expelled in the 1930s from California, Michigan, Colorado, Texas, Illinois, Ohio, and New York (Johnson 2005; Balderrama and Rodriguez 1995). Whether or not that figure of one million is accurate, there were clear declines in the population born in Mexico (from 641,462 in the 1930 Census to 575,902 in the 1960 Census) and in the Mexican-origin population (population born in Mexico and natives of Mexican parentage) (from 1,423,000 in the 1930 Census to 1,077,000 in the 1940 Census) (Gibson and Jung 2006; Bean et al. 1998).

California showed about the same sex ratio among undocumented residents as estimated for the nation in 1980. Texas, Illinois, and Washington had somewhat higher male percentages, primarily because these were states receiving male Mexican migrants. Western states showed higher percentages of males (57 percent) correlated with the dominant migrant worker profiles for estimated undocumented populations in these states. New York, New Jersey, and Maryland included more women than men among the undocumented population, and these populations in Florida and Virginia were substantially older than the national average. The unauthorized populations of Texas and Arizona were younger than the national average, primarily because Mexicans were so highly represented and because families were migrating with children to these locales through long-established processes of migration. Temporary labor migration leads to more settled family migration as socially expected durations transform from finite to more permanent (Roberts 1995). Increasing demographic diversity in the migrant stream over time corresponds with increasing prevalence of migration within a sending community. Social

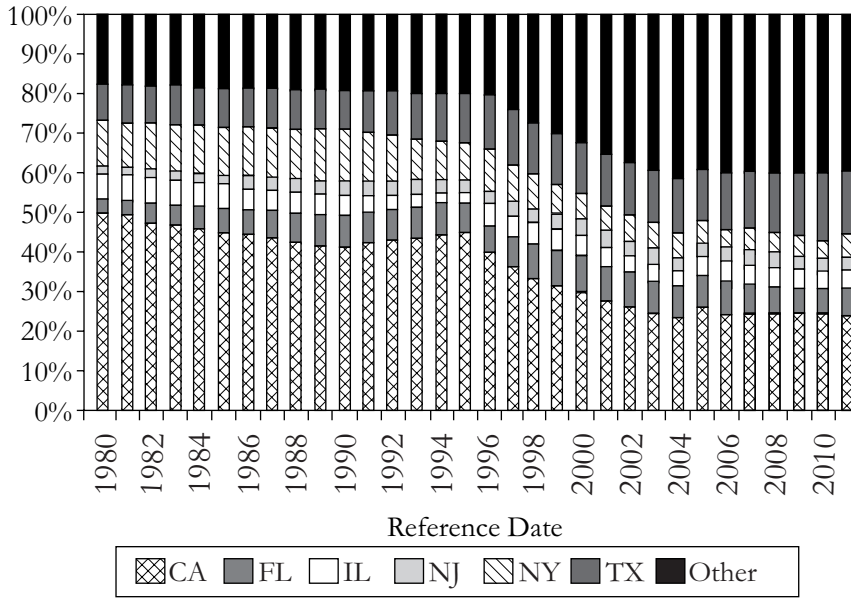

Figure 2.2
Distribution of State-Level Estimates of Unauthorized Immigrants, 1980–2011

capital—whether a parent, grandparent, sibling, or other relative (or friend) has migrated to the United States—has ramifications, and "migration becomes a generalized social and economic practice" (Massey, Goldring, and Durand 1994, 1528).

Only the 1980 estimates (Passel and Woodrow 1984) were derived by using data with detailed place of residence for both the foreign-born and legally resident foreign-born population estimates. Figure 2.2 shows a series of state-level estimates derived by other methods. In the past, some studies derived state-level estimates by allocating national-level estimates specific to country of birth to states using the distribution of IRCA legalization applications by states, for example, employing a static assumption that these immigrants lived in various states in the same relative pattern as had IRCA-legalized aliens. The USDHS estimates of unauthorized immigrants rely primarily on state of intended residence as lawful permanent residence, with updating as available from a later administrative contact. Setting aside concerns about data quality and accuracy of estimates, the geographic distribution of the legally resident foreign-born and the unauthorized populations may shift due to changes in status, return migration, and internal migration, and unauthorized persons are on the margins and at greater jeopardy of leaving, voluntarily or involuntarily.

With these caveats, California's share of the unauthorized population declined between 1980 and 2000 from 49.8 percent (Passel and Woodrow 1984) to about 30 percent (USDHS 2006), consistent with Johnson (1996). The decline continued over 2001–2006 to a plateau over 2006–2011 (USDHS 2006, 2007, 2008, 2009, 2010, 2011, 2012a; Passel 2005). The share in all other states increased, especially New York, New Jersey, Texas, and Florida. This could be a real decline for California, although it is seemingly counterintuitive given agricultural labor demands, but IRCA established the H-2A program to provide for a temporary agricultural workforce. Mexican migrant workers were placed across the nation, from California's agricultural sector to rural midwestern areas with inadequate labor force pools. Methodological changes may affect comparisons of estimates of unauthorized immigrants by state as of 2008 (USDHS 2008) and later comparisons with earlier ones. Legalization pursuant to IRCA, high naturalizations, family reunification, and agricultural guest workers may have elevated the legal share of California's foreign-born population. Local and state policies that were directed at inducing "self-deportation" by unauthorized immigrants could have resulted in out-migrants to other states or outside the United States. State labor markets in the nontraditional destination states seemingly have incorporated a substantial share of the nation's unauthorized residents, despite the recent economic crisis.

QUESTIONS ABOUT ESTIMATES OF U.S. UNAUTHORIZED IMMIGRANTS

Now that we have considered the official profile of U.S. unauthorized immigrants and briefly examined the history of the unauthorized immigrant population as available from demographic analyses, certain questions remain about the upper limit on the size of the U.S. unauthorized population as well as about its composition and distribution. The availability of census survey and administrative data for analytical studies has resulted in a body of literature on measures for net unauthorized immigration or stocks of unauthorized immigrants. However, a cautionary note is that despite the incompleteness of the data, researchers and institutions may depend upon what is there rather than be more innovative in using special surveys or qualitative studies, simply because they have available a vast array of census and public-use data with "validity and the degree of geographic, social, and economic detail" (Newbold 2007, 82) as well as usefulness and utility for the hypothesis-testing and theoretical formulation of positivist science. These studies on estimates of unauthorized immigrants are compiled from incomplete data, many necessary assumptions, and different methodologies, as set forth in several

critiques (Massey 2010; Passel 1991; Woodrow-Lafield 1998a, 1998b; USGAO 1993; Hill 2006).

Massey pointed out that "residual estimates . . . are notoriously sensitive to errors in the components; and while mortality and in-migration by temporary and permanent legal migrants are known with some precision, the measurement of out-migration rests on assumptions and estimates. It would be useful, therefore, to have an independent means of estimating the size of the undocumented population. Such an estimate could be achieved by periodically administering a 'two-card method' developed by the U.S. Government Accountability Office (2009) as part of the CPS. . . . [R]egular implementation of the two-card method on the CPS would provide an independent estimate of the size of the undocumented population to serve as a check on validity of the indirect demographic methods currently in use" (2010, 135–136). He also noted that the characteristics and behavior of undocumented migrants may be addressed using data from the Mexican Migration Project and the Latin American Migration Project. Immigration statuses, including unauthorized status indirectly, have also been indirectly ascertained through special surveys focusing on Mexican, Dominican, and Brazilian populations in metropolitan Los Angeles and Boston (Larson and Droitcour 2010; USGAO 2006, 2009; Marcelli 1999; Marcelli et al. 2009a, 2009b).

Confidence limits and uncertainty measures are not easily given on estimates of unauthorized immigrants; "margins of error" pertain only to the survey estimates of the foreign-born population by age, sex, country, period of entry, and state of residence. As crudely illustrative of the sensitivity of estimates of the unauthorized population to errors in components, USDHS (2012a) noted that doubling the unauthorized immigrant undercount rate from 10 to 20 percent would increase the estimated unauthorized population in 2011 from 11.5 to 13.0 million, and that lowering or raising emigration rates by 20 percent would result in a range of 10.7 to 12.3 million. Allowing for both these modifications would result in an expanded range from 12.0 to 13.9 million, that is, increased by 4.3 to 20.9 percent. Shortly before the 2010 Census, there were threats of an immigrant boycott against participating in the enumeration. Typically, agreements are made between the Census Bureau and immigration enforcement authorities about interior enforcement policies that might adversely affect the taking of the census. Although overall coverage was evaluated as high for the 2010 Census, most of the uncertainty about overall coverage was due to international migration (USCB 2010; Devine et al. 2012).

Within the Census Bureau, a consensus evolved in the 1980s about the credibility of estimates of unauthorized immigrants counted and uncounted in the 1980 Census, and coverage evaluation of the 1980 Census included

illustrative undercounts for up to five million undocumented residents in the United States (Fay, Passel, and Robinson 1988). At a time of rampant speculation about many millions of undocumented residents, Passel and Woodrow (1984) stated that undercoverage of undocumented aliens was probably not as great as three or more times the level of undercoverage on the group with the highest recently measured undercount (black males in their thirties, for whom the undercount rate was one in six). The total unauthorized population might have been three to four million as of 1980, although an upper limit of five million was used (Levine, Hill, and Warren 1985; Fay, Passel, and Robinson 1988). For 1990, preliminary assessments indicated a range of 1.9 to 4.5 million unauthorized immigrants, or more conservatively, a range of 1.7 to 5.5 million, depending upon accuracy in accounting for legal residents, such as special agricultural workers who were legalized under IRCA and nonimmigrant residents (Woodrow 1991). Subsequently, one analysis illustrated the assumptions under which 0.5 to 3.0 million unauthorized immigrants might have been missed in the 1990 Census (Woodrow-Lafield 1995). For the 2000 Census coverage evaluation and population estimates, the assumptions about net unauthorized migration for the 1990s initially relied on research studies from the USINS Statistics Office. A USINS estimate of 5.5 to 6.5 million was quickly revised to 6.5 to 7.5 million in early 2001 after the release of the 2000 Census counts; there were already hints, including by the Census director, that the high 2000 Census counts might be due to high response from unauthorized residents. The earlier report on estimates of unauthorized immigrants for 2000 (USINS 2003) used such strong adjectives as "extreme and untenable" to describe assumptions about undercounts other than the ones employed, but that report had relied on preliminary estimates of census coverage that were soon superseded.

Legal immigration is increasingly a process involving multiple, temporary stays, sometimes unlawful, complicating the definition of date of arrival or coming to stay. LPR data show increased prevalence of pre-LPR experience, including as unauthorized, although survey approaches more successfully identify the parameters of lawful or unlawful pre-LPR experience (Massey and Malone 2002; Jasso et al. 2008), including longer visa processing times for adjustees than new arrivals (Jasso et al. 2010).

Residual estimates of unauthorized immigrants may be underestimated if certain subpopulations are double-counted in the legally resident foreign-born population, such as when many Indian nonimmigrants were adjusting status to LPR (USDHS 2006). INS estimates in the 1990s may have seriously underestimated net undocumented migration of persons entering without inspection, mostly Mexicans, and especially in California, by assuming all IRCA beneficiaries under agricultural provisions already resided here. On the

other hand, residual estimates of unauthorized immigrants may be overestimated by the failure to include certain groups within the legally resident foreign-born population estimate, for reasons noted previously. An estimated 64,000 Hondurans held TPS when the designation of Honduras, effective for continuous residence since December 30, 1998, was extended to January 5, 2015, the eleventh extension. Approximately 217,000 Salvadorans, 66,000 Hondurans, and 48,000 Haitians held TPS in 2010 (Wasem and Ester 2011). In addition, some individuals have certain degrees of eligibility to adjust to LPR status or gain a provisional status, so their status may be considered marginally unauthorized or quasi-legal.

The IRCA legalization programs were regarded as a one-time thing, and in extending legal status, the 1980 Census-based estimates were informative to legislative discussion of numbers of unauthorized aliens, numbers who might receive legal status under IRCA provisions, and subsequent family reunification and impact on U.S. population growth (Newton 2008, 87–88). Judicial arguments can be made for long-term unauthorized residence as a basis for allowing individuals to legalize their status, for example, conceding that a statute of limitations on unauthorized residence has been superseded (Ngai 2005). Indeed, following the IRCA period, several policies emerged under which certain IRCA-era and other unauthorized residents would become eligible to adjustment from unauthorized status into lawful permanent resident or legal immigrant status, and these policies further subtracted earlier arrivals from the unauthorized population. These policies contributed to high legal admissions in the 1990s and 2000s, under the Legal Immigration Family Equity Act (LIFE) of 2000, the Chinese Student Protection Act, and the Nicaraguan Adjustment and Central American Relief Act (NACARA) of November 19, 1997, and through resolution of class-action lawsuits over IRCA amnesty application (before and during 2005–2010), which extended the reach of the IRCA amnesty. Administrative regulatory and policy changes may affect large numbers of unauthorized immigrants, such as announcements of more humanitarian policies to reduce deportation (Morton 2011; USDHS 2012d) and to create provisional waivers of hardship relief for facilitating adjustment of status (USDHS 2012c). Because unauthorized migration persisted in the post-IRCA period, and the process of migration changed, more unauthorized immigrants have had longer stays. Some find pathways to legal status, but others cannot do so or face difficult barriers.

The 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) extended and expanded upon IRCA enforcement provisions and the restrictions upon benefits for immigrants from the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, also known as the 1996 Welfare Reform Act). Deportations increased after 1997.

Following a USDHS task force evaluation, a policy of exercising prosecutorial discretion in deportation cases was announced to more strategically use limited resources in meeting agency enforcement priorities by focusing on criminal alien cases and taking an approach to immigration status violators with more humanitarian considerations of length of unauthorized residence, arrival as a child, and not having a serious criminal record (Wadhia 2011). Ironically, a "catch-22" had arisen in that individuals could be eligible to be sponsored for an immigration visa through a family member, but they were unable to access that visa because returning to the country of origin incurred the risk of being banned from reentering the United States for three or five years under IIRIRA. Deportation and voluntary departure, which may be offered to noncriminal aliens, have meant facing IIRIRA's three- or ten-year bans against reentry, even when the person is fully eligible to obtain an immigrant visa as a child or spouse of a U.S. citizen. When confronted with deportation or voluntary departure, aliens seek to prevail in an appeal in order to stay and avoid deportation and the ban upon readmission. Large backlogs for the federal judiciary were thus unanticipated consequences of policy shifts from the IIRIRA and the Antiterrorism and Effective Death Penalty Act (AEDPA). The commitment of the federal judiciary to due process protections in dealing with both recent immigration legislation and an unprecedented presence of unauthorized residents has probably mitigated the overall effect of IIRIRA upon noncitizens (Law 2010). In March 2013 USDHS initiated provisional waivers for hardship relief prior to departure, and their availability is likely to streamline the visa process for many family members of naturalized citizens and lawful permanent residents; it might also diminish the future judiciary burden as individuals become capable of claiming immigration visas through lawfully resident family members.

IMMIGRATION REFORM AND INSIGHTS ON ESTIMATES OF U.S. UNAUTHORIZED IMMIGRANTS

The chances of comprehensive immigration reform may have increased with public awareness of the unpopular aspects of the deportation-driven enforcement system. The broader matrix includes Americans' valuing due process and their distaste for effects of deportation orders upon individuals who are or are like their friends, neighbors, and U.S.-born citizens. Many experts are convinced that comprehensive immigration reform is needed, and varying levels of consensus are found about such specific measures as legalization or status regularization for some of the 11 to 12 million unauthorized immigrants currently residing in the country, establishing a temporary worker

program, providing for employer capability in hiring legal workers, and border controls (Massey 2007; Mangan 2008). Unauthorized migration from Mexico has diminished regardless of costly, technological enforcement strategies (USGAO 2009), which serve both as barriers to circular migration and incentives for settlement (Massey 2009). Any interpretation of numbers and arguments is necessarily complicated by differing conceptions or data capture of undocumented migrants, and debates can be muddied by use of alternative analytical dates, varying degrees of scientific rigor, and serious hidden methodological limitations.

The discussion underlying the debate over comprehensive immigration reform involves children and young adults, families with a parent at risk of deportation, and couples separated by borders. Large numbers of parents of U.S. citizen children have been deported, with consequent family disruption, uprooting of lives, and interrupted educational activities. Proposed immigration reforms in the 109th and 110th Congresses included a legal status pathway that would have involved substantially greater numbers than IRCA or any similar legislation. In the 109th Congress the House and Senate passed different bills on immigration reform: H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act, on December 16, 2005, and S. 2611, the Comprehensive Immigration Reform Act, on May 25, 2006. The first session in the 110th Congress included S. 1639 and renewed consideration of immigration reforms, including creation of a temporary worker program, more border security, and legalization for illegal or unauthorized residents without criminal records that allowed them to work while waiting for lawful permanent residence and citizenship.

When Congress failed to pass any immigration reform, the Bush administration shifted to several strategies to demonstrate the U.S. government's ability to enforce the laws (worksite raids, local law enforcement, and advising employers of no-match Social Security numbers) and to secure the border (fence-building and technology), and the Obama administration continued in that direction. On June 27, 2013, the Senate passed the Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, which spells out alternative pathways to legal status based on length of unauthorized residence and various criteria. Legislation introduced into the House of Representatives on October 2, 2013, H.R. 15, differed and had not passed as of early 2014.

The precise numerical impacts of proposed immigration legislation, including legalization options such as S. 2611, are difficult to gauge without accurate data and specified options. One group of policy experts (Brookings-Duke Immigration Roundtable 2009) convened in late 2008 to develop

consensus on recommendations on immigration reform. The report spelled out the possible numerical impacts from initial to eventual ones. First, there might be several million people eligible under long-term residence requirements (at least five years) (perhaps 6 million) and provisions made in fairness to current petitioners to resolve the backlog for family preference visas (perhaps .6 million) and extend status to certain spouses (perhaps .2 million). In coming years, nonresident spouses and minor children would immigrate from abroad, adding substantially to the numerical impact (perhaps 3.1 million). There would be some allowance for some fraudulent applicants and their family members (perhaps 1.5 million). Eventually, at least 1 million family members might follow through sponsorship of naturalized citizens. All together, based on the reasoning outlined in that expert report, 14 to 15 million immigrants could conceivably result from a program providing pathways to legal status for such an initial unauthorized population.

The estimate of the unauthorized immigrant population was 11.8 million as of January 1, 2007, and this was the basis used by this policy expert group in making an estimate of 8.5 million unauthorized persons of long residence, of whom 70 percent, or 6.0 million, would apply. From a report released April 24, 2014 (USDHS 2013), the overall estimate was about the same in 2012—11.4 million—as in 2011. Although the size of the unauthorized population resembles the size on January 1, 2007, more than 10 million unauthorized residents had lived at least five years in the United States, so the numbers of initial and subsequent beneficiaries would be likely to exceed these calculations based on a similar cutoff date of a minimum five years of residence to be eligible to apply. Based on S. 744, the Congressional Budget Office (2013a, 2013b) estimated that initially 8 million persons would gain legal status as Registered Provisional Immigrants (RPI), of whom about 1.5 million would be persons who entered under age sixteen and 1.5 million would be agricultural workers and their dependents. A lesser number would stay and eventually adjust to permanent residence. For understanding the fiscal impact of S. 744 for financing Social Security programs, the actuaries estimated there would be 8 million initial applications for RPI status. Over the initial six years, the population would be reduced to a cumulative 7.55 million by 2024, including by then 300,000 spouses and children who would have immigrated. The fiscal impact would be positive due to the significant increases in population and number of workers paying taxes (Goss et al. 2013a, 2013b). The estimates for likely beneficiaries of legalization may or may not resemble the consequences if this 113th Congress were to pass comprehensive immigration reform. The shadows obscuring the resident population of unauthorized immigrants would be dissipated as eligible individuals are granted provisional legal status and perhaps ultimately become lawful permanent residents and naturalized citizens in their nation of choice.

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3

Why Migrate? Theorizing Undocumented Migration

Douglas S. Massey

Migration has long been a primary means by which human beings preserve or enhance their well-being. Since *Homo sapiens* first emerged in East Africa approximately 150,000 years ago, migration has been a prominent strategy for human adaptation and improvement. Humans crossed the Red Sea into Eurasia about 100,000 years ago, moved into South Asia roughly 60,000 years ago, boated to Australia 50,000 years ago, reached Northern Europe some 35,000 years ago, and moved into East Asia 30,000 years ago. The species then crossed the Bering Strait into the Americas around 15,000 years ago and reached the southern tip of South America some 12,000 years ago. The final wave of human expansion ended when people reached the outermost islands of Polynesia around 2,000 years ago. Although the genus *Homo* emerged 2.5 million years ago, until *Homo sapiens* appeared it had never moved beyond a narrow geographic range extending from East Africa through Southern Asia (Massey 2005). What allowed our species to occupy the entire world so quickly was its remarkable capacities for cultural adaptation and social cooperation (Olson 2002).

Human migration is always selective, of course, and those who move generally do not constitute a random cross-section of the population of origin. The degree and nature of the selectivity depend on the precise motivations

for moving and the costs and risks of doing so. The motivations for migration can be classified into five general categories: material improvement, risk management, symbolic gratification, social connection, and threat evasion. The costs and risks of migration depend on the vagaries of distance, terrain, and access to information and social support, and in the modern era policies and regulations implemented by sending and receiving nations.

THEORIZING MIGRANT MOTIVATIONS

The desire of migrants to improve their material circumstances has long been recognized as a key motivation for migration. In prehistoric times individuals motivated by a desire for material gain moved to gain greater access to natural resources such as water, plants, and game. In modern times they move to gain access to economic resources such as employment, earnings, wealth, and education. Migration prompted by a desire for material gain is most commonly theorized by neoclassical economics, which views the migratory decision as a cost-benefit analysis whereby rational, utility-maximizing actors balance the gains to be made by working at various geographic locations against the costs of migrating to these places. According to the theory, individuals maximize utility by moving to the location where the expected increase in earnings is greatest, net of the costs of moving (Todaro and Maruszko 1987).

The desire for material gain has also been theorized by a model known as the "new economics of labor migration," which argues that in addition to maximizing absolute income, people often move to increase income relative to others in their reference community (Stark and Taylor 1989). The same analytical framework argues that people may also migrate to overcome missing, failed, or inaccessible markets for capital and credit (Stark 1991). In many developing countries, for example, mortgage markets are rudimentary or nonexistent, and obtaining credit is difficult or expensive. In this case a migrant might be motivated to move to a high-wage country to accumulate savings rapidly in order to purchase or construct a house, buy land, start a business, or acquire consumer goods. If the wages abroad are sufficiently high, they can also generate remittances to support the family while at the same time accumulating savings to finance the acquisition of the property or goods.

Whether inspired by a desire to maximize expected earnings or to accumulate cash to finance purchases in the absence of working markets for capital or credit, the underlying incentive is material improvement, a core human motivation (Fiske 2003). Although a desire for material gain may be a core motive for individual action, human beings are also driven by a strong desire to

minimize losses. Psychologically human beings experience more pain from a material loss than they do pleasure from an equivalent material gain, a well-known principle known as *loss aversion* (Kahneman and Tversky 2000). Actors may migrate as a means to self-insure against potential losses if they act collectively within families, households, or other social groups, and this motivation has also been theorized under the new economics of labor migration.

For example, a household might act strategically to minimize risks to its income by diversifying its labor portfolio, sending one member to work somewhere else in the sending country and another to work at a foreign destination while other family members work in the home community, managing household assets and business enterprises or working in the local labor market. If conditions deteriorate locally and cause a drop in subsistence or income (i.e., a drought, recession, or plant closing), the shortfall can be buffered by money remitted by family members employed elsewhere. Sending out various members to work in geographically distinct labor markets provides "insurance" in the absence of effective insurance markets or government substitutes, enabling households to rely on alternative income streams during local downturns. This strategy is feasible as long as economic conditions at the origin and destination are not strongly and positively correlated. It may be enhanced by a wage differential between the sending and receiving societies, but such a gap is not required for the strategy to serve the rational interests of the household.

In addition to relocating in pursuit of material resources, greater relative income, and a hedge against potential losses, people also move for purposes of symbolic gratification, seeking to achieve greater status, prestige, and esteem, which are also core human motivations (Fiske 2003). For example, a college teacher may decide to move to another university to accept a named professorship, even if the salary remains constant or declines, simply because it is more prestigious. The bright lights and stimulating social life of a big city, which offer the chance to become more "cultured" and "sophisticated," may attract rural residents. Denizens of provincial cities may even be willing to accept a decline in earnings to gain access to the prestige and pleasures of the metropolis. Although the economic model of utility maximization can be applied to explain movement for symbolic gains, such motivations are more commonly treated by sociological theories of cultural capital, which point out that intangible resources such as status, prestige, and esteem not only are valuable ends in themselves, but also constitute important forms of capital that can be used to generate other resources (Bourdieu 1986). Being familiar with the language and symbols of high culture, for example, may help people move in elite circles where decisions are made and resources allocated.

In addition to material and symbolic improvement, human beings are also strongly motivated to affiliate and interact to obtain emotional resources such as love, liking, companionship, and sex. *Homo sapiens* is a social species, and individuals cannot survive, prosper, or reproduce outside of social groups. As a result, we are psychologically disposed to maintain and seek out social connections with others (Fiske 2003). Throughout history human beings have migrated to get married, and married couples separated by migration are strongly motivated to reunite, through either the return of the absent spouse or the emigration of the trailing spouse. The neoclassical model of utility maximization may also theorize this motivation, but most research on the social process of migration has been done under the rubric of social capital theory (Massey and Philips 1999).

Because individuals are always socially connected to others—through networks defined by kinship, friendship, and acquaintance—migration not only motivates people to move for purposes of family reunification, it also confers instrumental value on ties to current or former migrants with experience in high-opportunity destinations. The wife of a male migrant may seek to migrate simply to reunite with her husband, but she may also aspire to gain access to greater opportunities for employment and higher wages at the place of destination or to overcome the patriarchal constraints of the sending country (Hondagneu-Sotelo 1994). Moreover, even when people do not wish to associate with a particular migrant, siblings, cousins, in-laws, and friends may be motivated to draw upon their ties to that migrant to facilitate migration for economic ends, whatever their feelings about family reunification. Likewise, a working migrant may learn of economic opportunities at the place of destination or be asked by a boss to find someone to fill a specific job, then turn to his social network to offer the opportunity or to fill the position.

In short, having a social connection to a migrant reduces the costs and risks of migration, so that migratory behavior tends to spread rapidly through social networks, yielding a process known as *cumulative causation* (Massey 1990). If someone wishes to migrate from a small Mexican town to the United States without authorization, the prospect is daunting if no one from the community has ever crossed the border before. In the absence of information or experience, undocumented border crossing can be a costly and risky proposition. Once someone from the community has migrated, however, everyone socially connected to that migrant acquires something quite valuable: a tie to someone who knows how to cross the border, find a job, and get by in the United States.

Depending on the closeness of the tie and the social obligations it implies, the migrant may provide information, offer job leads, recommend reliable border smugglers, finance the trip, personally guide the person across the

border, or offer food and lodging upon arrival. Whatever the specific set of services, the potential costs and risks of migration are reduced for those connected to the migrant, yielding valuable social capital. Some of these people will take advantage of their connection to migrate themselves, which expands the set of people with ties to the original migrant, inducing still more to migrate, yielding a self-perpetuating chain to promote cumulative causation by reducing the costs and risks of migration for an ever-expanding set of people (Massey and Zenteno 1999).

The final motive for migration is the desire to escape an immediate threat to emotional or physical well-being, such as civil violence, crime, domestic abuse, natural disasters, political upheaval, or even catastrophic economic transformations, yielding a stream of out-migrants whose mobility is motivated by well-founded and acute fears for their immediate survival, personal security, or short-term well-being (Kunz 1981). They perceive a tangible current or impending risk and move rapidly to escape it, usually but not always by proceeding to the nearest and most accessible safe haven. If they remain within their home nation they become internally displaced persons, and if they cross an international border they become refugees or asylees. How migrants fare after their departure depends critically on the social, economic, and political circumstances of their departure and arrival and, most important, on their prospects for returning home (Portes and Rumbaut 2006).

Although all migrants are self-selected, the degree of selectivity varies by category of motivation. Those seeking to evade an immediate threat are generally the least selected, though the degree of selection varies with the severity and character of the threat. Massive natural disasters and open warfare tend to produce the least selected flows, given the blanket and unselected nature of the threat. In the most severe cases of threat, everyone who is physically able to moves, and only the infirm and feeble are left behind. In contrast, political upheavals, crime, civil violence, and economic catastrophes are generally more selective on the basis of traits such as class, political affiliation, ethnicity, and religion.

Whatever the original nature of the selection, the incentive to integrate varies systematically with the prospects for return migration. When people believe that returning home is difficult or impossible, they have a strong incentive to invest in social integration and economic mobility in the place of destination. If they believe return is imminent or likely in the short to medium term, they have less incentive to adapt to their new circumstances. The ability to integrate, however, also depends on the policies of the receiving nation—whether it is willing to grant permanent resident status to the refugees or keeps them in a prolonged state of political limbo by not granting permanent resident rights. If the diaspora proves to be prolonged and not resolved in

either direction—settlement or return—refugees may languish in marginalization and poverty for many years.

Those migrating for reasons of social connection are generally more selected than those fleeing threats, though the degree of selection again varies depending on whether they are migrating strictly for purposes of reunification, responding to an entreaty from a migrant relative, or mobilizing social ties themselves to achieve economic goals. In general, the latter are more selected than the former with respect to traits such as ambition, motivation, drive, and often resources. The degree of selectivity also depends on when in the process of migrant network formation someone chooses to leave. Those leaving early in the process tend to be the most selected with respect to class and motivation. Lacking access to social capital, the very first migrants tend to be highly motivated or have some access to wealth or income to finance the trip. As networks expand and ties to migrants diffuse throughout the sending community, selectivity with respect to wealth and income decreases as social capital is created through processes of cumulative causation. Given the greater immediacy and closeness of social ties in small communities, cumulative causation is more intense in villages and towns than in cities and large metropolitan areas (Fussell and Massey 2004).

In general, the migrants who are most selected are those whose motivation is primarily material improvement. Almost by definition, such people are self-selected by their drive, ambition, will, courage, and tolerance for risk, all characteristics likely to be rewarded in destination labor markets and entrepreneurial sectors. In contrast, those migrating to minimize risk rather than optimize gain might be hypothesized to be less selected with respect to risk taking and possibly also with respect to drive and ambition, though there is little evidence on this issue. In sum, those migrating for economic reasons are generally more selected than those doing so for social reasons, who are more selected than those migrating to escape immediate threats to well-being, though as noted there are significant variations within each of these broad categories.

SETTLEMENT VERSUS RETURN

One final motivational issue to be considered is the permanence of migration: the degree to which migrants plan to settle and establish themselves permanently, or at least over the long term, at the place of destination. In general, neoclassical economics has envisioned migration involving an enduring change of residence, with migrants maximizing their lifetime earnings by relocating permanently to a higher wage area. Some work is inherently seasonal and sporadic, however (i.e., agriculture and construction), while other

jobs offer such limited prospects for status and mobility that workers do not wish to remain in them for long. Under these circumstances, migrants might rationally employ a circular strategy of migration, maximizing income by earning what they can during limited periods of work abroad and then returning to earn whatever they can get at home when foreign labor demand flags or the job becomes too onerous (Piore 1979).

In contrast to neoclassical economics, the new economics of labor migration has generally conceived of migration as temporary, with migrants seeking to earn a fixed amount of money or work for a fixed period of time to solve some economic problem at home, such as accumulating funds to invest in production or consumption in the absence of accessible markets for capital and credit, generating an alternative income stream to hedge against local economic shocks in the absence of access to unemployment insurance, or financing the construction or acquisition of a home in the absence of functional mortgage markets. Thus, both the neoclassical and new economic models are consistent with a circular pattern of temporary migration for purposes of either material improvement or risk management, even though the former is usually invoked to predict long-term or permanent migration.

Migration for purposes of symbolic gratification may likewise lead to either temporary or permanent migration. If living, working, and consuming in the destination society and achieving status there are the primary impetus for moving, then migration will be more permanent. If, however, a migrant's social identity remains rooted in the sending community, and it is the experience of migration and the material benefits it confers that enhance one's standing at home, then the migration will be circular (Piore 1979). Migration motivated by social connection might also be either temporary or permanent, depending on whether the principal incentive is the reunification of a geographically split family or the instrumental use of social ties to help earn a target income to solve an economic problem at home. As already noted, threat evasion likewise has the capacity to produce either short- or long-term migration, depending on the nature of the instigating threat, the circumstances of departure, and conditions at the point of destination.

As the foregoing discussion makes clear, there are good theoretical reasons to expect migratory systems to display patterns of both temporary and permanent migration, and historically the United States has witnessed both settlement and circulation. During the classic era of European immigration between 1880 and 1920, groups escaping dire threats to well-being or civil repression at home (the Irish during famine and Jews escaping Russian pogroms) displayed low rates of circulation and a strong proclivity toward settlement, whereas those who migrated for economic reasons (Polish and Italian migrants) displayed high rates of circulation, a strong propensity for

return migration, and relatively low rates of settlement until circulation was blocked, first by the outbreak of World War I in 1914 and then by restrictive immigration quotas in the 1920s (Wyman 1996).

Most citizens of wealthy industrial nations tacitly assume that migrant workers are strongly motivated to settle permanently in places of destination, and that in the absence of restrictions they would do so in large numbers, producing a rapidly growing foreign population. Being culture-bound, like all human beings, Americans tend to overestimate the attractiveness of their own country as a place of settlement while underestimating the allure of return migration, but in fact substantial evidence suggests that circulatory migration strategies are quite common and are often the preferred strategy for migrants to the United States, especially those from Mexico (Massey, Durand, and Malone 2002). Given access to temporary work visas, many migrants would prefer to circulate back and forth for periods of short-term work abroad, and most would ultimately like to retire back home to enjoy the fruits of their labors.

Under these circumstances, restrictive policies that limit access to work visas and make circulation difficult can backfire, inadvertently triggering high rates of settlement and lower rates of return migration, spurring greater growth in the population of resident foreigners. In Europe, for example, guest workers circulated in and out in large numbers for several decades prior to 1973. Although millions entered, millions also left, and the net increase of residents was small in any given year. In the wake of the 1973 global recession triggered by the Arab oil boycott, however, Western European nations that had become quite dependent on foreign labor unilaterally suspended guest worker recruitment and terminated access to temporary work visas.

Rather than this reducing foreign population growth, however, migrants who formerly would have returned home, secure in the knowledge that they could easily come back for additional labor in the future, instead dug in their heels and remained in Europe, and as their stays lengthened they petitioned for the entry of dependent family members. Within a short period European immigrants were transformed from a floating population of male workers circulating back and forth into a settled population of resident families rooted in cities throughout the continent (Reichert and Massey 1982). As the next section demonstrates, much the same thing happened in North America when the United States unilaterally cut off the supply of temporary work visas for Mexicans and then dramatically increased border enforcement despite the rapid integration of the two economies under a free trade agreement. The end result was a massive shift from circulation to settlement among Mexican migrants and the acceleration of undocumented population growth to record levels.

THE ORIGINS OF UNAUTHORIZED MIGRATION

Mexican migration to the United States is hardly new. The first labor migrants began crossing the border around the turn of the twentieth century, when railroads financed by U.S. investors penetrated deep into the Mexican interior and brought in labor recruiters from the United States. The outflow intensified after 1907, when the United States reached its "Gentleman's Agreement" with Japan, effectively cutting off the flow of Japanese workers to the West Coast. It surged again when World War I broke out, stopping the flow of labor from Europe, and peaked again after 1917, when the United States entered the war and established its own temporary worker program. The economic boom of the 1920s coincided with the passage of restrictive quotas to end mass migration from Europe; in response employers redoubled their recruitment efforts in Mexico, leading to a period that historians refer to as the "flood tide" of Mexican immigration to the United States (Cardoso 1980).

The surge in Mexican immigration is clearly indicated in figure 3.1, which shows Mexican entries into the United States in three legal categories from 1900 through 2010: temporary workers, legal immigrants, and unauthorized migrants. These data come from the *Yearbook of Immigration Statistics,* published each year by the U.S. Department of Homeland Security (and its predecessor agencies, such as the Immigration and Naturalization Service). Legal

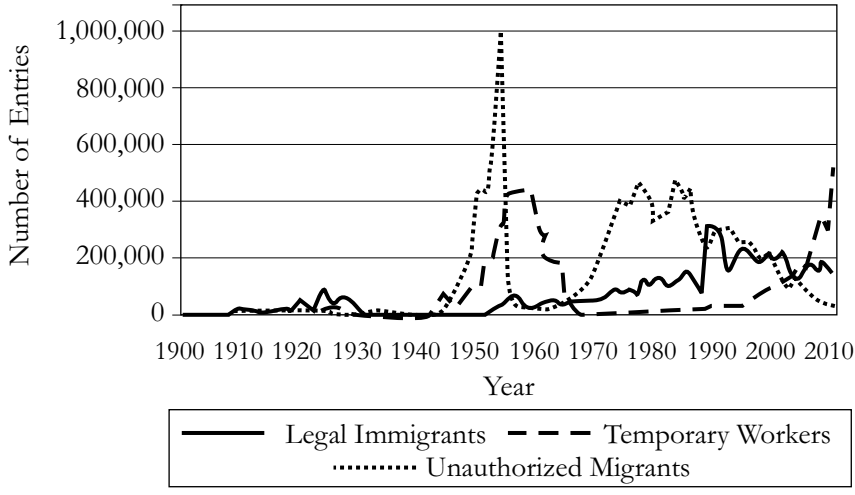

Figure 3.1
Entries from Mexico to the United States in Three Legal Categories, 1900–2010

immigrants and temporary workers are expressed as total recorded entries, whereas unauthorized migration is calculated from the number of apprehensions per thousand Border Patrol agents. By itself the number of apprehensions is a poor indicator of the relative size of the unauthorized inflow, because it reflects the enforcement effort as well as the number of attempted entries. Dividing by the number of Border Patrol agents standardizes for the enforcement effort to produce a serviceable indicator of the relative size of the unauthorized inflow (Massey and Pren 2012).

According to these statistics, the number of legal immigrant entries rose to a peak of 88,000 in 1924 and 67,000 in 1927, while the number of temporary workers averaged 15,000 a year from 1919 to 1929. All told, some 488,000 Mexicans arrived legally and another 148,000 came as contract workers between 1920 and 1929. By 1930 the Mexican-born population of the United States stood at 740,000, compared with just 100,000 in 1900. This so-called flood tide came to an abrupt end with the crash of the U.S. stock market in late 1929, and in the context of the Great Depression, Mexicans came to be seen as unwanted competitors for scarce jobs and a public burden when they weren't working, ushering in an era of mass deportations. From 1929 to 1939, 469,000 Mexican citizens were forcibly expelled from the United States, and by 1940 the Mexican-born population of the United States stood at only 377,000 (Hoffman 1974).

For the remainder of the 1930s movement across the border was almost nil. Connections between Mexican workers and U.S. employers withered, and when the United States entered World War II and new labor shortages developed, the flows had to be restarted by a U.S.-sponsored temporary worker program, christened the Bracero Program. The initial inflow of Mexican workers was small, with just 4,200 entries in 1942, but by 1945 the program had expanded to nearly 50,000 per year. When Congress attempted to reduce the number of Bracero visas after the war, labor shortages began to appear throughout the West, especially in agriculture, and unauthorized immigration rose steadily. Whereas the number of apprehensions per thousand agents averaged around 10,000 between 1933 and 1943, the figure reached 440,000 per thousand in the early 1950s, prompting the first border crisis and the launching of Operation Wetback in 1953–1954, the first full-scale militarization of the Mexico-U.S. border (Garcia 1980).

In the course of this border operation, the number of apprehensions per thousand agents briefly surged to a million, but this very public show of force at the border was accompanied by a much quieter expansion of the Bracero Program. From just 20,000 Bracero entries in 1947, the number reached 107,000 in 1949, 200,000 in 1952, and 445,000 in 1956. During the latter half of the 1950s the number of braceros averaged 433,000 per year, and

because the restrictionist quotas of the 1920s did not cover Mexico, legal Mexican immigration also grew, from around 2,200 per year in 1942 to more than 55,000 in 1963. With ample opportunities for legal entry through the early 1960s, undocumented migration fell to very low levels, averaging just 23,000 per thousand agents from 1957 through 1964.

During the late 1950s peace was thus restored to the border, which came to be seen as "under control." The annual inflow fluctuated between 450,000 and 500,000 entries per year, with around 90 percent circulating back and forth on seasonal work visas and 10 percent entering on legal residence visas. Among the latter, however, return migration in any given year averaged around one-third of the legal permanent inflow. At this point, therefore, the North American migration system was overwhelmingly circular, with most migrants entering the United States seasonally to maximize wages in combination with economic activities at home, to diversify the household income stream as a hedge against economic instability, or to accumulate funds for investment or consumption in Mexico.

The year 1965 witnessed a major shift in U.S. immigration policy. The Bracero Program was unilaterally terminated despite strong protests from Mexico, and numerical limitations were placed on legal permanent entries from Mexico for the first time. In the ensuing years these limitations grew increasingly restrictive, until by 1976 legal Mexican immigration was capped at 20,000 visas per year (though immediate relatives of U.S. citizens were exempted). Given ongoing labor demand in the United States, the strong ties between employers and migrants that had been established during the Bracero Program, the well-developed network connections among the migrants themselves, and a lightly patrolled border, Mexican migration did not stop, but simply continued under undocumented conditions.

From just 29,000 in 1964, the number of apprehensions per thousand agents rose to around 464,000 in 1977. Thereafter the unauthorized inflow stopped growing, and the number of apprehensions per thousand agents fluctuated around an average of 441,000 through 1986, before dropping to a new plateau around 254,000 from 1987 through 2000 and falling to near zero by 2010. In the latter year the number of apprehensions per thousand agents stood at just 22,500, the lowest level observed since 1962. Independent calculations from the Mexican Migrant Project showed that the probability of departing for the United States was just 0.002 for Mexican males in 2010 (Mexican Migration Project, Graph 9). Consistent with these figures, estimates by both the Department of Homeland Security and the Pew Hispanic Center indicate that the undocumented population, after peaking at twelve million in 2008 and falling to eleven million in 2009,

has remained virtually constant since then. The era of undocumented migration appears to be over, at least for the moment.

AMERICA'S BORDER BACKFIRE

As indicated in figure 3.1, the total inflow of Mexican migrants to the United States has not changed very much since the late 1950s. What has changed over time is the legal status under which the migrants entered. If we add legal immigrant and temporary worker entries with apprehensions per thousand agents for the years 1955 through 1959, we get a total of around 530,000, 81 percent of which represents temporary worker entries, 8 percent of which represents legal immigrants, and just 11 percent our proxy for undocumented entries. Moving to the years from 1976 to 1999, the total remained fairly stable at 513,000, but the percentages shifted to 4 percent for temporary workers, 32 percent for legal immigrants, and 65 percent for unauthorized migrants.

Since the late 1990s, however, Congress has once again quietly increased the number of temporary work visas, and more legal immigrants are entering outside the numerical quota, largely as a consequence of rapidly rising naturalization rates among Mexican legal permanent residents, which has produced millions of new citizens (as noted previously, immediate relatives of citizens are exempt from numerical limitations). Immigration policies enacted in the 1990s and 2000s began to strip away rights and suspend entitlements for documented as well as undocumented migrants, and in response millions of legal residents undertook "defensive naturalization" to guarantee their rights. Once naturalized they began sponsoring their spouses, minor children, and parents for entry *outside* the numerical quotas.

From 2000 through 2008 legal entries, temporary entries, and apprehensions per thousand agents combined yielded a total of 462,000, of which 39 percent were legal immigrants, 39 percent temporary workers and just 22 percent our proxy for unauthorized migrants. Since 2008 the increased availability of legal visas, the sharp drop in labor demand, and stagnating wages in the United States have combined with decelerating labor force growth, rising wages, increasing educational levels, a declining rural sector, and stable job growth in Mexico to bring about an end to undocumented migration (Massey and Pren 2012).

If total entries from Mexico have been relatively stable, and unauthorized migration did not grow after 1977, how and why did the unauthorized population of the United States increase from an estimated 2.3 million in 1990 to 12 million in 2008? The answer has to do with the massive militarization of the Mexico-U.S. border, which began in 1986 with the passage of the Immigration

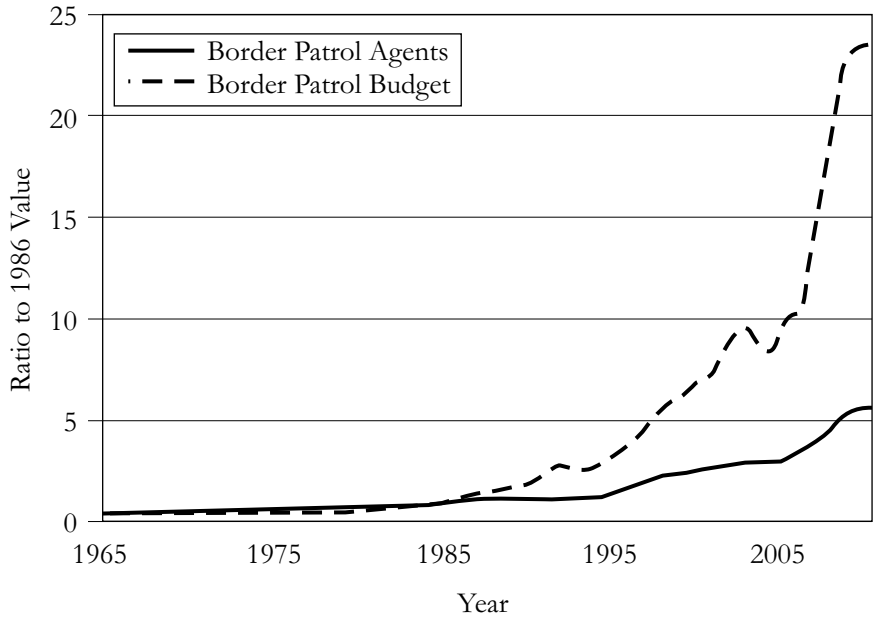

Figure 3.2
Border Patrol Agents and Budget Expressed as a Fraction of Their Values in 1986

Reform and Control Act, then accelerated in the 1990s with the launching of Operation Blockade in El Paso in 1993 and Operation Gatekeeper in San Diego in 1994, followed by the 1996 passage of the Illegal Immigration Reform and Immigrant Responsibility Act and the Anti-Terrorism and Effective Death Penalty Act. Enforcement efforts redoubled again with the passage of the USA PATRIOT Act in 2001 (Zolberg 2006). Figure 3.2 shows trends in two indicators of the U.S. border enforcement effort: the number of Border Patrol agents and the size of the Border Patrol's budget. Each series is divided by its value in 1986 to equalize the scales and express the degree of growth since that year. As can be seen, since 1986 the number of agents (the solid line) has grown by a factor of six, while the agency's budget (the dashed line) has increased by a factor of twenty-four—all despite the fact that the number of undocumented entrants ceased growing in the late 1970s.

As might be expected, the exponential increase in border enforcement had profound effects on the behavior of unauthorized migrants—but not the effects that U.S. policy makers anticipated. Between 1965 and 1985 undocumented migration had been overwhelmingly circular, with 85 percent of entries being offset by departures, yielding a small net increase in the stock of

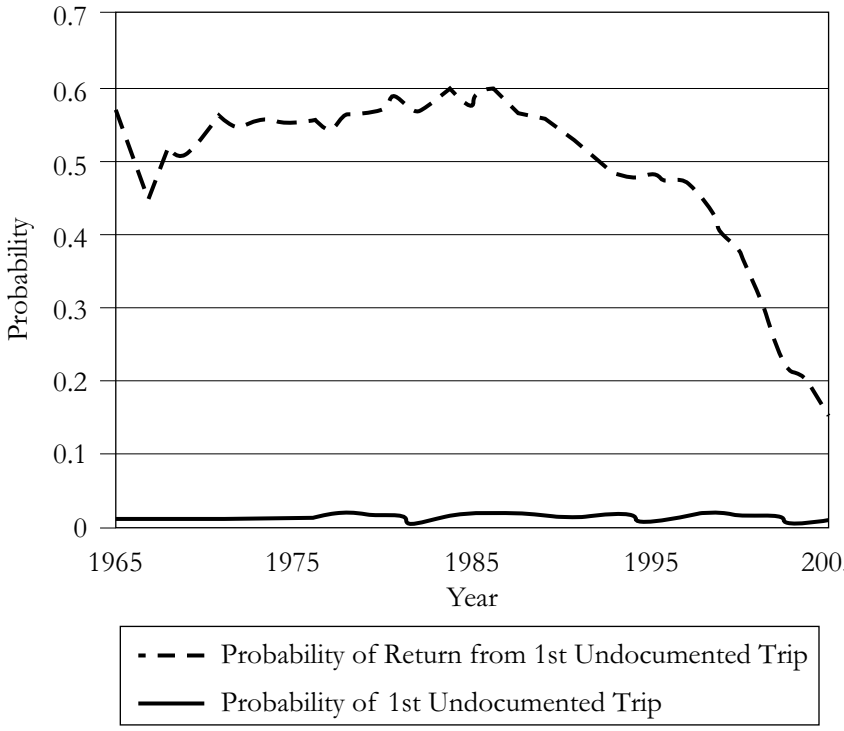

Figure 3.3
Probability That a Mexican Male Left on and Returned from a First Unauthorized Trip to the United States

undocumented residents each year (Massey and Singer 1995). One immediate consequence of the border militarization was a rapid rise in the costs and risks of undocumented border crossing, with a tripling of the death rate by the late 1990s compared with the early 1990s (Massey, Durand, and Malone 2002) and smuggling fees increasing by a factor of six between 1990 and 2010 (Mexican Migration Project, Graph 9). In response to the rising costs and risks of border crossing, undocumented migrants naturally enough minimized border crossing—not by staying home in Mexico, but by hunkering down and remaining in the United States once they had run the gauntlet at the border. As shown in figure 3.3, the probability of undocumented entry from Mexico (the solid line) remained stable from 1965 through 2005, but the probability of return migration (the dashed line) plummeted after 1986, with a notable acceleration after the mid-1990s. Whereas 60 percent of undocumented migrants returned home within twelve months of entry in 1985, by 2005 the figure stood at just 15 percent. During the 1990s the net

inflow of undocumented migrants doubled, not because more migrants were entering, but because many fewer were going home.

Although the militarization of the border dates to 1986, border enforcement accelerated markedly with the Border Patrol's launching of enforcement operations in El Paso and San Diego in 1993 and 1994, by far the two busiest border crossings, which historically had accounted for more than 80 percent of all undocumented entries. The hardening of these two sectors diverted the flows through the Sonoran Desert toward less-patrolled sectors along the border with Arizona and ultimately produced a marked shift, not only in the geography of border crossing but also in destinations (Mexican Migration Project, Graphs 3–7). Among Mexicans who entered the United States between 1985 and 1990, 63 percent went to California, but among those who entered between 1995 and 2000, just 28 percent did so (Massey and Capoferro 2008). As more migrants spent more time isolated from family members north of the border, they increasingly sought to arrange the entry of spouses and children (Massey, Durand, and Malone 2002). Within a short period of time U.S. border policies transformed what had been a modest circular flow of male workers going to three states into a larger population of families settled in fifty states.

MIGRANTS, MOTIVATIONS, AND PUBLIC POLICY

Undocumented migration is a regional, not a global issue for the United States. The top nations of origin for unauthorized U.S. residents are Mexico, El Salvador, Guatemala, and Honduras, which by themselves account for 73 percent of the total (with Mexico alone representing 60 percent) (Hoefer, Rytina, and Baker 2012). Adding in the rest of Latin America brings the total to around 80 percent (Passel and Cohn 2011). Large countries in Asia, such as China, India, Indonesia, and the Philippines, each account for 2 percent or less of the total. Unauthorized migration, therefore, is very much a phenomenon of the Western Hemisphere and is ultimately rooted in the history and nature of America's economic and political relations with its Latin American neighbors.

As noted, after a long period of openness to immigration from Latin America, the United States curtailed access to temporary work visas for Western Hemisphere residents in 1965 and sharply restricted access to permanent residence visas. The ongoing flows were quickly reestablished under undocumented conditions during the 1970s, however, and in response to the rising tide of "illegal aliens," ever more repressive border and immigration policies were imposed in subsequent years. As discussed previously, however, these restrictive policies ultimately backfired by driving down rates of return

migration and trapping millions of Mexicans north of the border. This "caging in" effect dramatically increased the net inflow of undocumented migrants to the United States, accelerating undocumented population growth and converting Mexican immigration from a circular flow to a settled population while transforming it from a regional into a national problem. When Central Americans in the 1980s sought to escape regional violence and disorder in the wake of the U.S. Contra intervention, they likewise encountered few avenues for legal entry and joined their Mexican counterparts north of the border, accelerating undocumented population growth (Lundquist and Massey 2005).

For most of the past three decades Latin American migrants have come to the United States for diverse reasons. Some, mainly from Central America, sought to escape threatening circumstances at home, but most migrated for economic reasons (income maximization, risk management, or to substitute cash savings for capital and credit). Social reasons also played an important role in the decision to migrate (for family reunification, to attain social status or prestige, or drawing on network connections to achieve economic goals). Whatever the precise motivation (or combination of motivations), the large majority of migrants, especially Mexicans, did not intend to settle permanently when they began migrating and would not have done so if the border had remained porous after 1986.

Although the diversity of migrant motivations and the contingent nature of decisions about settlement versus return have long been recognized by social scientists (Garip 2012), they have been widely misunderstood by politicians and the public, who seem to assume that all migrants want to settle permanently in the United States. They have a hard time grasping that the vast majority of Mexican migrants would actually prefer to circulate back and forth temporarily to improve their economic situation at home, viewing migrants stereotypically as desperate people fleeing abject poverty and deprivation in places of origin for the El Dorado of America rather than as calculating economic actors using migration instrumentally to achieve mobility projects rooted in their home communities. Given such a mind-set, policy makers, with widespread public support, implemented harsh border enforcement policies, intended to drive up the costs and risks of undocumented migration to discourage departure for the United States and to forestall successful entry when attempts are made.

Paradoxically, however, the resulting militarization of the Mexico-U.S. border frustrated the mobility plans and circular strategies preferred by most Mexicans, increasing undocumented population growth well above what it otherwise would have been. A better understanding of the motivations of migrants might have produced a strategy of immigration management rather than migrant repression, seeking to accommodate Mexican preferences for

circular migration with temporary work visas while providing pathways to permanent residence for those acquiring longer-term family and employment ties to the United States. Rather than seeking to block the entry of Mexicans through harsh, unilateral enforcement policies, a better strategy would have been to facilitate and encourage the legal movement of migrants back and forth within an increasingly integrated North American economy.

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4

The Dangerous Journey: Migrant Smuggling from Mexico and Central America, Asia, and the Caribbean

Robert Donnelly
Jacqueline Maria Hagan

Coming to America has long been a dangerous undertaking for the immigrant. Many European travelers of the nineteenth century suffered the Atlantic crossing in wretched conditions, exposing themselves to disease, malnutrition, and victimization by petty criminals and con men. In their quest to reach the United States, Asian travelers of the same era routinely suffered abuse at the hands of a powerful "migration industry" (Castles and Miller 2009, 29), one that involved U.S.-based employers, coethnic recruiters at home and abroad, and U.S. immigration officials.

At the turn of the twenty-first century, coming to America without authorization is as dangerous as at any time in the history of immigration to this country. The perils of crossing at sea—sharks, storms, and starvation—afflict would-be migrants from the Caribbean, while death from asphyxiation is a frightening possibility for the many Chinese migrants smuggled aboard container and other ships.

Yet it is the trek from Central America through Mexico and finally across the U.S.-Mexico border that is in magnitude the deadliest of all undocumented journeys. This route, along which more than five thousand people have perished since the buildup of border enforcement policies in the 1990s, ranks among the world's deadliest, perhaps comparable only to the treacherous sea route linking North Africa and Europe.

Thousands of migrants have died in the past two decades. Many have fallen victim to exposure and dehydration from the harsh sand and blistering sun of the Sonoran Desert. In south Texas migrants have drowned in the swirling currents of the Rio Grande, while still others have succumbed to hypothermia in the rugged mountains of eastern California. While exposure accounts for the largest number of recorded fatalities at the U.S.-Mexico border, migrants have also been victimized by street gangs and organized criminals alike, more so at perilous crossing points near the Mexico-Guatemala border and at other points along their journey through Mexico. Criminals, sometimes working in collusion with migration officials, have preyed on immigrants, at times maiming them and leaving them for dead, kidnapping and holding them for ransom, or killing them outright after robbing or sexually exploiting them. In recent years these dangers have intensified, as Mexican organized criminal groups have expanded into the lucrative human smuggling business and have begun to apply the same violent tactics that they use to move drugs and other contraband.

This chapter examines the different iterations of the undocumented migrant journey to the United States as it takes place overland and at sea and focuses on the routes taken by Mexican, Central American, Caribbean, and Chinese migrants, groups that account for large flows of unauthorized migration to this country. We place these journeys within a shifting geography of danger, which has been heavily influenced in recent years by the expansion of state enforcement activities at multiple international borders, as well as by the subsequent rise of organized human trafficking groups.

We see danger manifest in two main ways: in the form of physical hardships on the journey itself and in crime and the potential for crime directed against migrants. *Physical hardship* means the conditions of extreme hunger/thirst, injury, extreme temperature, and susceptibility to disease that afflict migrants on their long-distance treks over land and across seas, and the attendant malnutrition, fatigue, and worsening health that these conditions may cause. *Crime* refers to assault, robbery, rape, kidnapping, or the abuse of authority against migrants by government officials and smugglers.

Not all unauthorized border crossers are at equal risk of dying or being injured on the road. Distance traveled; mode of travel; and the different ways in which migrant men, women, and their families socially organize the migration journey may affect exposure to danger. Migrants who are female, minor, or poor face the threat of sexual predation; abuse, assault, and robbery; and the lack of protection afforded by bribing officials (Slack et al. 2013). Migrants with loyal friends and family in the United States, from regions close to the border with strong emigrant traditions and who possess sufficient funds to buy safe passage by obtaining the services of competent professional smugglers, for example, may experience fewer dangers (Singer and Massey 1998).

We begin this chapter by situating the undocumented border crossing population within the total unauthorized population in the United States. We then identify the three principal routes that undocumented migrants take to reach the United States: from mainland Latin America, Asia, and the Caribbean. In these sections we discuss the particular dangers that migrants encounter on each route, paying special attention to the aggravating influences of government actors and organized crime, and also examine the strategies migrants employ to cope with the threats they face on the migration journey. We close by offering suggestions for future research and policy options for reducing the dangers facing migrants.

WHO MAKE UP THE UNAUTHORIZED POPULATION, AND HOW DO THEY ENTER?

The most recent estimates place the U.S. unauthorized population at 11.1 to 11.51 million (Passel and Cohn 2012; Hoefer, Rytina, and Baker 2012; Passel and Cohn 2011a), with Mexicans comprising just under three-fifths of the population in all estimates, about 6.5 to 7 million people. Other Latin Americans—mainly Central Americans—comprise a large share of the estimated unauthorized population as well. According to the Office of Immigration Statistics (Hoefer, Rytina, and Baker 2012), Central Americans—Salvadorans, Guatemalans, and Hondurans—accounted for 14 percent of the 2011 total, while Pew (Passel and Cohn 2011a) reported that Central Americans and other non-Mexican Latin Americans comprised 23 percent of the 2010 population. Thus, Latin Americans—from Mexico and Central America principally—make up the lion's share of the estimated unauthorized population.

Asian unauthorized migrants make up between 10 and 11 percent of the total, about 1.3 million (Pew Research Center 2013), while undocumented persons from Europe and Canada account for 4 percent, or about 500,000 (Passel and Cohn 2012). Those from Africa and other countries represent 3 percent, or about 400,000, of the unauthorized population (Passel and Cohn 2012).

The majority of unauthorized Mexican and Central American migrants enter the United States clandestinely, that is, by crossing a land or sea border without official inspection. In 1996 84 percent of Mexican and 73 percent of Central American migrants entered the country in this way, based on inverse estimates of the "visa overstaying" populations of both groups (Pew Hispanic Center 2006). In comparison, only 9 percent of migrants from other countries entered the United States by bypassing official ports of entry, with a large majority, 91 percent, entering the country legally and then opting to remain beyond the terms of their visas (Pew Hispanic Center 2006). The high proportion of clandestine crossings for Mexican and Central American migrants

suggests an extraordinary susceptibility to the dangers of the migration journey for these two groups, given the special hazards of the desert crossing at the U.S.-Mexico border, which visa overstayers do not face. Moreover, it is likely that the number of Mexican and Central American migrants risking these dangers has increased in recent years, given new impositions on legal entry at the southwestern border since the 9/11 terrorist attacks.

These new barriers, which include biometric screening, restrictions on the use of temporary border-crossing cards, and tougher identification procedures generally (Meissner et al. 2013, 36), have prevented Mexican and Central American migrants from entering safely at official crossing stations using legal documentation or borrowing or stealing such documentation from look-alikes. Thus, it is possible that an even greater proportion of migrants from these countries must now enter in clandestine fashion through the inhospitable southwestern desert, risking grave physical and social danger to reach the United States.

It should be added that the quest for a legal visa for the typical Central American or Mexican economic migrant continues to be a futile exercise, with the visa-processing backlog for these migrants stretching back twenty years (Slack et al. 2013). In addition, temporary border-crossing cards are also now more difficult to obtain because of changes ushered in by the 2007 Western Hemisphere Travel Initiative (WHTI). These passes for routine crossers now contain new security features designed to thwart their misuse, such as photo substitution (Meissner et al. 2013).

Although estimates of the U.S. unauthorized population have decreased since peaking in the mid-2000s, and declining numbers of apprehensions in the Southwest suggest a drop-off in border crossings, the ratio of unauthorized Mexican and Central American border crossers to Mexican and Central American visa overstayers may be increasing. This is of concern in this chapter, given the gulf in danger experienced by the two groups. In the following section we address the extraordinary hazards confronting unauthorized migrants from Central America, a group that, according to the leading measure, has registered an uptick in unauthorized crossings at the southwestern border.[1]

TRAVELING THE GAUNTLET: THE DANGEROUS JOURNEY FROM CENTRAL AMERICA TO THE UNITED STATES

The migrant's 1,800-mile journey[2] through Central America, in transit through Mexico, and across the perilous southwestern border, is one of the most dangerous unauthorized routes into the United States. For the many migrants who come from Central America, as well as for the smaller numbers that originate farther south, emigration means thousands of miles of hard

travel by foot, the surreptitious crossing of multiple heavily guarded international boundaries, and the jumping on and off of moving freight trains, to sneak deeper into Mexico and evade both corrupt officials and marauding gangs like the notorious MS-13. For the typical poor migrant from Central America, the journey is a grueling slog of uncertain risk without guarantee of success, frequently leading to death, serious injury, or emotional trauma. Similarly, the journey carries dangers for Mexican migrants, who must venture into unknown parts of their own country, where their regional accents, looks, and manners may tip off unscrupulous criminals to their vulnerability. Extraregional nationals who use Mexico as a springboard to the United States are also imperiled by organized and petty criminals, with criminal violence reported against transit migrants from Colombia, Cuba, Ecuador, and elsewhere (Comision Nacional de Derechos Humanos 2011, 27).

Gravest dangers lie in wait at those points along the journey through which all migrants must pass and which are staging grounds for surreptitious crossings. Thus, it is near heavily secured international border crossing stations, such as the Tecún Umán-Ciudad Hidalgo entry at the Mexico-Guatemala boundary or along the Rio Grande Valley in south Texas, that the threat of antimigrant crime is highest.

Migrants beginning their journeys in Central America must overcome numerous legal, social, and physical challenges (Hagan 2008, 67–70). To avoid detection by officials and organized crime groups, these migrants must travel by foot and in poorly ventilated vehicles over thousands of miles across deserts, mountains, rivers, and multiple guarded international borders to reach the United States. The governments of Central American countries have historically been open to interregional seasonal labor migration. However, in recent years, under pressure from Mexico and with funding from the United States, these governments have launched border enforcement campaigns to restrict the mobility of undocumented labor throughout the region. These efforts include transportation of unauthorized migrants to homelands, installation of monitoring equipment, deployment of border personnel, and requiring nationals to carry passports. As a result of these campaigns, thousands of Central Americans have been apprehended, detained, and deported (Hagan 2008, 61–70).

Migrants traveling through Central America must also cross though lawless areas controlled by organized crime groups smuggling drugs, humans, and weapons. The dissolution of state security and intelligence forces after the civil wars of the 1980s in the region has left experienced police and military officials, who are knowledgeable about the area's geography, available for hire by criminal groups involved in the trafficking of weapons and drugs (Dudley 2012). Among these criminal organizations are groups such as the Zetas and

the Sinaloa Cartel, who established operations in Guatemala and Honduras following the crackdown by the Mexican government on criminal groups in the country. Also increasingly present along the migrant trail are gangs composed of tens of thousands of migrants who have been deported to El Salvador from the United States for involvement in street gangs, such as the notorious Mara Salvatrucha and Barrio 18. These gangs have since established a visible presence along the El Salvador-U.S. migrant trail, where they prey on migrants as they hide in concealed train compartments or jump off the trains as they approach checkpoints.

The rise of organized crime in Mexico and the Northern Triangle region of Central America (Guatemala, Honduras, and El Salvador) has dramatically increased the risks that migrants face as they attempt to cross the region. According to Mexico's National Commission on Human Rights (Comisión Nacional de Derechos Humanos 2011), 9,758 migrants were reported kidnapped in a six-month period in 2008 and 2009, with another 11,333 reported kidnapped over April–September 2010 (CDNH 2011, 12, 26). About three-quarters of victims in the 2010 count were Central Americans, reflecting that region's high presence in Mexico's transit-migrant flow, but other Latin American nationalities—Cuban, Nicaraguan, and Ecuadorian—were represented as well (CDNH 2011, 27).

The problem of organized crime in the region, not to mention the battle for control of smuggling routes among the different organizations and groups, is an enormous one for migrants and explains the growing reliance on *polleros,* or "coyotes," to reach the United States. As the Zetas, Sinaloa Cartel, MS-13, and other organized crime groups have established themselves in the Northern Triangle, they have increased the danger that migrants face at both the beginning of their journeys and the U.S.-Mexico border.

The final leg of the Central American gauntlet is crossing into Mexico from Guatemala. Several routes are available to migrants, all of which are precarious and collectively lead to hundreds of deaths each year (Hagan 2008, 67). The first step in this arduous trip involves crossing through the notorious Mexico-Guatemala border towns of Tapachula, Tecún Umán, El Carmen, and La Mesilla, which in recent years have been characterized by criminal activities ranging from drug trafficking, to human smuggling, to corruption by border officials. Journalists refer to Tecún Umán, the most infamous of the border towns, as "Little Tijuana," because of the hundreds of *polleros* and other immigration-related industries that have exploded in recent years to provide services for transit migrants. If and when migrants manage to pass through the chaos of these bustling and booming border towns, they then must overcome the fortified border and interior enforcement efforts of the Mexican government.

Most Central American migrants launch their trip to Mexico from Tecún Umán, the lawless Guatemalan border town and dumping place for those who are deported from Mexican cities (see map 4.1). To evade Mexican border guards at the official Tecún Umán–Ciudad Hidalgo crossing, migrants regularly try to pass as locals, transporting goods and people via *balsas* (rafts composed of inner tubes) across the River Suchiate, the natural border between Mexico and Guatemala, dodging bandits who patrol the area at night. Migrants have no option but to cross this river during the day, under the vigilant eye of Mexican authorities. They cross early in the morning to blend in with labor migrants from the Guatemala border region, who as border area residents have visas that permit them to cross to and from work on farms and ranches in southern Mexico. Those who are successful continue on the migrant trail. Others, however, are apprehended and detained by Mexican officials and regularly forced to pay a bribe to pass further or are sent back to Tecún Umán on one of the daily buses that leave Tapachula.[3] Still others are held hostage by machete-wielding locals, who extort money from them under threat of alerting the authorities to their presence (Thompson 2006).

Some Central American migrants never make it beyond the Tecún Umán–Ciudad Hidalgo crossing. Financially destitute because of robbery or bribes, they are trapped in the Guatemalan frontier post and often have no options but to become prostitutes or petty criminals until they can earn enough funds to attempt the journey again (Jordan 2006). Tragically, an escalating number of Central American migrant women have turned to prostitution to make ends meet. In Tapachula, Chiapas, the nearest major Mexican city on the border with Guatemala, a journalist found that a large majority of prostitutes working in the city were from Guatemala, Honduras, or El Salvador (Edgar 2003).

Those who make it across the Suchiate River often find refuge at the Casa Albergue de Migrante in Tapachula, a safe house run by the Scalabrini order that provides for migrants and documents migrant abuses. The most common types of abuses reported are extortion, robbery, assault, verbal threats, sexual assault and rape, document destruction, and irregular detention. Most abuses involved robbery, rape, and assaults by bandits, but there were also substantial abuses by Mexican and Guatemalan officials.

Bribe-seeking officials are another source of danger for migrants traveling through Mexico. A collaborative effort of nongovernmental and academic institutions, including the Facultad Latinoamericana de Ciencias Sociales (FLACSO), interviewed 1,003 undocumented Honduran, Salvadoran, Guatemalan, and Nicaraguan U.S.-bound migrants in the northern Mexican city of Saltillo, Coahuila, in 2005 and 2006. Of the 1,558 abuses reported by the migrants, the majority had been committed by municipal, state, or federal

Map 4.1
The Dangerous Journey: From Mexico and Central America to the United States

Sources: ESRI World Countries layer (outlines of world countries): Environmental Systems Research Institute, DeLorme Publishing Company, Inc World Countries, accessed July 8, 2013, http://www.arcgis.com/home/item.html?id=3864c63872d84aec91933618e3815dd2; ESRI USA States layer (outlines of USA states): Environmental Systems Research Institute, TomTom, Department of Commerce, Census Bureau, U.S. Department of Agriculture (USDA), National Agricultural Statistics Service (NASS), accessed July 8, 2013, http://www.arcgis.com/home/item.html?id=1a6cae723af14f9cae228b133aebc620; ESRI World Shaded Relief Environmental Systems Research Institute, accessed July 8, 2013, http://www.arcgis.com/home/item.html?id=9c5370d0b54f4de1b48a3792d7377ff2; Natural Earth River and Lake Centerlines Natural Earth, accessed July 8, 2013, http://www.naturalearthdata.com/downloads/10m-physical-vectors/.

authorities (Peña, Galdamez, and Ergemy 2007). These criminal acts by officials usually involved bribes, but assaults and rapes were also reported. As a Scalabrini priest and director of a migrant shelter in Chiapas reported in 1998, "For those people who pass through Chiapas, the route is not the Way of the Cross, but a hellish crucifixion." A few years later, when Jacqueline Hagan interviewed Father Flor, he said that the state of Chiapas had become a "cemetery without a cross" (Hagan 2008, 67).

Once migrants cross into Mexico, the dangers continue. Those who cannot afford a coyote are often forced to pay bribes upon entry into Mexico, and in their attempts to evade checkpoints in southern Mexico, many migrants travel through remote jungle areas, where they fall victim not only to associated physical dangers, such as death from exhaustion, but to violence from the Mara Salvatrucha, or MS-13, who regularly rob and assault journeying migrants. Still others ride the train through Mexico, which migrants refer to as *La Bestia* or the "death express," because of the lives it regularly claims. Migrants regularly run for their lives as they try to jump on the freight train as it leaves the depots. To catch a train, migrants must run at a pace of 10 to 15 kilometers per hour until they can grab a ladder hanging from the cars and pull themselves up onto the "iron worm," as it is also called by residents in the region. Between Tapachula and Mexico City, a distance of roughly seven hundred miles, riders must dodge twelve migration checkpoints. Each time the train reaches a checkpoint, the migrants jump off and run for cover, then attempt to remount as the train pulls away. In these life-threatening transfers, they lose arms, limbs, and even their lives. On the train they face other dangers. In the dark confines of the freight compartments, robberies and rapes by gang members are commonplace. After being abused, the victims are often thrown from the train, destitute and severely injured. Some do not survive the deadly migratory trail through Mexico. Nongovernmental groups estimate that up to seventy thousand Central American migrants have gone missing in Mexico since 2006 (Lopez 2012).

Organized Crime's Growing Involvement in Migrant Smuggling from Latin America

The increasing involvement of Mexican organized crime in human smuggling has introduced new risks on both of the country's borders as well as within Mexico. Organized crime groups see migrants opportunistically in ways that small-scale smugglers do not. Rather than play the role of service provider, organized smugglers perceive their human cargo as so much illicit contraband, to be exploited sexually or through work, to be kidnapped and held for ransom, or to be used as drug mules or even mercenaries. As they replace the small-scale human smuggling

operators known as *coyotes* and apply the violent methods they use to haul other forms of contraband like drugs, Mexican organized crime groups have made the journey through Mexico more dangerous than at any time in recent memory.

A massacre in the northern border state of Tamaulipas in August 2010 stands as a stark example of the deadly consequences of the cartels' expansion into human smuggling. In the town of San Fernando fifty-eight male and fourteen female migrants, all from Central and South America, were gunned down, presumably for failing to make ransom payments or for refusing to work as drug mules. Implicated in the massacre were members of the Zetas cartel, which controls several local jurisdictions in Tamaulipas and is known for its bloody paramilitary methods (Malkin and Cave 2011).

International condemnation following the massacre at San Fernando and a proliferation of films and journalism on the new depredations facing third-country migrants have prompted widespread humanitarian concern in Mexico, Central America, and the United States (Comisión Nacional de Derechos Humanos 2011; Meyer and Brewer 2012; Isacson and Meyer 2012; International Displacement Monitoring Center 2010; Talsma 2012). Shortly after the massacre, the nation's human rights watchdog published a report citing more than eleven thousand alleged kidnappings of transit migrants, three-quarters of them Central Americans, in a six-month period in 2010. The report described opportunistic organized crime groups that raid migrant shelters, take victims, and hold them until family members in their home countries or in the United States can supply ransom payments. It also reported that collusion between organized crime and authorities, including both local officials and federal immigration agents, has facilitated many assaults on migrants. Small-scale smugglers are also victimized, with the migrants under their care frequently being kidnapped from them, or they are forced to pay so-called *derechos de piso* for the right to pass through cartel territory. Failure to make payments, which can range as high as US$30,000 per week or US$500 per migrant, can result in so-called coyote rips, seizures of the migrants by organized crime, entailing the risk of criminal violence against the migrants (Dudley 2012, 20). The dangers migrants face from organized crime are great, including seizure by rival crime groups, increasing the potential of criminal victimization; retribution for failure to act as drug mules or for inability to pay ransoms or smuggling fees; and trafficking, including sexual and labor exploitation. These dangers are vividly captured in a University of Arizona study that interviewed 1,113 repatriated Mexicans at migrant shelters. "They (Los Zetas) cut out a young Nicaraguan guy's eye and two of his fingers because he didn't pay. He bled to death in two days," one migrant said (Slack et al. 2013, 21). Mexicans are also victimized by the violent tactics used by organized crime smugglers, although fewer incidences of such cases have been reported to the Mexican authorities. More than 10 percent of

kidnapping cases documented in the 2011 CNDH report were of Mexican nationals, while 7 percent of respondents from the University of Arizona study of Mexican repatriates reported being kidnapped, whether by members of the Zetas and other organized crime groups, Mexican officials, or unscrupulous *coyotes* (Slack et al. 2013, 20).

If migrants succeed in evading organized crime and detection by authorities in Central America and Mexico, they must still face the major hurdle of crossing the U.S.-Mexico border, a heavily guarded fortress by the late 1990s. Historically, unauthorized entry from Mexico into the United States has been dangerous, at times even fatal. In the 1880s Chinese migrants died in the Southwest while trying to evade border enforcement operations stemming from the Chinese Exclusion Act of 1882. In 1953 an estimated three to four hundred crossers perished in the swift currents of the Rio Grande after a flood. The scorching heat and desolate terrain of the Southwest have long taken dozens of lives each year. Yet since the mid-1990s labor migrants from Central America and Mexico have had to contend with levels of physical, social, and psychological danger that are greater than those faced by prior generations of migrants. The steady buildup in U.S. border enforcement efforts over the past twenty years and the persistent and urgent demand for emigration in the countries of origin have combined to make the southwestern border the site of the highest number of migrant deaths in the United States. In the next section we discuss recent trends in migrant deaths and examine the effect of U.S. border enforcement policies on the conditions shaping the migration journey.

U.S. Border Enforcement Policies and Migrant Deaths

Since the mid-1990s the U.S. government has implemented a border enforcement strategy referred to as "Prevention through Deterrence," with the principal aim of curtailing undocumented migration at the southwestern border. The thrust of the strategy is to make it so difficult to cross the border illegally that prospective migrants preemptively choose not to make the migration journey at all. As its principal deterrent mechanism, the policy seeks to close off the most accessible routes into the United States through increased monitoring of those routes by agents of the U.S. Border Patrol and by the application of state-of-the-art motion-detection technology. However, a consequence of the strategy is the incursion of migrants into the least accessible—and therefore most inhospitable—areas of the southwestern border, such as the harsh desert lands straddling the Arizona-Sonora boundary. It is here that migrants are especially vulnerable to death or injury from exposure, thirst, and other physical harms related to the migration journey.

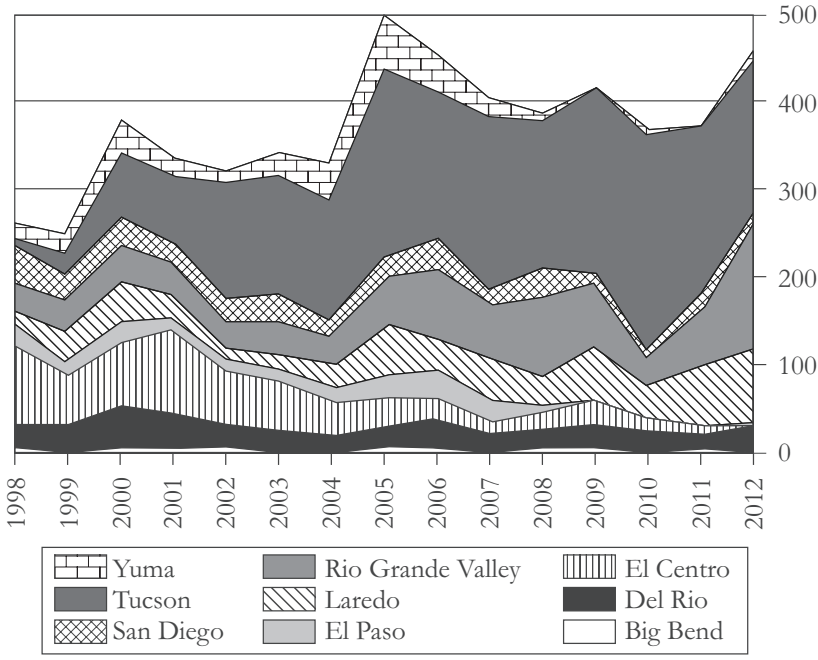


Figure 4.1
Migrant Deaths at the U.S. Southwest Border, by Sector, FY1998–FY2012

Source: Department of Homeland Security. 2013. "U.S. Border Patrol Fiscal Year 2012 Statistics." Washington, DC: Department of Homeland Security, Customs and Border Protection.

Critics charge that the policy has aggravated migrant deaths by purposefully diverting unauthorized traffic into the desert and away from urban, suburban, and other safer crossing points. In fact, migrant deaths have maintained a steady upward trend since the mid-1990s, when the policy was put in place. Between fiscal years 1998 and 2005, recorded migrant deaths at the southwestern border more than doubled, from 263 to 492, and they averaged 409 per year between fiscal years 2006 and 2012, reaching 5,570 deaths over the fifteen-year period (Department of Homeland Security 2012).

The lion's share of the increase in deaths occurred along the border's Tucson sector in southern Arizona. Deaths there shot up after the implementation of "Prevention through Deterrence," rising from 11 in 1998 to 251 in 2010, before dropping to an annual average of 186 for 2011 and 2012. The dramatic increase coincided with many fewer deaths at the El Centro, San Diego, and El Paso sectors, where beefed-up enforcement details sought to deter unauthorized traffic from these and other urban areas.

Figure 4.1 shows the increase in reported migrant deaths at the U.S. southwestern border. Between 2005 and 2009 the number of deaths

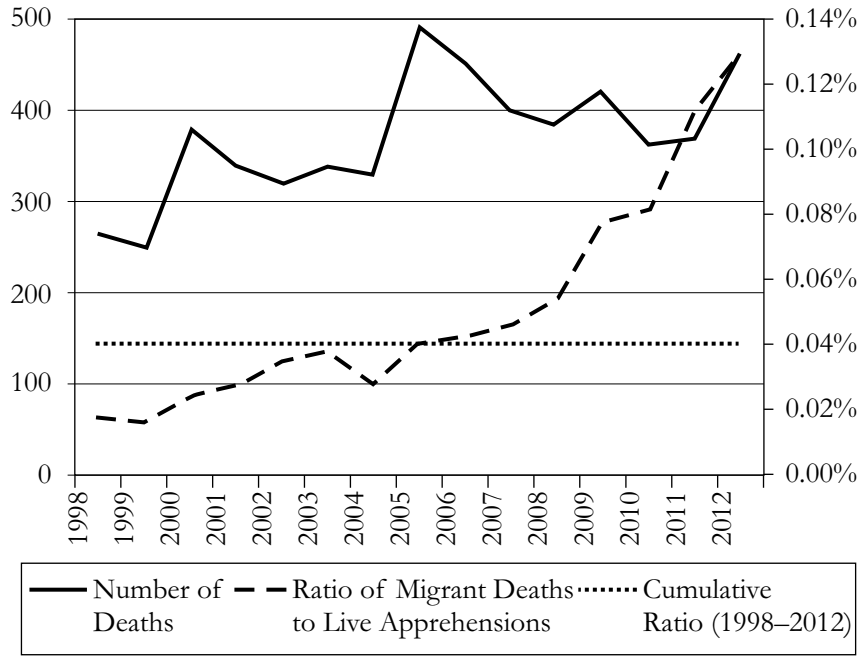


Figure 4.2
Migrant Deaths and Ratio of Migrant Deaths to Live Apprehensions, 1998–2012

Source: Department of Homeland Security. 2013. "U.S. Border Patrol Fiscal Year 2012 Statistics." Washington, DC: Department of Homeland Security, Customs and Border Protection.

declined; however, the trend has turned upward more recently, with 463 fatalities on record in fiscal year 2012. The graph shows the concentration of deaths along Arizona's desert border (Tucson sector) and a recent spike in migrant deaths in the Rio Grande Valley, where deaths reached 150 in 2012, three times the annual average over 1998–2011 (Department of Homeland Security 2012).

That migrant deaths have increased is surprising given the recent steep fall in apprehensions of unauthorized border crossers. Apprehensions have declined steadily since peaking at 1,643,679 in 2000, with only 22 percent of this number—356,873—apprehended in fiscal year 2012. Nonetheless, the ratio of migrant deaths to live apprehensions has increased, from 0.02 percent in 1998, to 0.04 percent in 2005, to 0.13 percent in fiscal year 2012. As figure 4.2 indicates, the ascending ratio suggests that the journey has become more dangerous for the individual migrant since any time in the past twenty or so years. The ratio of deaths to apprehensions is variable across the border, with the highest ratios posting in those sectors encompassing the Rio Grande Valley (0.15%), Laredo (0.20%), and Tucson (0.15%).

Although Customs and Border Protection (CBP) numbers are the most comparable, they are not a comprehensive accounting of all migrant deaths. Studies that have included deaths on the Mexican side of the border, as well as of non-CBP-recorded deaths on the U.S. side, have placed the number of migrant deaths at much higher levels. Relying on data from Mexican government sources, a joint study by the CNDH and the American Civil Liberties Union calculated 5,607 migrant deaths on both sides of the border for fiscal year 1994 through 2008, 45 percent more than the 3,861 deaths recorded by CBP in the same period (Jimenez 2009, 8). Relying on data from Mexican and U.S. sources at the state and county-level data, a University of Houston study calculated 1,962 migrant deaths from 1993 through 1997, significantly higher than the number of deaths estimated over that time by the Government Accountability Office (GAO) (Government Accountability Office 2006; Esbach et al. 1999). Over a similar period, Massey, Durand, and Malone found that the migrant death rate doubled, from three to four per 100,000 crossings in 1993–1994 to six per 100,000 crossings in 1997–1998, following implementation of Operation Gatekeeper and Operation Blockade, border enforcement details aimed at diverting the migrant stream away from the San Diego and El Paso corridors, respectively (Massey, Durand, and Malone 2002, 113).

It is likely that this ratio will continue to increase in the near term, for two main reasons. First, the economic desperation of most Mexican and Central American migrants will likely force them to resort to the services offered by dangerous organized crime–affiliated smuggling bands or local *polleros,* with no guarantee of safe delivery. Second, as the U.S. border and immigration enforcement apparatus continues to expand—it is already larger than all other federal law enforcement agencies combined (Meissner et al. 2013)—the number of relatively safe routes for migrants to pass through will continue to diminish, leaving only the most inaccessible and dangerous pathways available for clandestine entry.

Causes of Migrant Deaths

Notwithstanding the new threats posed by organized crime, exposure remains the leading cause of migrant deaths. In a study by the Pima County Medical Examiner's Office and the University of Arizona's Binational Migration Institute, researchers coded 46 percent of 2,238 fatalities as deaths from exposure to the elements, with about a third coded as inconclusive (Martinez et al. 2013, 9). Another study, encompassing Arizona, New Mexico, and El Paso County, Texas, found that two-thirds of fatalities resulted from drowning or probable or likely heat exposure, which can cause life-threatening health conditions such as hypothermia, dehydration, hyperthermia, and sunstroke (Sapkota et al. 2006). Similarly, drowning and exposure to the

heat and/or cold were the leading causes of migrant death in fiscal year 2003, according to an analysis of Border Patrol data (Guerette and Clarke 2005).

THE DANGEROUS JOURNEY: FROM CHINA TO THE UNITED STATES

We focus in this section on migrant smuggling from China, because unauthorized migration from that country is consistently of greater volume than that of other Asian nations and because it very frequently involves clandestine entry into the United States.

As shown in Table 4.1, the Chinese unauthorized population in the United States rose 43 percent between 2000 and 2011, outpacing the overall

Table 4.1
Asian Unauthorized Population in the United States and Apprehensions

Country of birth	Unauthorized population, 2011	Unauthorized population, 2000	Change
China	280,000/2%	190,000/2%	43%
Philippines	270,000/2%	200,000/2%	35%
India	240,000/2%	120,000/1%	94%
South Korea	230,000/2%	180,000/2%	31%
Vietnam	170,000/2%	160,000/2%	10%
All countries	11,510,000	8,460,000	36%

Country of birth	Alien apprehensions, 2011	Inadmissible arrivals, 2011	Maritime interdictions, 1982–2013
China	2,537/0.4%	16,931	5,946
Philippines	1,090/0.2%	25,197	N/A
India	3,838/0.6%	5,983	N/A
South Korea	660/0.1%	1,950	N/A
Vietnam	1,368/0.2%	1,094	N/A
All countries	641,633	212,234	242,166

Sources: Hoefer, Rytina, and Baker, 2012; U.S. Coast Guard, 2013. "Alien Migrant Interdiction Report." http://www.uscg.mil/hq/cg5/cg531/amio/FlowStats/FY.asp (accessed June 8, 2013); U.S. Department of Homeland Security, 2012. "Yearbook of Immigration Statistics," pp. 94–106. http://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2011/ois_yb_2011.pdf (accessed June 8, 2013). Maritime interdictions are for the period 1982 through June 3, 2013.

growth of the unauthorized population. Indicative of the prevalence of attempted clandestine entry, China leads all other Asian nations in U.S. Border Patrol and Coast Guard apprehensions (Sapp 2011; U.S. Coast Guard 2013).

The 1990s: A Boom in Chinese Migrant Smuggling

Unsettling social, economic, and demographic changes hit China with full force in the 1990s, at the same time that U.S. policy changes began to offer hope of political asylum and permanent residency for Chinese nationals (Smith 1997). Given these developments, it is unsurprising that the 1990s experienced a boom in illicit Chinese migration to the United States. Annual migrant smuggling from China to the United States was estimated to be as high as 100,000 persons successfully entering the country in the 1990s (Bernstein 2009), with direct, port-to-port, maritime smuggling the preferred mode of entry. Though only a fraction of irregular Mexican migration, on the order of 1.3 million successful entries in 1988 (U.S. General Accounting Office 1993), the Chinese flow attracted a unique enforcement response, as U.S. officials elevated it from an immigration to a national security issue (Smith 1997, 1–3). This approach was due to the organized and transnational nature of the Chinese trade, which triggered antiracketeering provisions, as well as to the public outrage that accompanied the televised shipwreck in 1993 of the smuggling vessel *The Golden Venture,* in which a dozen Chinese migrants drowned off the coast of New York City.

Since the 2000s and 2010s Chinese migrant-smuggling strategies have shifted. While direct, port-to-port maritime techniques, such as those involving fishing vessels or container ships, were ascendant in the 1990s, today's smuggling is more likely to be multimodal (air, land, sea); follow complex, indirect routes; make use of counterfeit documentation; and rely on asylum-seeking strategies upon arrival in the United States. The sophistication of these methods appears to be a consequence of both the shutting down of earlier routes by U.S. and international enforcement, as well as higher barriers to illicit entry imposed by post-9/11 U.S. border enforcement.

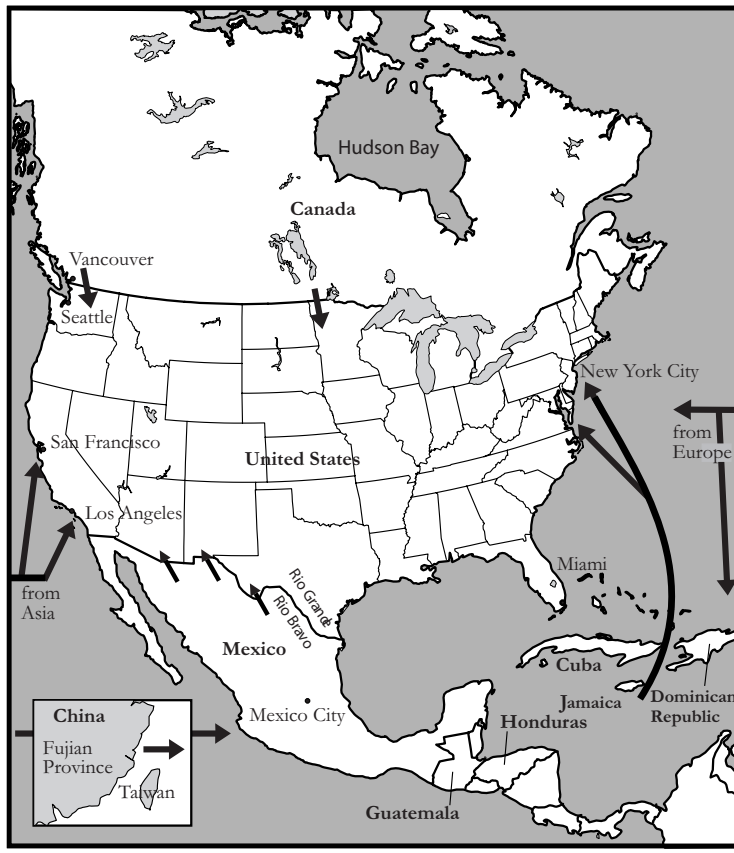
Rather than deliver migrants directly onto U.S. shores, current forms of smuggling tend to employ circuitous itineraries to create "tourist cover"[4] and stopovers in friendly ports, where migrants may be given wink-and-nod treatment by authorities and airport personnel. Schemes may involve plans to spirit migrants into the United States as asylum seekers or migrants' venturing to nearby countries, such as Canada or Mexico, for final surreptitious land or sea crossings.

Successful asylum-seeking air smuggling relies heavily on the proper selection of transit countries, routes, and modes of travel, as well as on the vetting of personnel. The latter may include complicit airline employees; bribed authorities; and smuggling ring "employees," such as "coordinators," who herd migrants through airport terminals. It should be noted that even if documents are deemed unacceptable upon arrival, lack of official documentation is no impediment to requesting asylum. Thus, Chinese asylum-seeking migrants may instrumentally use counterfeit documentation as a means to board a U.S.-bound plane, even if such documents offer no visitation or residency permission. In fact, asylum-seeking migrants are coached to destroy counterfeit travel documents midair lest they leave an incriminating paper trail.

Chinese nationals consistently account for high numbers of persons granted asylum in the United States; in 2012 34 percent of asylees were from China (Martin and Yankay 2013), much higher than the next-leading country, Egypt (9.8%), and an increase over the percentage of Chinese asylees in 2006, 21.3 percent. In addition, even if an application is ultimately rejected, merely requesting asylum buys breathing space, as the request prevents expedited removal and places the applicant in a backlogged administrative process where delays could offer further maneuvering room. Moreover, limitations on detention periods mean applicants could be paroled on bond after only 180 days (Freemantle 2013; Huus 2006).

Strategies that use neighboring countries as springboards to the United States date to the 1880s and the Chinese Exclusion Act, when migrants began to use Mexico and the shared desert as an entryway to the West Coast urban centers and ethnic enclaves they hoped to call home. Since that time Mexico has remained an important intermediate destination for unauthorized Chinese migrants, and news reports suggest that this continues to be the case. In fiscal year 2009 a record 332 Chinese migrants were apprehended at the Border Patrol's Tucson sector in southern Arizona, an increase from only 30 such apprehensions the year before. According to a news report, the sector was on track to register even higher Chinese migrant apprehensions in 2010 (Ceasar 2010).

The drive to seek new routes and methods before enforcement can catch up means that Chinese migrant smuggling groups must be extraordinarily creative to survive. For example, Smith (1997) documents a zigzagging, multistage journey that originated with an overland trek from China to Thailand, followed by flights, in this order, to New Delhi, Nairobi, Buenos Aires, Barcelona, and finally New York City; another report cites a Beijing-Rome-Caracas-Mexico City link (Ceasar 2010). Still other accounts describe the use of Caribbean islands or Mexico as way stations where migrants regroup before embarking on the final U.S.-bound leg of their journeys, often by air but sometimes by foot or boat. (See map 4.2.) In all, Chinese migrant-smuggling



Map 4.2
The Dangerous Journey: From China to the United States

Sources: ESRI World Countries layer (outlines of world countries): Environmental Systems Research Institute, DeLorme Publishing Company, Inc World Countries, accessed July 8, 2013, http://www.arcgis.com/home/item.html?id=3864c63872d84aec91933618e3815dd2; ESRI USA States layer (outlines of USA states): Environmental Systems Research Institute, TomTom, Department of Commerce, Census Bureau, U.S. Department of Agriculture (USDA), National Agricultural Statistics Service (NASS), accessed July 8, 2013, http://www.arcgis.com/home/item.html?id=1a6cae723af14f9cae228b133aebc620; ESRI World Shaded Relief Environmental Systems Research Institute, accessed July 8, 2013, http://www.arcgis.com/home/item.html?id=9c5370d0b54f4de1b48a3792d7377ff2; Natural Earth River and Lake Centerlines Natural Earth, accessed July 8, 2013, http://www.naturalearthdata.com/downloads/10m-physical-vectors/; SEDAC Fujian Province boundary. Chinese Academy of Surveying and Mapping (CASM), China in Time and Space (CITAS)/University of Washington, and Center for International Earth Science Information Network (CIESIN), 1996. China Dimensions Data Collection: China Administrative Regions GIS Data: 1:1M, County Level, 1 July 1990. Palisades, NY: NASA Socioeconomic Data and Applications Center (SEDAC), accessed July 8, 2013, http://sedac.ciesin.columbia.edu/data/set/cddc-china-admin-regions-gis-july-1990.

strategies seem to resemble methodical hopscotch-like games, whose object is to keep authorities continually guessing and several steps behind at all times.

Organized Crime and Dangers Facing Chinese Migrants

The bribery of authorities and securing of counterfeit documentation that these routes require implies that Chinese migrant smuggling organizations increasingly resemble organized criminal networks. Moreover, as their schemes become more complex, Chinese migrant smuggling groups augment their collaboration with organized crime bands in the different countries they use as intermediate stops, to buy protection from official scrutiny and for other services. Before, during, and after the migration event, Chinese smuggling rings apply organized crime tactics: supplying irregular exit visas, intimidating and controlling charges en route, and coercing payments from migrants and home-country family members upon arrival.

The criminalization of the smuggling business has changed the mix of dangers confronting Chinese migrants, who must necessarily contract with professionals, given the logistical complexity of the journey from East Asia to North America. While news reports in the 1990s and 2000s documented cases of death by asphyxiation in sealed container ship holds or physical and sexual abuse by the crews of fishing trawlers and other smuggling vessels, the risks facing Chinese migrants now appear mainly to result from the onerous debt bondage they incur upon arrival in the country of destination. Glenny (2009) notes the stress migrants are subjected to by the draconian payment demands of organized smugglers and their associates—a fear of retribution also extends to family members in China. In addition, because of their precarious status as undocumented persons, Chinese migrants are also vulnerable to extortion, shakedowns, and other abuses after they have migrated and sometimes after some smuggling fees have been paid (Lii 1995). Such dangers are exacerbated by their inability to request help from authorities without risking deportation and the loss of their and their family's investment.

Chinese migrant smuggling fees have shot up since the mid-1990s, as post-9/11 border enforcement efforts have raised the bar to illicit entry and while migration demand from China remains brisk. This fee increase may be because of greater operating costs passed on to the user, such as the new costs associated with intermediate stopovers in multiple third countries. Or they may be the result of a monopolistic squeeze exerted by a dwindling supply of competent service providers. Whatever the reason, fees are exceptionally high for Chinese migrants, compared with those charged to Mexican and Central American migrants. Figures of around US$40,000 per

person from homeland to the United States were cited by a Border Patrol spokesman in 2009 (Ceasar), an increase from the US$30,000 per person rate charged in the early 1990s (Zhang and Chin 2002) and much higher than the US$1,500–$3,000 paid by Mexican and Central American migrants in recent years.[5]

To be sure, because their journeys are so heavily collateralized on their future debt bondage, Chinese migrants may not face the same fears of physical violence confronted by Mexican and Central American migrants, since their deaths would invalidate payment. More, family members in China may not agree to payments until they have received news their loved one is safe and alive in the country of destination—another incentive for smugglers to protect their cargo (Glenny 2009, 319–325). Thus, some safeguards for migrants are built into the structure of this complex migration industry, in contrast to the more predatory and indifferent approach of cash-upfront human smugglers in Mexico.

Inside the Ring

The case of Fujianese migrant smuggler Cheng Chui Ping, the ringleader of the failed *Golden Venture* operation, provides a glimpse into the workings, finances, and hierarchy of one Chinese migrant smuggling organization.

Better known as "Sister Ping," Ping was sentenced to thirty-five years in prison in 2005 for running what prosecutors called the largest migrant-smuggling operation New York City had ever investigated—a scheme entailing money laundering, trafficking, and kidnapping. She was depicted in mainstream media accounts as a cold-hearted slave trader, who weakened her charges by starving them, restricted their water intake to "two sips" a day, and kept them under lock and key in the ship's "fetid hold" (Preston 2006)—a contrast to the mainly benevolent image of "snakeheads," as smuggling ringleaders are known, in the ethnic Chinese community (Chin 1999, 41). A native of China's most prolific migrant-sending region, Fujian Province, Ping was said to have netted up to US$40 million in revenue over the course of her smuggling career.

Ping's operation was part of an international black market in Chinese migrant smuggling, with an estimated value of US$7 billion at its zenith in the mid-1990s. Reaping the profits of this racket are organized smuggling groups, frequently headquartered outside of China, atop whose hierarchies sit so-called "snakeheads," whose job it is to coordinate the complex operation and amass financing, sometimes from a coterie of investors. Orders are passed down from the "snakehead" to recruiters in the home country, who are known as *lakejia*; then on to coordinators and drivers, who herd migrants together

and guide them on the different legs of their journeys; and finally to enforcers, who use the threat of violence to extract payments from migrants in their country of destination and from family members back home. Operationally Chinese migrant smuggling involves three main stages: 1) home-country recruitment and contracting by the *lakejia*; 2) intermediate travel between the home country and the United States; and 3) arrival in the United States, with initial seclusion in a safe house followed by eventual settlement, typically in an ethnic enclave.

THE DANGEROUS JOURNEY: FROM THE CARIBBEAN TO THE UNITED STATES

In this section we discuss Caribbean unauthorized migration and migrant smuggling in the post-1994 era from Cuba, Haiti, and the Dominican Republic. We choose these countries because they are among the top four sending countries of Caribbean unauthorized migrants, and the post-1994 period because it marked the start of a new era in Caribbean unauthorized migration due to two major developments in U.S.-Caribbean relations. First, in 1994 a new bilateral immigration agreement was made between the U.S. and Cuban governments. The agreement was designed to increase channels for legal migration through expanded visa allotments and to curtail unauthorized migration by enforcing the repatriation of Cuban migrants at sea. Importantly, the agreement equalized the U.S. enforcement stance for all maritime migrants and reversed long-standing practice that had allowed Cuban migrants to apply for protected status aboard U.S. ships. Second, in that year also U.S. intervention helped to reinstall deposed Haitian President Bertrand Aristide, signaling a U.S. commitment to his administration and helping to stabilize the country's violent post-Duvalier transition, which more than eighty thousand Haitians had taken to the sea to escape. Both political events were watersheds that had strong impacts on migration patterns. The volume of interdictions at sea dropped by more than 90 percent in 1995—from 64,443 to 5,367—and has not come close to touching the levels it reached in the 1992–1994 period.

The dangers facing smuggled Caribbean migrants have also changed since 1994. Whereas physical dangers, principally drowning, were preponderant concerns in the 1980s and 1990s, the professionalization (Kyle and Scarcelli 2009) of some forms of Caribbean migrant smuggling appears to have heightened the potential for violent crime and other "social" dangers (Hagan 2008, 67–70), such as the kidnapping of migrants for ransom, their victimization in intergang turf wars, and/or their sexual or labor exploitation.

Caribbean Nationals in the United States

Those migrants who successfully settle in the United States add to a Caribbean foreign-born population that numbered 3.75 million in 2010 (Passel and Cohn 2011b). Of these, approximately 500,000, or about 13.4 percent, are unauthorized (McCabe 2011), a proportion similar to that of the Asian foreign-born population (roughly 10–11%). Unauthorized Caribbean migrants represent a small fraction of the total U.S. unauthorized population, about 4 percent, as they are dwarfed by the Mexican, Central American, and Chinese cohorts, and as their numbers are reduced by the exemption of Cuban migrants from the unauthorized designation.

Caribbean unauthorized migrants rank high in indicators of attempted clandestine entry. Natives of the archipelago account for the vast majority of migrants interdicted at sea, 93 percent of all interdictions from fiscal year 1982 through May 14, 2013 (U.S. Coast Guard 2013). In addition, in fiscal year 2011 Cubans ranked fifth (4,691), Dominicans sixth (4,405), and Jamaicans tenth (2,755) in total immigration enforcement apprehensions (Department of Homeland Security 2012). In the same year more than 7,759 Cubans were found inadmissible at U.S. air, sea, and land ports—a rate of about 20 per day and fifth after Mexico, Canada, the Philippines, and China (Department of Homeland Security 2012).

Cuban Migrant Smuggling: Late 1990s to the Present

The use of professional smugglers and the development of indirect multimodal routes, especially through Mexico, characterize recent trends in Cuban unauthorized migration. These changes have come about because of heightened U.S. Coast Guard patrols in the Straits of Florida, which have made direct routes from Cuba to Florida much riskier to use. In addition, Cubans must now face the same strict maritime interdiction regime that is applied to all Caribbean unauthorized migrants—a reversal of the pre-1994 enforcement stance, which had viewed Cubans as political refugees and allowed them to be processed as such aboard USCG vessels. Known as "wet foot/dry foot," the policy still maintained some dispensations for Cubans. Once they set foot on U.S. soil, it shielded them from expedited removal and maintained the historic preferential treatment of Cubans as political refugees. Because the policy rewarded those able to make landfall on U.S. soil, it fueled unauthorized migration demand from Cuba. Because it punished those captured at sea, it fueled the exploration of new routes and methods to elude U.S. maritime authorities and deliver migrants to U.S. land ports of entry. As such, the policy made unviable the pre-1994 Cuban migration method, which had involved migrants' sailing into the Straits of Florida in makeshift boats and *balsas* and

hoping for either rescue and refugee processing aboard USCG vessels or successful reception in the Cuban American bastions of south Florida.

Because of this higher enforcement bar, Cuban migrant smugglers began in the late 1990s to use so-called go-fast boats, similar to cigarette boats, to elude the Coast Guard and to deliver migrants safely to the U.S. mainland. Once ashore, most Cuban migrants strategically turned themselves in to U.S. immigration authorities; because of special exemptions in U.S. law, they were typically granted automatic legal status, technically referred to as "parole," a conditional first step to qualify for legal permanent residency (green card) (Henken 2005, 403; Kyle and Scarcelli 2009, 302). Paid for by family members in the United States, smuggling fees at the time were said to approach US$8,000 (Kyle and Scarcelli 2009, 304).

Beginning in the late 1990s and early 2000s, tougher USCG enforcement against go-fast boats in the Straits of Florida forced smugglers to explore alternate strategies.[6] Some of these included routes that approached Florida's western shore in the Gulf of Mexico, but most looked in a southwesterly direction, toward the Yucatan Peninsula in Mexico. With only about 120 miles separating Cuba's westernmost point and Cancun, the peninsula is seen as a convenient starting point for an overland journey through Mexico to the northern border. Once at the border, migrants typically entered at official crossing stations, presented themselves as Cuban nationals, and obtained provisional legal status.

The long middle stretch through Mexico is the most dangerous part of the journey (see map 4.3). This is where Cuban migrants are particularly vulnerable to the violence of being held hostage by the smugglers they depend on for transport to the U.S. border and where they are most likely to be trafficked by organized crime or be apprehended by the police. The overland journey is also where other smuggling groups may decide to seize a shipment of migrants—to be exploited or to be held for ransom or as bargaining chips against rivals or authorities.

In addition, given the difficulty of obtaining exit visas from Cuba, migrants are typically undocumented when they arrive in Mexico. This status may make it difficult for them to seek assistance from diplomatic officials or Mexican authorities, and it may exacerbate their dependency on the smuggling organization. To be sure, violence against migrants may also be constrained by the economic logic of this smuggling method, since final payment typically hinges on their safe delivery. Mexican government efforts in recent years may also have reduced opportunistic crime against transit migrants, as the country has stepped up the detention of migrants and sought to swiftly repatriate them to Cuba, following a 2008 agreement between Mexico City and Havana (Arreola 2008).

Map 4.3
The Dangerous Journey: From the Caribbean to the United States

Sources: ESRI World Countries layer (outlines of world countries): Environmental Systems Research Institute, DeLorme Publishing Company, Inc World Countries, accessed July 8, 2013, http://www.arcgis.com/home/item.html?id=3864c63872d84aec91933618e3815dd2; ESRI USA States layer (outlines of USA states): Environmental Systems Research Institute, TomTom, Department of Commerce, Census Bureau, U.S. Department of Agriculture (USDA), National Agricultural Statistics Service (NASS), accessed July 8, 2013, http://www.arcgis.com/home/item.html?id=1a6cae723af14f9cae228b133aebc620; ESRI World Shaded Relief Environmental Systems Research Institute, accessed July 8, 2013, http://www.arcgis.com/home/item.html?id=9c5370d0b54f4de1b48a3792d7377ff2; Natural Earth River and Lake Centerlines Natural Earth, accessed July 8, 2013, http://www.naturalearthdata.com/downloads/10m-physical-vectors/.

The route through Mexico is an expensive one, with fees said to vary between US$5,000 and $15,000 per delivered migrant, typically paid for by family members in the United States (Stevenson 2008; Kyle and Scarcelli 2009, 305). It is also a lucrative route for the professional smugglers and organized crime networks that fulfill the illicit service. Conservatively estimating per-migrant fees at US$5,000, the route through Mexico would have

totaled a black market of US$55.63 million in 2007, based on the 11,126 Cubans conveyed on it in that year (Stevenson 2008).

Migrant Smuggling from the Dominican Republic

Dominicans rank high in indicators of attempted clandestine entry into the country. In the post-1994 period (fiscal year 1995 to May 14, 2013), Dominicans were apprehended at sea more than any other national origin group, accounting for 31,023, or approximately 38 percent of all Caribbean national interdictions in the period (U.S. Coast Guard 2013). In fiscal year 2011 Dominicans ranked sixth in total immigration enforcement apprehensions, with 4,405, and in 2010 they accounted for 1,330 Border Patrol apprehensions, also occupying the sixth ranking (Department of Homeland Security 2012). The Dominican-born population in the United States is estimated at 853,000, or about 2 percent of the nation's total foreign-born population of 39.9 million, though the total Dominican-origin population is on the order of 1.5 million, with concentrations in New York City and New England (Motel and Patten 2012).

Dominican unauthorized migration has traditionally flowed eastward to Puerto Rico, which many migrants have used as a springboard to the United States, although it is also a primary destination, and a large settled-out expatriate community exists on the island (Duany 2011, 186). Crammed aboard wooden or fiberglass boats called *yolas* (Kane 2008, 20), migrants typically embark from eastern ports like Higuey, Samana, Boca de Yuma, or La Romana, with hopes of landing on Puerto Rico's western shore at towns such as Rincón, Anasco, Aguadilla, Aguada, Mayaguez, or Cabo Rojo (Duany 2011, 194). The voyage involves crossing the roughly seventy-mile Mona Passage, "a perilous sea journey" (Duany 2011, 194), and can involve rendezvous with smugglers and the boarding of new passengers at Mona Island, located at the channel's midpoint (Kane 2008, 20; Thomas-Hope 2005, 303). Fees in 2010 were estimated at between US$400 and $2,000.

Dominican unauthorized migrants face grave dangers from the physical hazards of the journey, and Duany reports that "hundreds of Dominicans have drowned" since the first documented crossings in the early 1970s. Dominican migrants face other dangers as well. In 1980 twenty-two Dominican stowaways died by asphyxiation on a freighter bound for Miami (Duany 2011, 194). Human traffickers also add to the mix of dangers, particularly in the islands of the eastern Caribbean, where prostitution rings are said to prey on females and minors and to traffic them beyond the region.

Strategies for migrants hoping to use Puerto Rico as a stepping stone can involve marrying a Puerto Rican or another U.S. citizen to obtain a U.S.

marriage visa or attempting to pass as a Puerto Rican and then boarding a U.S.-bound flight, sometimes with fraudulent documentation. Because passports and visas are not required for travel to the United States from the island, lookalikes may seek to obtain driver's licenses or other forms of Puerto Rican identification as part of their plan (Duany 2011, 195). Bypassing the U.S. migration stream, other Dominicans prefer to look to the tiny islands of the Caribbean's eastern edge, where demand for migrant workers in the tourist industry may be a strong draw. Island-hopping strategies may be at play as well, with a migrant's ultimate goal to settle in a European protectorate or Commonwealth member, such as Guadeloupe or Dominica, from which eventual migration to France, the United Kingdom, or the Netherlands may be possible (Thomas-Hope 2005, 301).

Migrant Smuggling from Haiti

Inhabitants of the Western Hemisphere's poorest country, Haitians accounted for 27,019, or about one-third, of Caribbean national migrant interdictions in the post-1994 era (fiscal year 1995–May 14, 2013) (U.S. Coast Guard 2013). Haitians, however, do not account for high numbers of U.S. immigration enforcement actions, possibly because so many tend to be apprehended at sea before they have a chance to reach U.S. territory. Only 1,323 Haitians were apprehended by immigration authorities in fiscal year 2011, amounting to little more than a quarter each of Cuban and Dominican apprehensions (Department of Homeland Security 2012). In 2009 the Haitian foreign-born population was estimated at 489,700, about 60 percent of a total Haitian-origin population of 830,000. The majority of the Haitian population lives in either New York or Florida (Buchanan, Albert, and Beaulieu 2009).

The Haitian migration journey is longer and at least as dangerous as that of other Caribbean national origin groups. This is due partly to the longer distances to the United States that Haitian migrants must contend with. Haiti lies three times as far from the U.S. mainland as does Cuba (three hundred versus one hundred miles), while the Dominican Republic and its historic hostility to Haitian migrants separates Haiti from the eastern coast of Hispaniola and from greater proximity to Puerto Rico. In addition, the Haitian migrants' desperate poverty and the financial limitations of their diaspora in the United States preclude procurement of professional smuggling services, which could enhance the chances of a successful crossing—as has been proven for Cuban migrants.

Given these constraints, a trend in Haitian unauthorized migration has been the use of the islands between Hispaniola and southern Florida as stepping stones, since the fees charged for travel to them are cheaper than they are

for outright smuggling to the U.S. mainland. Migrants typically push off in wooden sailboats from northern Haiti, intending first to reach the nearby Turks and Caicos Islands, before regrouping and then proceeding northward to the Bahamas, from where they may be smuggled into the United States. This is not to say that Haitians are welcomed with open arms in these intermediate destinations. Even though the Turks and Caicos Islands are a British Overseas Territory, Haitians are discouraged from applying for refugee status or political asylum there (Thomas-Hope 2005, 306).

Despite their contentious history with the Dominican Republic, Haitian migrants also appear to be entering the territory of their eastern neighbor in greater numbers, as part of a plan to be smuggled across the Mona Passage into Puerto Rico. An indication of aggressive smuggling along the route, U.S. authorities in the first half of 2013 reported interdictions of 352 Haitian migrants in the waters west of Puerto Rico, while Dominican officials reported 400 migrant detentions in the same period. Fees for this journey are said to range between US$1,000 and $1,500 (Coto and Daniel 2013).

The physical dangers facing Haitian migrants are great. They risk death and injury from drowning or from shark attacks if their frequently overcrowded boats capsize—as happened in May 2007, when eighty migrants drowned near the Turks and Caicos Islands (Cave 2009). Migrants also risk death from starvation, dehydration, exposure, and depredation by other migrants, when they are left stranded by smugglers in remote islands far from safety. Fearful of pursuing enforcement, smugglers may also jettison their human cargo. In November 2005 the bodies of three Haitian women washed ashore on Pompano Beach in south Florida, alleged victims of a smuggler who had ordered them to jump out and swim (cited in Kyle and Scarcelli 2009, 302).

Haitian migrants have little protection from these abuses. While the smugglers of Cuban migrants have an economic interest in guarding their charges from undue harm until fees can be collected from U.S. family members, Haitian migrant smugglers are not so motivated. They prefer cash up front, not payment on delivery, and this stance virtually negates the bargaining power of migrants and their ability to demand protection from smugglers en route. The desperation and disadvantaged financial position of Haitian migrants aggravate the dangers they face. Given that Haitian migrants are among the poorest of the Caribbean, the rates smugglers may command must be proportionate. Thus, smugglers often overload their vessels, risking structural damage to the boat, as well as overcrowding and violence aboard ship (Coto and Daniel 2013).

Dangers follow Haitians upon arrival in the United States. In 2004 eighty-one-year-old Joseph Dantica, a Haitian Baptist minister and uncle of Haitian American novelist Edwidge Danticat, died in an immigration detention cell

in Florida after authorities confiscated his blood pressure medication. Dantica had flown to the United States for medical treatment and political asylum after life-threatening threats were made against him in Haiti (CBS News 2008*).*

CONCLUSIONS

In many ways, the geography of migrant danger is expected to change little going forward. The vast majority of unauthorized crossings will likely continue to take place at the U.S.-Mexico border, mainly involving Latin Americans, especially Mexicans and Central Americans, with many fewer crossings by extraregional migrants. The southwestern border will also probably continue as the leading site for the deaths of migrants entering the United States, although the geographic center of these deaths will likely shift, consequent to enforcement activity, consequent to enforcement activity and repatriation policies. The spike in deaths in south Texas in 2012 suggests an eastward movement of this center in the near term.

For those Asian, European, African, and Caribbean migrants not using Mexico as a springboard, dangers at U.S. borders will be of a lesser magnitude, especially given the apparent drop-off in container-ship smuggling from Asia and the increase in less dangerous, albeit equally illicit, ways to reach the United States. Nonetheless, as the examples in this chapter show, these extraregional migrants may face grave dangers in the complex itineraries they follow *before* reaching U.S. ports, in journeys that commonly involve abuse at the hands of organized smugglers.

Organized crime is increasing its involvement in human smuggling in Mexico, too. The massacre in 2010 of seventy-two Central and South Americans in the Gulf Coast border state of Tamaulipas marks a low point in organized crime's expansion into this new business activity. And it is highly likely that at least some of the cartels, most notably the Zetas, will continue to extend the geographic monopoly they hold on drug routes to people smuggling, as well. For opportunistic criminals, migrants are easy targets. They are far from home and from the family networks that can offer shelter, and they are typically poor and lack the resources to buy protection from authorities in the countries they pass through. In their desperation to cross the border successfully, they may enter wittingly or not into relationships with organized criminals, who may end up extorting them, using them as drug mules, or exploiting them sexually or as free labor. For Central American transit migrants, these vulnerabilities are magnified by their unfamiliarity with Mexico and their ethnic or linguistic diversity, and they may become easy prey for corrupt authorities as well.

Much of this chapter focused on the special dangers facing Central American migrants. These men, women, and children face extreme dangers in their journeys to the U.S. border. Unlike most Mexican migrants, Central Americans must brave violent gangs, such as the MS-13, as they attempt to pass surreptitiously from the Guatemalan border through southern Mexico. Withstanding the violence and threat of violence of this notorious transnational gang is just one challenge in the long, dangerous journey these migrants must endure. Central American migrants must also contend with gross violations by authorities, sometimes in collusion with organized criminals. Accounts appear throughout official reports of systematic abuses, such as the practice of transferring detained undocumented Central American migrants into the hands of organized crime groups, who may then hold them for ransom or for exploitation.

Sadly, the plight of Central American migrants transiting Mexico probably will not improve in the near future. The Central American countries' dismal economies and the continual strengthening of Central American migrant networks in the United States will likely foster conditions for further emigration. This contrasts sharply with Mexico, which although it is contiguous to the United States and has a deep tradition of emigration there, also has a level of political and economic stability incomparable to the conditions of Honduras, Nicaragua, Guatemala, or El Salvador. Furthermore, Mexico's middle class appears to be growing, and the country's economy appears better suited than in the recent past to absorb its labor surplus. The country's stability, especially since the smooth presidential turnover of 2000, is partially credited with the decline in Mexican undocumented migration to the United States in recent years (Rosenblum et al. 2012).

We expect the dangers facing Central American migrants to remain as bad or even to worsen in the years to come. Part of the reason for this assertion is the changing dynamics of the migration industry operating on both sides of the U.S.-Mexico border. Organized crime's expansion into human smuggling, a result of a business decision to maximize monopolies on overland routes and territories, means that the violent methods used for drug trafficking are applied to human cargo as well. In addition, the cartels' strength is great in the borderlands, where migrants hoping to cross into the United States must gather before making crossing attempts and where most repatriated migrants are returned, even Central Americans, who may claim Mexican nationality to facilitate repeat crossings.

As several journalists have reported, repatriated migrants are placed in extraordinary danger when they are returned to cartel-controlled border towns (Marosi 2012; Fox News Latino 2013). This danger may be aggravated by certain repatriation practices, such as the scheduling of repatriations at

times of day when migrants may be most vulnerable, such as in the middle of the night (Pombo 2010), or transferring migrants to places on the border far from their original starting point, as part of an ineffective strategy to cut down on repeat crossings (Fox News Latino 2013). At the same time, repatriation to anywhere along the border may increase the likelihood that a migrant will attempt an unauthorized crossing again, which carries with it the risk of death or injury from exposure, drowning, or other physical dangers.

Greater cooperation between the United States and Mexico on repatriation policies may help to mitigate these dangers. Authorities in the United States may wish to discuss with their Mexican counterparts appropriate practices for the return of migrants into Mexican territory. In addition, U.S. authorities may wish to revisit the since-defunded practice of repatriating Mexican nationals deeper into the Mexican interior, to redistribute repatriates away from the border and prevent exposure deaths from summer crossing attempts (National Immigration Forum 2012). Repatriating migrants farther from the border could also prevent their exploitation by criminal networks and assuage fears among local Mexican officials, who claim the concentration of idle migrants in their towns and cities breeds crime.

Border Patrol policies that aid distressed migrants, such as the Border Safety Initiative, should also be given continued support. Begun in 1998, the initiative seeks to reduce deaths along the border by providing medical training for officers and installing rescue beacons to help migrants in crisis. It should be noted that where migrant deaths and apprehensions occur, rescues also happen, and that the agency documented 1,312 of these in fiscal year 2012 (Department of Homeland Security 2012).

Operations of the Border Patrol may also require adjustment to handle possibly higher numbers of illicit crossings at unexpected points of the border, such as along the Baja California–California coastline, which has reported increasing numbers of maritime crossers in the past year (Isacson and Meyer 2012, 11). Other Border Patrol policies, especially regarding the detention of migrants at and beyond the border, should be held up for review, especially in light of recent legal claims alleging abuse by the agency (Associated Press 2013).

NOTES

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1. The total number of Salvadorans, Guatemalans, and Hondurans apprehended by the Border Patrol at the southwestern border rose 9 percent from 2009 to

2010, in contrast to a 19.7 percent drop among Mexicans and a 17.2 percent drop for the Southwest overall. Calculation based on Sapp (2011).

2. This is the approximate distance between Tegucigalpa, Honduras, and Laredo, Texas.

3. See, i.e., Hagan (2008); Nazario (2006); Ogren (2007). When the UN Special Rapporteur for Migrants' Rights, Gabriella Rodriguez Pizarro, visited southern Mexico in 2002, she reported that the majority of the detained migrants with whom she spoke said they had been detained and extorted by officials (Ogren 2007).

4. A Brazilian ring created similar itineraries that routed wealthy undocumented Brazilians through Paris, London, and the Bahamas, followed by a sailing trip to Miami. The scheme attempted to create a tourist backstory that the illicit migrant would tell authorities upon arrival. See Chardy (2012).

5. Other reports corroborate this amount. In a study of undocumented Chinese surveyed around the time of the *Golden Venture* incident, respondents reported having paid an average of US$27,745 per person to be smuggled to America. This fee is believed to have increased to US$36,000 for those who arrived some years later, in 1996. Glenny (2009, 321) cites a current smuggling fee range between $20,000 and $70,000. Though fee amounts vary widely, average fees have risen substantially between the mid-1990s and 2010s.

6. USCG enforcement against professional migrant smugglers and go-fast boats in and around the Straits of Florida increased between the late 1990s and mid-2000s. At the turn of the last century (1999–2002), Cuban arrivals outpaced interdictions at sea: 9,549 to 6,415. At mid-decade, interdictions had surpassed arrivals: 2,338 to 1,581. See Henken (2005, 403–405).

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5

Globalization and Undocumented Migration: Examining the Politics of Emigration

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The aim of this chapter is to situate undocumented migration within the context of neoliberal globalization, which gives rise to and exacerbates inequalities between wealthier and poorer regions of the world and plays a key role in producing migratory flows, both legal and "illegal." Migration to the United States is a result of unequal conditions between the United States and countries in the global South. The U.S. imperial legacy and its continued economic and military dominance in Latin America and Asia explain the migrations of particular peoples from those regions, including Koreans, Mexicans, Central Americans, and Filipinos, to the United States (Espenshade 1995; Cheng and Bonacich 1984; Sassen 1990; Bustamante 1976; see also Massey 1993). From foreign direct investment by American firms, to U.S. government development aid, to the presence of the U.S. military, to the circulation of American goods and culture, the U.S. presence in these regions "consolidates the objective and ideological linkages with the receiving country" (Yang 2010, 19). Moreover, neoliberal economic restructuring in the United States produces demands for "flexible" forms of labor in its "global cities," like New York or Los Angeles. "Flexible" workers include immigrant workers (Castles and Davidson 2000; Harvey 1991; Castles and Miller 2003; Sassen 1990).

We focus on the emergence of the "global remittance trend" (GRT) in shaping contemporary migration flows (Kunz 2011). The GRT is yet another manifestation of neoliberal economic orthodoxy. It is rooted in the "migration as development" framework being propagated by international institutions like the World Bank, the International Monetary Fund (IMF), and the UN (UN) (Geiger and Pécoud 2013). To address issues of poverty and economic marginalization, international institutions are encouraging developing states to facilitate emigration for increased remittance generation. The "migration as development" framework is fundamentally rooted in neoliberal logics, because it shifts the onus of development and poverty alleviation away from governments and onto the shoulders of individual migrants.

Here we look specifically at the ways the GRT has been implemented by the Philippine government through "labor brokerage." As a labor brokerage state, the Philippines, we argue, is implicated in the production of undocumented migration. Indeed, our aim is to shift the dominant analytical lens in the immigration scholarship from the politics of immigration in the United States to the politics of emigration to understand undocumented migration in this country. Much of the scholarship and the political debate about undocumented migration in the United States has focused on U.S. immigration policy or undocumented migrants' experiences. We suggest, alternatively, that undocumented migration needs to be understood within a broader global context. In what follows, we situate contemporary migration within an emergent global remittance trend (GRT). We then look at how GRT is manifested in the Philippines through an examination of labor brokerage. We end with a discussion of specific case studies to illustrate the ways labor brokerage shapes Filipino undocumented migration and undocumented migrants' experiences in the United States.

NEOLIBERAL GLOBALIZATION, THE GLOBAL REMITTANCE TREND, AND LABOR BROKERAGE

In recent years migration has reemerged as a strategy of poverty reduction and development for many countries in the global South. For what both scholars and practitioners call the "migration and development nexus," the pendulum of opinions about migration as a development strategy has swung widely. From a positive perspective that migration offers potential development gains, to a perspective that it produces "brain drains" and actually causes underdevelopment, today the "migration and development nexus" is enjoying (re)newed optimism (Geiger and Pécoud 2013; Kabbanji 2013).

International institutions such as the World Bank, IMF, and UN (as evidenced by its High-Level Dialogue on Migration and Development in 2013), along with labor-sending and -receiving states, are increasingly

framing migration as a "triple win." Sending states, receiving states, and migrants are figured to be "winners" from the remittances gained from international migration. Sending states "win" from the remittances generated through the large-scale export of their citizens. Receiving states "win" by being able to secure legal temporary migrant workers. Migrants "win" by having employment, albeit overseas (Pina-Delgado 2013). Indeed, what has emerged is a GRT. What makes it qualitatively different from previous iterations of the "migration as development nexus" is the degree to which institutions and policies have been created at the international and national levels to implement "migration as development" programs (Pina-Delgado 2013).

As neoliberal logics have become more and more hegemonic, developing states have restructured in a range of ways. Alongside liberalization, deregulation, and privatization, many states have introduced policies of "labor brokerage" to mobilize their citizens for emigration as a means of generating remittance income as remittances have become an especially crucial source of foreign exchange. These programs are often the result of diplomatic agreements between governments. Moreover, labor brokerage programs of different types "make" their citizens into migrants well before they even leave. "Labour emigration requires the bilateral (or even multilateral) assent of states, but is not merely the result of governmental policies. It comes with a range of wider societal practices. This includes the production—and contestation—of the 'ideal migrant'" (Rodriguez and Schwenken 2013).

The Philippines in particular has been considered by "migration as development" proponents to be a "model of migration management," which has devised a highly efficient transnational apparatus that facilitates the emigration of workers to all corners of the planet while it simultaneously ensures remittances flow back into the country. The Philippine labor brokerage state's labor export policy (LEP), buttressed by institutions like the Philippine Overseas Employment Agency (POEA), the Overseas Worker Welfare Agency (OWWA), and other migration agencies, along with the migration industry (which includes private labor recruiters, travel agents, and the like), normalizes and facilitates emigration (Rodriguez 2010; Guevarra 2009). Emigration is heralded by the Philippine state as "heroic"; migrants are considered the Philippines' "new national heroes." Consequently, overseas employment is not just framed as commonsensical and "natural" among many Filipinos, but something to be aspired to. At the same time the Philippines' transnational migration management apparatus rationalizes the process of emigration, to the extent that nearly five thousand Filipina and Filipino migrants are able to leave for employment in hundreds of destinations around the world on a daily basis. The state, with the assistance of the migration industry, deploys so many workers globally by ensuring that prospective migrants are equipped

with country-specific skills training and the documentation necessary for employment abroad.

Labor brokerage as the Philippine state's avenue onto the global economic stage is highly profitable under the rubric of the GRT. The Philippines profits from brokering its citizens to the tune of $22 billion annually from the remittances of more than ten million migrant workers in more than 190 countries (Bangko Sentral Ng Pilipinas 2013). Further, systematized migration management produces profits even before migrants leave a country's shores; migrants pay from various migration industry institutions, such as recruitment and placement agencies, as well as government agencies premigration fees for seminars, forms, applications, etc.

We argue that the labor brokerage state, by playing such a key role in facilitating the export of migrants, is implicated in producing undocumented migration. Indeed, a study of the labor brokerage state and undocumented migration offers a necessary critique of the "migration as development" framework. What the "triple-win" rhetoric of "migration as development" proponents leaves out is that the facilitation of labor migration between governments, encouraged and endorsed by international institutions, not only produces flows of migrants, but also creates conditions that can render legal migrants "illegal." Indeed, under many immigration regimes in receiving countries, the line between "legal" and "illegal" migration is thin, because the need for temporary workers, as opposed to permanent residents, has become the rule of thumb. "Legal" migration is characterized by a great degree of precariousness for migrants who not only provide "flexible" labor in difficult jobs as service, agricultural, and domestic workers, but also face increasingly securitized immigration regimes. Moreover, migrants are subject to conditions of virtual debt peonage, as they are forced to repay various migration agents constituting the labor brokerage apparatus (both state and nonstate actors) that facilitated their emigration to begin with. The "migration as development" framework may be a "win" for sending governments, which profit from increasing remittance earnings, and for receiving governments, which profit from cheap and temporary workers, but migrants clearly lose, because legal avenues of migration in no way guarantee that they will remain in the good graces of either government or enjoy fair wages and dignified employment.

RISE OF UNDOCUMENTED FILIPINO IMMIGRANTS TO THE UNITED STATES

It is the Philippine state's role as a "labor brokerage state" under a neoliberal global economy that produces conditions under which Filipino migrant workers become susceptible to illegalization. The system of labor brokerage and the

increasing role of the private recruitment industry has produced new forms of undocumented Filipino migration to the United States. One form of undocumented migration is through tourist visas. Filipino migrants either secure tourist visas, then overstay their allowed time period to work in the United States, or they are brought to the United States through prospective employers or labor contractors on tourist visas with the promise that employment visas will be applied for on their behalf once they arrive. Whether they come on tourist visas on their own or through the assistance of migration industry actors, Filipino migrants' ability to secure tourist visas is linked to what Anju Paul (2011) calls "stepwise" migration.

Philippine migrants ultimately "collect" temporary contracts and visas and engage in stepwise migration, wherein they migrate to multiple destinations for short periods of time until they are able to reach their final destinations, most often countries in the West (Paul 2011). For example, as we detail in this chapter, migrants may begin with a contract in a country like Saudi Arabia, then go to South Korea to work for a short time, then eventually try their luck in a Western country like the United States or Canada. Western countries, often have very rigid entry requirements. Overseas experience may make Filipino migrants more appealing as candidates for employment or tourist visas. Hence, migrants' employment in different countries may make them eligible for entry into a more preferred country in the West, where the migrants can earn in a currency that can be exchanged at a higher rate for the Philippine peso. However, employment and/or immigrant visas are typically only set aside for highly skilled, professional workers; this is true in the United States. Many of the migrants from the Philippines who participate in stepwise migration are likely not eligible for employment or immigrant visas to the United States, because the Philippines labor brokerage apparatus exports mainly low-skilled workers. Instead, prospective migrants from the Philippines to the United States apply for tourist visas. They use the money they have earned in other countries to make them eligible candidates for tourist visas, because the United States requires that tourists demonstrate that they have assets and other ties to their countries of origin as a means of preventing "illegal" migration. Alternatively, migrants use their previous records of travel as "proof" that they are law-abiding individuals who do not overstay their visas, although that is often their intention. Indeed, many private recruitment agencies in the Philippines may illicitly apply for tourist visas for their job applicants and promise them an eventual transition from tourist to employment or immigrant visa. This becomes a mechanism that facilitates undocumented migration. Filipinos pursue this mode of entry into the United States in order to support families in the Philippines that are struggling to stabilize their livelihood.

Stepwise migration is possible because the Philippine state's labor brokerage apparatus has made it rather quick and easy for Filipinos to secure employment in any number of countries around the world. Hence Filipino migrants can collect employment visas in their passports from a wide range of countries over the course of their lives. By amassing on the one hand the kind of capital that the United States often requires of tourists through their accumulated savings from overseas employment, and on the other hand the kind of "authorization" that U.S. immigration officials may value as "proof" that they are reliable travelers (i.e., migrants prove that they will not be risky tourists by showing proof that they have traveled to other countries in the past and have been compliant with immigration laws in those countries), Filipino migrants are able to secure entry to the United States. Migrant workers' use of tourist visas through stepwise migration becomes an alternative route when other kinds of entry (i.e., through family reunification or employment visas) are onerous or impossible. Employers, in collusion with recruitment agencies, facilitate migrants' entry into the United States on tourist visas but hold out the promise of regularizing migrants' visas as employment-based visas.

These mechanics of stepwise migration through tourist visas are facilitated by the demands of globalization for cheap and expendable labor. Coupled with the sophisticated system of labor brokerage and the binding conditions of debt peonage, migrants are illegalized in their relentless search for the next source of income abroad. Even as they continue to remit faithfully to their families and inadvertently to the national economy of the Philippines, they are placed in precarious work and immigration status. As the logic of neoliberalism has it, the economy is pushing and pulling migrant labor freely, while migrants themselves are put in extremely unstable and insecure conditions.

Based on our research, a second type of undocumented migration, which is significantly linked to the labor demands of neoliberal globalization, is the trafficking of Filipino migrant workers to the United States. Filipinos are brought into the United States on temporary employment visas and experience extreme forms of exploitation that force them to escape their employers. This renders them undocumented. At the same time, migrant workers are at the mercy of private recruitment agencies that bind them with debt peonage. Debts for various travel expenses force migrants to overstay their temporary employment visas in order to continue working, albeit as undocumented migrants, so that they can pay off their debts. Migrants are illegalized (or rendered undocumented) through the collusion of the Philippines' migration industry, including several layers of labor recruiters, with Philippine state

agencies and employers of the receiving state (i.e., the United States). Though this collusion facilitates the legal emigration of Filipinos on temporary work visas, migrants ultimately become illegalized by debt peonage, part and parcel of the neoliberal Philippine labor brokerage. Paradoxically, the debts migrants incur to legally migrate to the United States become the basis for being rendered "illegal."

In the following section we draw from research we have engaged in both collaboratively and independently, as well as campaigns taken up by community-based organizations linked through a U.S.-based coalition called National Alliance for Filipino Concerns (NAFCON). The case studies we provide aim to illustrate the aforementioned two types of undocumented migration produced by the Philippine labor brokerage state under the auspices of neoliberal globalization.

THE UNDOCUMENTED CHARACTER OF STEPWISE MIGRATION

We find that stepwise migration has long been a strategy engaged in by many Filipino migrants to get to the United States (see Rodriguez 2010). In our collaborative research, we talked with various individuals who had strategically used their record of temporary employment in other countries as a means of securing a tourist visa (a nonemployment visa) to the United States. This was true, for instance, in Angelito's case. Angelito says:

Yung first ko ano eh sa Papua New Guinea for two years, tapos balik. Then, I've been in Saudi Arabia fifteen years. Then I go back to the Philippines. Nagtrabaho ako sa warehouse nung dati ako nagabroad but I wanted to go to the U.S. para madagdagan ang suweldo. So I apply for a multiple entry visa so I could get a visitor visa to the U.S. Tapos, dito na ako for five years.

The first time I left I went to Papua New Guinea for two years; then I came back home. Then I went to Saudi Arabia for fifteen years. Then I go back to the Philippines. Both of those places I worked in a warehouse but I wanted to go to the U.S. for better wages. So I applied for a multiple entry visa so I could get a visitor visa to the U.S. After that, I've been here for five years.

Not only does Angelito's story illustrate the use of stepwise migration to secure entry into the United States; it is also a story of migration that begins through "legal" avenues and eventually results in an "illegal" entry into the United States, as his aim was not merely to visit the country but to find work there as an "illegal" migrant. The illegalization of Angelito in the United States began with his previous labor migrations to Papua New Guinea and

Saudi Arabia, where he collected enough capital, work experience, and travel visas to be approved for a U.S. tourist visa. Angelito's ultimate goal was the "better wages" in the United States, as his past work experiences did not satisfy his family's needs. Angelito's illegalization did not just begin with his immigration to the United States; it was created by the neoliberal politics of emigration of the Philippine labor export policy. This illustrates how the Philippine state's labor brokerage apparatus is key to providing avenues for stepwise migration, a point not fully discussed by Paul (2011). By mobilizing and facilitating out-migration, the Philippine state produces the conditions for stepwise migration. Without the labor brokerage state, it is unlikely that migrants would be able to exercise this pattern of migration.

Grace's migration to the United States began with contractual work in Hong Kong. She left her family and children to work as a domestic worker in Hong Kong for twelve years. Though it is not entirely clear from her interview whether she engaged in stepwise migration to get to the United States, an interview with Grace indicates that her entry into the United States was through a tourist visa and that indeed, her intention in coming to the United States was never for simply a short-term visit:

Interviewer: So, what was the main reason why you left?

Grace: Hmm. (Pauses.) American Dream, no? (She laughs.)

Interviewer: What is the American Dream to you?

G: Earning dollars.

In the Philippines, Grace was a social worker at a government agency, where she was earning a decent wage, yet it was insufficient to put her three children through school. Although she had a job that was meaningful to her, she turned to contractual work in Hong Kong and eventually a tourist visa entrance to the United States to support her family financially. She explains how she secured a job there:

Interviewer: How did you get a job here in the U.S. when you first came here?

Beth: Oh, ok. When I first came here as a tourist I do volunteer work at Laguna Honda. . . . I always do volunteer work, I always do volunteer work. . . . So, I started working as a caregiver.

Interviewer: Ok. How did you get that job?

Beth: Actually, through a friend I just met on Market Street.

Although Beth had no prospect of a job waiting for her in the United States, she still persisted in coming to find work. Beth, like many Filipino migrants

who have had experience working in other countries, knew that she must build a network, whether through volunteer work or church fellowship, to find a social network to plug into. Beth's case illustrates how Filipino migrants enter the United States legally (as tourists) but overstay their visas in order to "earn dollars." She first attempted to gain experience through volunteering and then secured a job as a caregiver through migrant networks.

These cases highlight the role of the labor brokerage state in manipulating the U.S. visa regimes to facilitate the migration of workers il/legally. We want to underscore the role that the Philippine state plays as a "labor broker" in the stepwise migration of Filipino migrant workers. Without the active role of the state in the export of workers in cooperation with a booming migration industry consisting of labor recruiters and overseas employers, migrant workers would not be able to secure contractual work in different countries to eventually aim for the United States. Moreover, we point to labor brokerage and stepwise migration to illustrate the Philippine state's strategy to maintain its investment in a remittance industry without concern for the illegalization inherent to the process of labor export. Its participation in the global remittance trend continues to feed Filipino migrants into a stepwise migration stream so as to sustain a steady return in terms of remittances, regardless of whether Filipinos working abroad sacrifice their immigration status in the process.

THE TENUOUSNESS OF LEGAL STATUS

Our research suggests that an increasing number of Filipino migrants are entering the United States on temporary employment visas. What we find, however, is that though these visas allow Filipinos legal entry into the United States, many are experiencing extreme forms of exploitation and abuse upon arrival, which amounts to labor trafficking, while on these visas. It is here, we argue, that the lines separating legal and "illegal" migration become blurry. In the current immigration debate, legality is touted as the means by which undocumented migrants can "come out of the shadows" to enjoy legal status and presumably better terms of employment and living conditions. Yet our research indicates that legality is no guarantee of decent and dignified lives for migrants.

If legal status does not protect migrants from highly exploitative living and working conditions, the transnational apparatus that structures Philippine migration often subjects migrants to incredibly onerous debts that ultimately render them undocumented. That is, in order to secure overseas employment, Filipino migrants depend on various migration industry actors (i.e., labor

recruitment agencies, located in either the Philippines, the United States, or both) as well as governments (i.e., migration agencies). In the Philippines and the United States both state and nonstate actors charge migrants fees for their services. Often migrants do not have the funds to pay for these fees. They are then forced to borrow money from either private lenders or labor recruitment agencies, if the latter have the capacity to front the funds that migrants need. Of course, not only do migrants need funds to pay for service fees, they will need the funds to travel. Most Filipino migrants' wages are garnished when they work abroad. This means that they have less to send back to their families. Those who do not pay risk having their families in the Philippines threatened by lenders' or agencies representatives. Moreover, the short-term contracts that migrants have often expire before they are able to repay their debts. Migrants, to avoid intimidation by lenders or agency representatives, willfully overstay their employment visas and become undocumented in order to continue to pay their debts.

Harry was brought to the United States on an H2B visa as a first-class welder for employment in Alabama. He was first recruited from his hometown of Cebu with sixty-eight other workers. With a growing family of three children, he was forced to look for work overseas, so he responded to a recruitment ad for welders in the United States. However, "*Sinabihan ng agency na kami magbabayad ng mga four hundred thousand pesos.* Our agency told us that we would have to pay four hundred thousand pesos. So it's about I would say, ten thousand U.S. dollars." Harry explains:

Binigyan ako nga H2-B *bisa, yung* H2-B *bisa ko is 15 days bago mag expired. Sinabi naming na wala kaming pang bayad sa three hundred fifty to four hundred thousand pesos yun ang range para sa pagbago ng bisa. So inofferan nalang nila ng offer na puntahan nyo itong lending company kasi may bisa na kayo, pakita nyo yung bisa sila na bahala sa pera nyo. So from lending yung pera hindi naman nahawakan, binigay na papuntang agency.*

They gave me an H2-B visa, the H2-B visa is only 15 days before it expires. We said we didn't have the money to pay the range of 350,000 to 400,000 pesos for visa renewal. So the agency offered that we go to a lending company because we already had a visa but the lending would take care of the money. But the money from the lending company, we didn't get that money, it went straight to the agency.

Though anxious about the amount of money being charged by the recruitment agency, Harry also felt that it was a reasonable bargain for the opportunity to go to a coveted migrant destination, the United States. Harry's case illustrates how multiple state and nonstate institutions are at work to produce a population of precarious workers before they even leave home. Yet Harry ultimately saw his opportunity to earn in dollars as a promising opportunity to lift family members out of poverty.

When he arrived in the United States Harry was ready to work. Though he and his cohort of welders expected to work hard, they ultimately found themselves in highly exploitative working conditions: "*So nagtrabaho kami ng 7 days a week, 12 to 14 hours. Yun yung trabaho namin.* So we worked seven days a week, 12 to 14 hours. That's our workday." Despite working long hours, all of the wages Harry earned were used to repay his debt, which was accruing interest, to the Philippine-based lending company from which he had borrowed funds to pay the recruitment agency: "*Walang mapupunta samin yung pera kasi, uh . . . pinagbabayad lang siya sa lending company.* None of our wages would end up with us because, uh . . . we are paying all of our wages to the lending company." Contrary to his expectation prior to leaving the Philippines for employment in the United States, Harry's ability to support his family was minimized by the need to pay his accruing debt within a specific timeline. Harry and the other migrant workers in his cohort were soon struck with the worst news about their employment:

After two months bigla nalang inninannounce nung company na wala na silang maibigay na project so yon. May utang pa kami pero wala pa kaming trabaho pag dating dito sa U.S.

After two months, they surprisingly announce that the company did not have any projects to provide to the workers. We still had debts but we had no work when we got here to the U.S.

The cohort of migrant workers that Harry came to the United States with soon realized that their agency's promise of employment and legalization was a sham:

Nakita yung status na talagang human trafficking. Parang ghost company lang ginawa. Binigyan muna kami ng . . . parang ginawa sabing totoo na may trabaho binigyan namin muna ng dalawang bwan na trabaho tapos wala na, bigla nalang nawala. So nag watakwatak kami.

We saw immediately that our status was human trafficking. It was a ghost company that was made to bring migrant workers, the company created a job contract that would give us work for two months and then it was gone, it was all of a sudden gone. After that all of the workers dispersed.

In Harry's case, when the job that he was recruited for disappeared without the possibility of renewal or placement elsewhere, he was not able to continue to pay his debts. The lending company, however, used strong-arm tactics transnationally to ensure that Harry would find some way, even if it meant becoming undocumented, to pay the debts back:

Bumigat noon yung problema kasi, tapos may trip na sa pamilya ko. Yung asawa ko tinatawagan na ng lending companies, mga lawyers sinasabi makukulong asawa ko pag hindi ako magbayad. Hindi na nakakatulog, At apektado na yung pamilya ko.

The problem became heavier because there were threats to my family. The lending company was calling, the lawyers said that my wife could be jailed if I didn't pay my debt. I wasn't able to sleep because of the situation because it affected my family.

Threats made against his family because of the debt he had incurred when leaving them forced Harry to ultimately stay in the United States, with or without documentation, to pay back what he owed to the lending company to ensure his family's safety. The transnational regulation of migrant workers through debt peonage is a key reason many migrants choose to fall out of status. Harry's migration started with the idea that working abroad would help stabilize his family. The migration industry created an avenue through which he could satisfy those desires. Harry believed that he would be able to pay back the debt incurred to be able to migrate. However, his story illustrates how the precariousness of his employment and his debt bondage worked toward his illegalization in America.

In our interviews we found that other migrants shared Harry's experience. Elaine, a Filipina migrant, left a young son in the Philippines to come to the United States. In Elaine's case, she felt the pressure of debt bondage even before she left the Philippines:

Elaine: All our debts is already rising. Because we just borrow money, you know, to buy the ticket and everything, like all the expenses. So, like we already borrowed money from the bank. . . .

Interviewer: How much were you in debt?

Elaine: Maybe, 250 thousand pesos! Yeah, because we already like, borrow money from the bank, yeah, to pay the agency, to pay the ticket, you pay all the expenses, everything! I have, I borrow money from like, like, four of my, three of my sisters, and my brother, and from my uncle, and yeah, it's like, they let me borrow the money but I have to pay them [the bank] or they will call my family.

In addition to debt peonage, Elaine was subject to the whims of the recruitment agency (whose services, of course, had put Elaine into such serious debt). Similar to what happened to Harry, Elaine's recruitment agency had managed to secure a visa for her, but the job she was initially promised was no longer available. Concerned about her debts, which were rapidly accruing interest, Elaine, along with a few other migrant workers in the same situation,

pressured the recruitment agency in the Philippines to secure any source of employment for them. The recruitment agency revived contacts in Portland, Oregon, and sent the migrant workers there to work as caregivers to the elderly (they were originally recruited as hotel workers in Florida). During Elaine's time in Portland she was paid $1,500 a month as a caregiver to the elderly. Still, Elaine agreed to take the job so she could begin to repay her debts. Soon enough, however, her job as a caregiver in Portland was threatened, as the recruitment agency attempted to place Elaine and her cohort of migrant workers in hotel jobs in New Jersey:

> Well, after, like three months working [in Portland], the agency called us, and then they threatened us. They want us to go to New Jersey to work there in a hotel. Actually my caregiver employer told me that, um, it's OK for me not to go with them because actually in the first place, it's their [the agency's] fault why we ended up in Portland. I'm not really sure if there's really, really gonna be a job there. At least in Portland we have a job and, you know, that time we're still paying back the debts and I'm still supporting my son.

Elaine continued to explain the complicated relationship with her agency:

> I talked to the attorney, actually she's also a Filipino in Portland, she said, "Elaine . . . there's nothing they can do to you [you have to go to New Jersey]." But, you know, it's scary, you just came here, you, you, we don't even have a cell phone. It's like you really don't know what's the right thing to do! You know? And then, well, it's kind of like, because, for me, they're, the agency is really my employer, basically, technically speaking, because they're the one who petitioned us from the Philippines, so, they pressured us to report in New Jersey. So I went there.

Elaine's confusion about whether she should leave her job in Portland or comply with the demands of the recruitment agency to go to New Jersey illustrates the complex set of relations that Philippine migrants under a transnational labor brokerage regime are subject to. Ultimately, Elaine was not certain who her employer actually was and to whom she was supposed to be accountable. The recruitment agency had helped place her as a caregiver in Portland (after breaching a promise that she was to work as a hotel worker in Florida). The agency shortly thereafter demanded that Elaine stop working as a caregiver in Portland to take a hotel job in New Jersey. The care home owner, meanwhile, attempted to keep Elaine on staff. The lawyer Elaine consulted clarified that Elaine's employer was technically not the care home owner but the recruitment agency. Regardless of who actually employed Elaine, it is clear that both the agency and the "employer" profited: the agency

from the fees that Elaine paid prior to leaving the Philippines, the "employer" from having a cheap worker. It is Elaine who lost out. Not only was she underpaid and subject to what was practically labor trafficking (i.e., false promises regarding her employment), she ultimately found herself vulnerable to illegalization.

Indeed, not only was Elaine confused about who her employer actually was, she was ultimately confused about who held the key to her legal status. When asked about why she stayed here even after her status expired, Elaine said:

> It's because the promise to us when we were in the Philippines with the agency, like, "Oh, you gonna work in America." When we were asked to go to New Jersey from the agency, I was confused and had to pick between my first employer, who is a Filipino, owning a big facility in Portland. They're Filipino, and, they try to convince me to stay with them, and they gonna petition me for like, H-1B, things like that. But the agency is pressuring me to report in New Jersey. But it's kinda like, well, and then the agency is keep on pressuring us, like keep on calling me, in Portland that, "Elaine, you need to come here in New Jersey because we're the one who petition you!" you know, blah blah blah, and like, "If you don't come here, we gonna, we gonna call the immigration and they gonna get you there!" you know?

This push and pull between Elaine's current temporary visa and the potential to extend that visa through her U.S.-based employer and the demands of the Phillippine-based recruitment agency prevented her from making an informed decision about employment (and ultimately legal status) in the United States. The differing pressures, from debt peonage to contractual obligations, ultimately pushed Elaine to work in New Jersey and fall out of status. The agency's partnership with a company in New Jersey did not result in a permanent resident status for Elaine. Elaine gambled with a move to New Jersey, trusting that the agency would not steer her wrong and that the promise of legalization would be fulfilled and could be the answer to her responsibilities in the Philippines.

CONCLUSION

Within the context of neoliberal globalization, multilateral institutions and states are touting the GRT as a developmental strategy. The GRT has become institutionalized by many developing states, with the Philippines as a "model" for migration management. The Philippines' systematic and aggressive institutionalization of labor export continues to facilitate the large-scale emigration of its citizens globally. The Philippines' labor brokerage apparatus produces the conditions for both documented and undocumented migration to the United States and around the world.

We argue that analyses of the globalization of undocumented migration must critically consider the politics of emigration, specifically the conditions under which nation-states like the Philippines institute labor export policies for profit and over the welfare of their migrant citizens who end up undocumented in countries elsewhere. Coupled with neoliberal privatization, liberalization, and deregulation that have effectively diminished the ability of people to make meaningful livelihoods with dignified jobs in many countries in the global South, such as the Philippines. Labor export and its systematization has been these countries response to these conditions. Tourist visas and short-term contracts secured by Philippine citizens abroad are profitable for the Philippine state, as stepwise migration and temporary migration ensure remittances are continuously incorporated into the fabric of the Philippine national economy. Labor brokerage also answers the call for cheap labor in countries like the United States from industries that hold precariousness at their center. Many migrants leaving the Philippines secure their departure through temporary contracts in precarious forms of employment; low-wage, temporary jobs in the service and domestic industries can keep workers at the mercy of job instability and, more important, migration status. The role of sending states in the production of "illegality" and undocumented migrants must be interrogated, as the profits from the labor of migrant workers are collected not only in receiving states and economies, but in sending ones as well. Analyses that confine themselves to the dynamics in immigrant-receiving countries are ultimately incomplete, as they fail to account for the role of emigrant states, supranational institutions, and the migration industry in shaping undocumented migration. With the lives of undocumented migrants and their families becoming increasingly more precarious, a global perspective is all the more urgent.

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6

International Law and Undocumented Migration

Beth Lyon

INTRODUCTION: LOW MANAGEMENT, HIGH ENFORCEMENT

An estimated 3.1 percent of humanity, or 214 million people, live outside their country of birth (HCHRM n.d.). Roughly forty million of them are thought to be undocumented (ICHRP and Oberoi 2010, 13). Undocumented migration is growing and becoming more interrelated; it is a policy issue of great importance to many countries in the world and receives extensive media attention (ICMPD 2009; PICUM n.d.; DESA 2006, 3; Aldana et al. 2013, 26). Nonetheless, this increasingly important *international* phenomenon is largely addressed by individual countries, with relatively little regulation at the transnational level (Martin 2011, 14). As one scholar notes, there are "enormous economic, political, and human costs of the growing mismatch between rising emigration pressure and dwindling opportunities for legal entry (especially for low-skilled labor migrants)" (Ghosh 2009, xv). Most strikingly, international policy makers have yet to theorize an effective international low-wage-worker migration regime (Martin 2011, 4). As one treatise argues, "despite the inherently trans-border nature of international migration, it remains the only key part of the international economy that is largely unregulated by international norms or coordinated by an international organization" (Aldana et al. 2013, 21).

In the industrialized West, curtailing undocumented migration became a significant U.S. policy goal only in the 1950s, and only economic downturn in the 1960s and 1970s sparked Western Europe to track irregular migration and create restrictionist policies to counter it (Aldana et al. 2013, 25). After this period the Organisation for Economic Co-operation and Development (OECD) nations attempted more proactively to address undocumented migration, engaging in sporadic immigration amnesties against a backdrop of increasingly restrictive and enforcement-oriented policies (Levinson 2005, 27–62). Outside the highly integrated labor migration cooperation found within (and exclusive to) the nations of the European Community, most other countries have relatively liberal visa regimes for welcoming professional workers, but severely limit low-wage-labor migration. Typically, the scarce visas are available in the context of temporary "guest worker" programs (Castles and Miller 2009, 67–70). Worker abuses in these temporary-visa labor programs are widespread and severe.[1]

A limited patchwork of cross-national collaboration on migration has developed since World War II. Most prevalent are hundreds of bilateral treaties, which typically do not guarantee labor market access or commit to particular levels of migration (Trachtman 2009, 206–208). Professional and investor labor migration arrangements also exist as corollaries to regional trade arrangements, such as the North American Free Trade Agreement (Nonnenmacher 2012, 312, 334). The General Agreement on Trade in Services entered into force in 1995. It creates limited rights to migrate for consumers to cross into other countries to receive services and for individuals who are providing a service, such as foreign intercompany transferees (312, 313–315). Many of these trade agreement arrangements involve "circular," or mandatory-return, migration (Trachtman 2009, 223–239), failing to address the reality of integration and the resulting permanence of much human migration. The international community increasingly recognizes the need to create a global migration regime, but has not gotten beyond "talking initiatives" (Trachtman 2009, 15). For example, the United Nations (UN) has held two "High Level Dialogues" and a series of Global Fora on Migration and Development around international migration (Omelaniuk 2012, 336, 360–363), but no binding standards have resulted (362–363), revealing how little political will exists to develop formal arrangements for low-wage migration (363).

Even in the protection and humanitarian realms, only one effort to create an international human rights law regime for migrants has succeeded. The atrocities of the Holocaust created sufficient political impetus for the entrenchment of a robust international refugee protection legal regime (Goodhart

2012, 220; Nash and Humphrey 1988, 44). Most countries have ratified the UN's Refugee Protection Convention and Protocol (Bhuiyan and Islam 2013, 381), and since its promulgation, tens of millions of refugees have gained protection from being returned to their countries of persecution (UNRA n.d.). Nonetheless, asylum and refugee protections are constantly undermined by restrictive policies, such as the 1996 laws in the United States placing a deadline on asylum applications and the promulgation by many countries of "expedited removal," authorizing border officials to order on-the-spot deportations unless traumatized refugees press immediately for their right to seek asylum (Siskin and Wasem 2005, passim).

However, the vast majority of immigrants leave their countries not because of targeted persecution, but because of poverty, war, domestic abuse and other violence, and climate change, a reality that often excludes them from refugee protection (UNRA 2012). Efforts to create international and regional legal protections for low-wage migrant workers have fallen short, time after time. The two International Labour Organization conventions relating to immigrants have among the lowest adoption rates of any International Labour Organization (ILO) conventions (Lyon 2010, 486), and between them, the lower of the two is the convention that includes protections for undocumented immigrants (389, 486). The UN Convention on the Protection of the Rights of All Migrant Workers and Their Families has a radically lower ratification record than any UN human rights treaty of similar age (ISCCR 2012, 28). The only humanitarian effort to gain momentum since the immediate post–World War II era is the international anti-trafficking regime, which is heavily focused on enforcement (Brand 2010, 26–30).

WORLDWIDE INCREASE IN CRIMINALIZATION AND DETENTION

Reflecting national practice, international collaboration on migration generally revolves around enforcement. In the words of one scholar, the global trend is toward countries creating a "piecemeal and reactive set of policies . . .—penalization, detention and incarceration— . . . adopted outside the framework of the international protection regimes" (Gowlland-Debbas, 2007, 294). Undocumented immigrants are subjected to increasingly harsh sentences and lengthy periods of detention across the globe.[2] For example, over the objections of the UN, European countries are increasingly utilizing criminal penalties and detention to punish immigration infractions (Hammarberg 2010, part II). The top federal criminal prosecution charge in the United States for the year 2011 was reentry after deportation,[3] which can carry a sentence of twenty years (TRAC 2011). The United States has rapidly

expanded its use of immigration detention, expanding capacity "from fewer than 7,500 beds in 1995 to over 30,000 today, without the benefit of tools for population forecasting, management, on-site monitoring, and central procurement" (Schriro 2009, 2). Detention of children is considered "standard practice in the majority of EU Member States" (Cornelisse 2010, 3) and in many other countries—Canada (Banki and Katz 2009, 18); Belgium, Egypt, Lebanon, Malaysia, the United States, the United Kingdom, and South Africa (IDC 2008, 3–4); and Australia (Gauthier et al. 2011, 3)—as is detention of asylum seekers and refugees, including noncriminally accused refugees (Global Migration Group 2005, 62; Martin et al. 2007, 62; Amnesty International 2008, 6–7).

In 2009 the European Union adopted its first hard-law measure criminalizing illegal entry (Hammarberg 2010, part V). A series of directives and treaties issued by the EU regarding immigration cooperation have, apart from statements on protecting asylum seekers, almost uniformly related to enforcement, not to opening borders to non-EU countries or protection for smuggled and trafficked people (Hammarberg 2010, part VI). Countries collaborate extensively on enforcement measures, for example the plan Sur, whereby the United States and Mexico work together to militarize Mexico's southern border (Romo, et al. 2012, 12, 67–72; González-Murphy 2009, 169–175).

INTERNATIONAL LAW PROTECTION FOR UNDOCUMENTED MIGRANTS

With no coherent or comprehensive transnational regime for regulating migration, it is unsurprising that there are millions of undocumented people in the world, and with the "globalizing culture of control" (Cornelisse 2010, 24), it is also unsurprising that they are among the most vulnerable people on earth (Bustamante 2010, 565–583), as described throughout this book. There is no single international law regime or agency charged with protecting undocumented immigrants, but when considered as a whole, there is rich transnational doctrine for protecting undocumented immigrants, and civil society has grown by leaps and bounds to improve enforcement. Even while international human rights law developed rapidly in the latter half of the twentieth century, international norms protecting *migrants* lagged behind other more politically viable areas of human rights law, and norms specifically protecting *undocumented migrants* lagged even further. Nonetheless, most of the extant canon of international human rights law applies to undocumented migrants, and rules addressing specific issues are slowly gaining traction. The following section of this chapter provides an overview of general human

rights protections, including those that apply to undocumented migrants and some major areas of exclusion. The section then reviews existing protections related to specific areas of concern for undocumented migrants.

General Human Rights Protections

From its earliest inception in the seventeenth century, modern international law developed to regulate war and commerce between sovereign nations (O'Connell et al. 2010, 14; Bedjaoui 1991, 9), and sovereign nations, not individuals, were "the most privileged of international law's subjects" (Bedjaoui 1991, 225). Strains of humanitarian and protective intent evinced themselves over the centuries, for example in the nineteenth-century international gatherings and at least one treaty aimed at abolishing slavery (Henkin et al. 2009, 138), but it was not until the twentieth century that international human rights law developed significantly (42). In direct response to and within the political space created by the atrocities of the world wars, governments created the International League of Nations and its successor, the United Nations, and included protections for individuals and vulnerable minorities within their mandates (138–141). The 1948 Universal Declaration of Human Rights (UDHR 1948) was a groundbreaking global document that laid out a broad vision for individual rights (Glendon 1998, 1154).

The United Nations codified the UDHR in 1966 with two treaties: the International Covenant on Economic, Social, and Cultural Rights (ICESCR 1966) and the International Covenant on Civil and Political Rights (ICCPR 1966; Henkin et al. 2009, 215). Through the present day, the international community has continued to generate specialized treaties focused on specific areas of concern (Alston and Goodman 2013, 143–144), such as genocide prevention (CPPCG 1948), and vulnerable groups such as civilians and others affected by armed conflict (mid-nineteenth through mid-twentieth centuries) (Geneva Convention 1949), children (CRC 1989), and people with disabilities (CRPD 2006). The UN is currently responsible for monitoring more than eighty human rights documents (Weissbrodt and Divine 2012, 155). Nine of these are considered to be the UN's core human rights treaties (ICERD 1965; ICCPR 1966; ICESCR 1966; CEDAW 1979; CAT 1984; CRC 1989; ICRMW 1990; CRPD 2006). Regional treaties echo and supplement many of the norms enshrined in these international agreements. Particularly developed are the human rights regimes of the African Union (Heyns 2004, 681–685), the European Community (Marantis 1994, 4–5), and the Organization of American States (Mantei 2001, 522).

Treaties gain legal force through signature and ratification by governments that become "parties" to the treaties. The doctrines of *jus cogens* and customary international law hold that some norms have gained widespread recognition to bind all governments, no matter what treaties those governments have or have not ratified. Only a limited number of norms enjoy sufficiently wide acceptance to be considered *jus cogens* or customary international law, for example the prohibitions on genocide, slavery, and torture, and the right to life (Thouvenin and Tomuschat 2006, Giegrich 2006, 206 n. 8). In addition to this small group of generally enforceable norms, general human rights treaties providing a broader range of rights have broad or universal ratification (Bradley and Goldsmith, 2000, 425–427). Notably fewer countries have ratified treaties with a direct focus on migrants (Lyon 2010, 394–396).

Most human rights treaties create or are assigned to institutions charged with monitoring government compliance with the treaties. These institutions take many forms. At the UN, enforcement of the human rights treaties within member states varies. The monitoring body might be a field agency such as the UN High Commissioner for Refugees, charged with monitoring the Refugee Convention and Protocol and also running refugee camps throughout the world and regional offices that actively promote domestic implementation (CRSR 1951, art. 35, paras. 1–2). Most of the UN human rights treaties are less directly implemented than this, however, and are instead monitored by a small committee of experts operating in a primarily promotional and advisory capacity. One example of this type of monitoring body is the UN Committee on the Rights of Migrant Workers (CMW), which holds hearings and issues opinions about state party compliance with the International Convention on the Protection of Rights of Migrant Workers and Their Families (ICMW 1990). Many UN human rights treaties also have provisions or Optional Protocols allowing individual complaints about compliance.[4] Although slower to gain widespread ratification, these Optional Protocols have made possible important test cases creating new developments in human rights law and direct action on individual situations. For example, in 2010 the United Nations Committee Against Torture ruled that Sweden would violate the UN Convention Against Torture if it deported Mükerrem Güclü to her home country of Turkey, because the committee determined that she had shown sufficient proof that she would be subjected to torture if returned (CAT 2010, para 6.8). Implementation of regional human rights treaties is more judicial in nature, with regional human rights courts in Africa, Europe, and the Americas issuing binding decisions in individual cases (Carrozo and Shelton 2013, 154–159). Over the decades, civil society has expanded immensely, playing an active role in all of these fora to develop new norms and press for better compliance.[5]

Limited Exclusions from Protection for Immigrants

Human rights treaties that are not focused on immigrants typically mention immigrants only for the purposes of *excluding* them from specific protections. Some of these provisions exclude only undocumented immigrants. For example, article 12(1) of the International Covenant on Civil and Political Rights (ICCPR 1966) limits "liberty of movement and freedom to choose [one's] residence" to individuals "lawfully within the territory of a State." Other exclusions apply to all immigrants, whether they are lawfully or unlawfully present. ICCPR article 25 limits to citizens the right to participate in public affairs, vote, hold office, and access public services. Article 2(3) of the Covenant on Economic, Social and Cultural Rights (ICESCR) allows lower income countries "with due regard to human rights and their national economy" to "determine to what extent they would guarantee the economic rights recognized in the [Covenant] to 'non-nationals' (ICESCR 1966, art. 2[3]). Article 1(2) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) allows states to make distinctions between "citizens and non-citizens" (ICERD 1965, art. 1[2]). The treaty-monitoring body has since limited this exclusion to distinctions that do not have the effect of limiting the enjoyment by non-nationals of rights enshrined in other instruments (CERD 2004, para. 7).

Increasing Protection for Immigrants, Including Undocumented Immigrants

Treaties of general application do not specifically mention immigration status for *inclusion* in protection. However, over time human rights treaty bodies have progressively interpreted general protections to include undocumented migrants.[6] Most importantly, the general treaty provisions on "non-discrimination" and "equality before the law" apply to undocumented immigrants with regard to fundamental human rights, although those provisions were originally written without mentioning immigration status (Fitzpatrick 2003, 172–174). In its General Comment 20, the UN Committee on Economic, Social and Cultural Rights affirmed that "[t]he ground of nationality should not bar access to Covenant rights,[7] i.e. all children within a State, including those with an undocumented status, have a right to receive education and access to adequate food and affordable health care. The Covenant rights apply to everyone, including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation" (CESCR 2009, para. 30). In its General Recommendation, entitled "*Discrimination Against Non Citizens,*" the UN Committee on the Elimination of Racial

Discrimination (CERD) recommended that States Parties to the ICERD, "as appropriate to their specific circumstances," "[e]nsure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status, and that the implementation of legislation does not have a discriminatory effect on non-citizens" (CERD 2004, preamble, para. 7). With these statements, the default position of undocumented immigrants trends increasingly toward inclusion in international human rights protections.

It is beyond the scope of this chapter to describe in detail every internationally protected right that equally protects undocumented immigrants, but the following is an overview of these protections. As noted previously, *jus cogens* human rights norms include protection from genocide, torture, and slavery, and the right to life. Other basic protections that are *not* conditioned on nationality or immigration status are the right to a name, registration of birth, and nationality (UDHR 1948, art. 15[1]–15[2]); the right of access to primary and secondary education (UDHR 1948, art. 28[1]–28[2]; ICESCR 1966, art. 13; ICRMW 1990, art. 30); the right to preserve one's cultural identity (UDHR 1948, art. 23[1]; ICESCR 1966, art. 15; ICRMW 1990, art. 31); the right to just and favorable conditions of work (ICESCR 1966, art. 9); the right to health (art. 10), including the right to emergency medical care (UDHR 1948, art. 25[1]; ICRMW 1990, art. 28); Social Security (ICESCR 1966, art. 9); special protection for the family and for children (art. 10); adequate food, clothing, and housing (art. 11); the right to the enjoyment of the highest attainable standard of physical and mental health (art. 12); the right to freely leave and return to one's country of origin (ICRMW 1990, art. 9); the right to freedom of thought, expression, conscience, and religion (arts. 12–13); the right to privacy (art. 8); the right to property (art. 15); the right to liberty and freedom from arbitrary arrest or detention (UDHR 1948, art. 9; ICRMW 1990, art. 16); the right to be presumed innocent until proven guilty (UDHR 1948, art. 11[1]; ICRMW 1990, art. 19); and the right to a fair and public hearing with all the guarantees of due process (UDHR 1948 art. 11[1]; ICRMW 1990, arts. 16–20). Worker protections designated as "fundamental" by the International Labour Organization include prohibitions on forced labor and child labor; protection from employment discrimination; and the right to freedom of association (ILO 1998), including the right to form a trade union (ICCPR 1966; UNFAP 1948, art. 11; UNRTO 1949, art. 4; ICRMW 1990, art. 26).

Case Example: General Protections for Undocumented Migrants: Case of *Vélez Loor v. Panama,* Inter-American Court of Human Rights

Jesús Tranquilino Vélez Loor, a citizen of Ecuador, was traveling through Panama without the required visa, after having entered Panama illegally on

previous occasions. He testified that he was captured by border police in the town of Nueva Esperanza, held at gunpoint, and forced to walk handcuffed, his bare feet in shackles, to a military barracks in another town. There he was handcuffed to a metal post for eight hours until a helicopter moved him to the town of Meteti. He was held there in a small cell. He was sentenced to two years imprisonment for violating immigration laws, without being informed of the charges or being allowed to appear at a hearing in his own defense. Neither was he informed after he had been sentenced. He was taken by boat to a penitentiary for extremely dangerous persons located on La Palma Island. Mr. Vélez Loor and the other prisoners lived in fear of explosion, as there was an enormous petrol depot in the middle of the cellblock, which also had a suffocating effect on the prisoners at night. Mr. Vélez Loor began a hunger strike with other people who had been imprisoned for lack of documentation, protesting the detention conditions and demanding that they be deported immediately.

Following Mr. Vélez Loor's protest, he was savagely beaten, receiving a blow with a wooden stick that fractured his head and permanently injured his spine. No medical attention was given to Mr. Vélez Loor, and he could not afford to pay the hospital in La Palma. The rest of the prisoners tried to bind his head to take care of him, but he remained in extremely poor condition. The other detainees were deported, but Mr. Vélez Loor was transferred by land to La Joyita prison in Panama City and held for six months. He was not allowed to communicate either with his family or with the Ecuadorian Embassy. He asserted that it was only thanks to a telephone kept illegally in the prison that he was able to get in touch with the Consulate and ask them to inform his family that he had been arrested. Mr. Vélez Loor begged for medical attention and then initiated another hunger strike, sewing his own mouth partially shut. He was sent to a maximum-security block, where he endured more physical and psychological torture until he was deported to Ecuador.

Mr. Vélez Loor petitioned the Organization of American States Inter-American Commission on Human Rights, which held that Panama was guilty of a series of human rights violations. The Commission then lodged a petition against Panama in the Inter-American Court of Human Rights. The Panamanian government challenged many of the facts, but conceded to sufficient facts for the Court to rule that the government violated Mr. Vélez Loor's right to personal liberty, his right to a fair trial (judicial guarantees), his right to freedom from ex post facto laws, and his right to humane treatment (personal integrity), and failed to guarantee, without discrimination, his right to access to justice.

As reparation, the Court ordered Panama to pay Mr. Vélez-Loor $US 7,500 for specialized medical and psychological treatment and care, $20,000 as compensation for "profound suffering" (IACtHR 2010, para. 313), and $2,500 as compensation for the earnings he lost during the ten months he was imprisoned in violation of the American Convention (IACtHR 2010, para. 304).

Panama was ordered to publish a summary of the decision in national newspapers in Panama and Ecuador and on an official Web site for one year (IACtHR 2010, para. 265). The government also had to "effectively continue and carry out with the utmost diligence and within a reasonable period of time, the criminal investigation initiated in regard to the facts [about torture] alleged by Mr. Vélez Loor" (IACtHR 2010, Order para. 14). Also required were "the necessary measures to create establishments with sufficient capacity to hold persons whose detention is necessary and reasonable for migratory reasons, specifically adapted for such purposes, which offer appropriate physical conditions and a regimen suitable for migrants and which are staffed by properly qualified and trained civilians" (IACtHR 2010, Order para. 15). The Court directed Panama to "implement . . . an education and training program for personnel of the National Immigration and Naturalization Service, and for officials whose work requires them to deal with issues related to migrants, focusing on international standards related to the human rights of migrants, due process guarantees and the right to consular assistance" (IACtHR 2010, Order para. 16). Finally, the Court ordered Panama "to implement, within a reasonable time, training programs regarding the obligation to initiate investigations *ex officio* whenever there is an accusation or a well-grounded reason to believe that an act of torture has been committed under its jurisdiction, directed at personnel of the Public Prosecutor's Office, the Judiciary, the National Police as well as medical personnel with authority in this type of case and who, because of their functions, constitute the first line of care for torture victims" (IACtHR 2010, para. 280).

Human Rights Protections Specific to Undocumented Migrants

After successful refugee protection efforts after World War II resulted in the Refugee Convention and Protocol, development of new human rights treaties focused on immigrant protection continued, but support for those instruments lagged. For example, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families has garnered only 46 ratifications, compared with an average of 150 ratifications for the other eight "core" UN human rights treaties (UN n.d.a–d; Lyon 2010, 394–396). The International Labour Organization issued two conventions protecting migrant workers, in 1949 and again in 1975 (ILO 1949c, 1975a). The eight "fundamental" ILO treaties, on freedom of association, nondiscrimination in the workplace, forced labor, and child labor, have on average 163 ratifications.[8] Meanwhile, the ILO 1949 migrant worker convention has only 49 ratifications, and the 1975 convention, which explicitly protects undocumented immigrants, has only 23 (ILO n.d.a, n.d.b.). Despite the slow pace of ratification and enforcement, however, an increasingly detailed body of standards is in place to protect undocumented immigrants, including those in criminal proceedings and in deportation proceedings, immigrant detainees, refugees, asylum seekers and immigrants fleeing torture, stateless people,

smuggled and trafficked people, children, women, workers, detainees, and noncombatants and terrorism suspects.

Special Concerns of Immigrants in Criminal Proceedings

As noted previously, criminally accused undocumented immigrants enjoy the same international law protections as any other defendants, including the right to be presumed innocent until proved guilty (ICCPR 1966, art. 2), prompt hearing to learn the charges against them in a language they understand, access to counsel, criminal trial in a language they understand without undue delay, and the right not to testify against themselves (art. 3). All immigrants, including undocumented immigrants, have an important supplementary protection under the Vienna Convention on Consular Relations (VCCR 1963). If an immigrant is arrested, imprisoned, or detained, the authorities must, with the immigrant's consent, notify the relevant consular authorities without delay (art. 3). Criminally accused and detained immigrants and their consulates must be permitted continuous communication and access (art. 36b–c). The International Court of Justice examined this provision of the Vienna Convention in the context of inmates on death row in the United States who were not given full consular access, requesting stays of execution (ICJ 1998; ICJ 2001) and finding that this failure by U.S. authorities constituted grounds for reconsideration of death penalty convictions (ICJ 2004, para. 152).

Undocumented Immigrants in Deportation Proceedings

Because expulsion ("deportation") is treated as a civil rather than a criminal penalty (ICHRP 2010, 29), deportation proceedings do not carry the same procedural international law protections as do criminal prosecutions. In general, the power to expel undocumented immigrants is considered to be the province of sovereign nations, but there are international human rights limitations on that power. Most importantly, governments may not engage in collective expulsions, but must give individualized attention to deportation decisions.[9] The International Covenant on Civil and Political Rights requires a hearing to establish whether or not a migrant was undocumented or documented when the deportation proceedings were instituted (ICCPR 1966, art. 13; ICHRP 2010, 116). Article 13 of the ICCPR provides for several further procedural protections for *documented* immigrants who are subject to losing their status in deportation proceedings, but not for *undocumented* immigrants (ICCPR 1966, art. 13; HRC 1994, para. 9; ICHRP 2010, 116).

The UN Migrant Worker Convention gives migrant workers and their family members (whether they are documented or undocumented) an important set of rights in the deportation process. Article 22 spells out procedural

protections in deportation, including the right to be informed of deportation decisions in a language the migrant understands and to be informed of the reasons for the decision (except when national security prevents such disclosure) and provided an opportunity to appeal that decision, except in extraordinary circumstances (ICRMW 1990, art. 22[3]). In addition, the UN Convention on the Rights of the Child requires that a child subjected to deportation proceedings "be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law" (CRC 1989, art. 12[2]). The child's views should "be given due weight in accordance with the age and maturity of the child" (art. 12[1]).

The ICRMW further instructs that migrants who have a final order of deportation must be given a reasonable opportunity before or after departure to settle any claims for wages and other entitlements.[10] The Council of Europe Guidelines on Forced Return instruct that governments must respect the dignity and safety of migrants during the actual physical deportation to their country (COE 2005, guideline 17).

Immigrant Detainees

The use of detention as a tool in border and immigration control is increasing worldwide (Cornelisse 2010, 24). Detention is used for three main purposes: 1) to prevent undocumented immigrants from absconding into the country and avoiding deportation; 2) to hold undocumented immigrants who might threaten public safety or national security; and 3) incarceration in place of detention, as a criminal punishment for violations of immigration law (Lyon 2014). "Penalization [criminal punishment for immigration violations], detention and incarceration" of undocumented immigrants, including asylum seekers and children, are on the rise worldwide (Gowlland-Debbas 2007, 294). Intergovernmental institutions and civil society have turned increasing attention to this phenomenon, and international law on immigration detention is developing rapidly.

In a series of decisions in the late 1990s regarding Australian detainees, the United Nations Human Rights Committee (UNHRC) interpreted the ICCPR prohibition on arbitrary detention or deprivation of liberty (ICCPR 1966, art. 9) to apply to detained undocumented immigrants (HRC 1997; HRC 2002). The UNHRC held that countries may detain asylum seekers, but they must engage in an individualized analysis of the necessity of detention (HRC 1997, paras. 9.3–9.4). Moreover, the government must determine that the detention is "*necessary*" given "all the circumstances in the

case," meaning that the justification for detaining and the detention itself must be *proportional* (para. 9.2 [emphasis added]). According to the UNHRC, a government cannot detain an immigrant simply because of an illegal entry alone; it must consider other factors, such as risk of flight and lack of cooperation (para 9.4). In addition, States Parties must "demonstrat[e]" that "there were *not less invasive means [than detention] of achieving the same ends*" (HRC 2002, para. 8.2). Finally, according to the HRC, the ICCPR requires that the detention decision must be free of *"inappropriateness and injustice"* (HRC 2002, para. 8.2). In 2010 the UN General Assembly issued a resolution "[calling] upon all States to respect the human rights and the inherent dignity of migrants and to put an end to arbitrary arrest and detention and, where necessary, to review detention periods in order to avoid excessive detention of irregular migrants, and to adopt, where applicable, alternative measures to detention" (UNGA 2010, art. 4[a]). In addition to these general limitations on immigration detention, a growing body of primarily non-treaty sources urges a moratorium on detention of child immigrants (HRC 2010, 14, para. 53) and discourages detention of asylum seekers, particularly those who are traumatized, or unaccompanied elders (HCR 1999, guideline 7). Soft international law also addresses length of detention, treatment in detention, and periodic review of detention (Lyon 2014).

Unauthorized Workers[11]

About half of the immigrants in the world are working (ILO 2008). Crossing national boundaries for work is a complex undertaking that involves real legal and financial obstacles for higher wage (and usually documented) migrants such as business executives, athletes, and scholars. When *low-wage* (often undocumented) migrants are forced to work abroad to flee extreme poverty or violence in their home countries, the process is not only difficult, but also degrading and dangerous. Around the world, particular industries rely heavily on unauthorized labor, including agriculture, extractive industries, construction (Passel 2007, 17; Düvell and Jordan 2002, 173), domestic care (OECD 1999, 247), and sex work. Recognizing that undocumented immigrants are among the world's most vulnerable workers, both the ILO and the UN promulgated human rights treaties dedicated to migrant worker protection (ILO 1949a; ILO 1975a, pmbl.; ICRMW 1990), as well as numerous soft-law documents (ILO 1949c; ILO 1975b).

Table 6.1 lists workplace rights that these various international law sources establish, differentiating between unauthorized and authorized immigrant workers:

Table 6.1
Workplace Rights, All Migrant Workers (Including Undocumented Workers) versus Documented Migrant Workers

Equal Rights Guaranteed to *All* Workers, Including Unauthorized Workers:	Equal Rights Guaranteed to Migrant Workers *Only* If They Are Authorized to Work:
1. Access to cooperatives and self-managed enterprises	1. ICMW—equality of treatment for authorized workers
2. Access to vocational guidance and placement services, vocational training and retraining facilities and institutions	2. Guarantees of security of employment
3. Prohibition of obligatory or forced labor	3. Loss of work does not mean loss of immigration status
4. Prohibition and abolition of child labor	4. Provision of alternative employment, relief work and retraining
5. Special care for women workers	5. "Equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights, and of individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully within its territory"
6. Freedom of association	
7. Organize and join a union	
8. Collective negotiation	
9. Fair wages for work performed	
10. Judicial and administrative guarantees	
11. Working day of reasonable length with adequate health and safety conditions	6. Equality of rights arising from past employment regarding remuneration, social security, "and other benefits"
12. Rest	
13. Compensation	
14. "Equality of treatment with regard to working conditions"	

Used with permission from Aldana et al. (2013, 379–380).

Refugees, Asylum Seekers, and Migrants Fleeing Torture

The most established area of international migrant protection is non-refoulement (nonreturn). Currently, 147 countries are parties to either one or both of the two major international treaties focused on refugee protection: the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (CRSR 1951; PRSR 1967; UNHCR n.d.a.; UNHCR n.d.b.). Regional

documents protecting refugees are in force in Africa (CPRA 1969) and Europe,[12] and there is a regional declaration on refugee protection in the Americas (OAS 1984). By ratifying these treaties, countries commit to a policy of "non-refoulement," or nonreturn. Before deporting foreign nationals, governments must screen them to determine whether they meet the international refugee definition. A refugee is an international migrant who has a well-founded fear of persecution on one of five protected grounds—race, religion, nationality, membership in a particular social group, or political opinion—if he or she is deported to another country (CRSR 1951, art. 1[A][2]).[13] Over the years since the establishment of the refugee definition, the five grounds have been interpreted to encompass newly recognized forms of persecution, such as gender-based violence (Anker 1995, 776). Many countries revoke asylum if a refugee's well-founded fear has dissipated owing to a change in their circumstances or country conditions (Kapferer 2003, 3). Many countries also offer more than simply non-return to recognized refugees, conferring permanent status (Martin et al. 2007, 71).

Some international migrants do not face persecution tied to one of the five protected grounds, but can demonstrate that they would face torture if deported to another country. With 153 ratifications (UN n.d.b.), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) provides a separate basis of non-refoulement protection for undocumented immigrants in this situation. CAT Article 3 commits ratifying nations to offer non-refoulement to individuals who have "substantial grounds for believing that [they] would be in danger of being subjected to torture . . . inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity" (CAT 1984, art. 3). The Committee on the Elimination of Racial Discrimination interpreted the International Convention on the Elimination of All Forms of Racial Discrimination to mean that people in ratifying nations should not be returned to a country where they would be "at risk" of "cruel, inhuman or degrading treatment or punishment" (CERD 2004, para. 27). Signatories to the European Convention for the Protection of Human Rights and Fundamental Freedoms have the same obligation.[14]

Case Example: Non-Refoulement and Collective Expulsion: Case of *Hirsi Jamaa and Others v. Italy,* The European Court of Human Rights (2012)

[E]leven Somali nationals and thirteen Eritrean nationals were part of a group of about two hundred individuals who left Libya aboard three vessels with the aim of reaching the Italian coast. On 6 May 2009, when the vessels were 35 nautical miles south of Lampedusa (Agrigento), that is, within the Maltese Search and Rescue Region of responsibility, they were intercepted by

three ships from the Italian Revenue Police (Guardia di finanza) and the Coastguard. The occupants of the intercepted vessels were transferred onto Italian military ships and returned to Tripoli. The applicants alleged that during that voyage the Italian authorities did not inform them of their real destination and took no steps to identify them. All their personal effects, including documents confirming their identity, were confiscated by the military personnel.

On arrival in the Port of Tripoli, following a ten-hour voyage, the migrants were handed over to the Libyan authorities. According to the applicants' version of events, they objected to being handed over to the Libyan authorities but were forced to leave the Italian ships. At a press conference held on 7 May 2009 the Italian Minister of the Interior stated that the operation to intercept the vessels on the high seas and to push the migrants back to Libya was the consequence of the entry into force on 4 February 2009 of bilateral agreements concluded with Libya, and represented an important turning point in the fight against clandestine immigration. . . .

According to the information submitted to the Court by the applicants' representatives, two of the applicants, Mr Mohamed Abukar Mohamed and Mr Hasan Shariff Abbirahman (nos. 10 and 11 respectively on the list appended to this judgment), died in unknown circumstances after the events in question. After the application was lodged, the lawyers were able to maintain contact with the other applicants, who could be contacted by telephone and e-mail. Fourteen of the applicants (appearing on the list) were granted refugees status by the office of the UNHCR in Tripoli between June and October 2009. Following the revolution which broke out in Libya in February 2011 forcing a large number of people to flee the country, the quality of contact between the applicants and their representatives deteriorated. The lawyers are currently in contact with six of the applicants. . . .

No procedure to identify the intercepted migrants and to gather information as to their personal circumstances had been possible aboard the ships. In those circumstances, no formal request for asylum could have been made. Nevertheless, upon approaching the Libyan coast, the applicants and a substantial number of other migrants had asked the Italian military personnel not to disembark them at the Port of Tripoli, from where they had just fled, and to take them to Italy. The applicants affirmed that they had quite clearly expressed their wish not to be handed over to the Libyan authorities. They challenged the Government's contention that such a request could not be considered to be a request for international protection.

The applicants then argued that they had been returned to a country where there were sufficient reasons to believe that they would be subjected to treatment in breach of the Convention. Many international sources had reported the inhuman and degrading conditions in which irregular migrants, notably of Somali and Eritrean origin, were held in Libya and the precarious living

conditions experienced by clandestine migrants in that country. In that connection, the applicants referred to . . . the texts and documents produced by the third parties concerning the situation in Libya. In their view, Italy could not have been unaware of that increasingly worsening situation when it signed the bilateral agreements with Libya and carried out the push-back operations at issue. Furthermore, the applicants' fears and concerns had proved to be well-founded. They had all reported inhuman and degrading conditions of detention and, following their release, precarious living conditions associated with their status as illegal immigrants.

The applicants argued that the decision to push back to Libya clandestine migrants intercepted on the high seas was a genuine political choice on the part of Italy, aimed at giving the police the main responsibility for controlling illegal immigration, in disregard of the protection of the fundamental rights of the people concerned. . . .

In order to ascertain whether or not there was a risk of ill-treatment, the Court must examine the foreseeable consequences of the removal of an applicant to the receiving country in the light of the general situation there as well as his or her personal circumstances. The Court has already had occasion to note that the States which form the external borders of the European Union are currently experiencing considerable difficulties in coping with the increasing influx of migrants and asylum seekers. It does not underestimate the burden and pressure this situation places on the States concerned, which are all the greater in the present context of economic crisis. . . . It is particularly aware of the difficulties related to the phenomenon of migration by sea, involving for States additional complications in controlling the borders in southern Europe. However, having regard to the absolute character of the rights secured by Article 3, that cannot absolve a State of its obligations under that provision. . . .

[T]he Court considers that it was for the national authorities, faced with a situation in which human rights were being systematically violated, as described above, to find out about the treatment to which the applicants would be exposed after their return . . . Having regard to the circumstances of the case, the fact that the parties concerned had failed to expressly request asylum did not exempt Italy from fulfilling its obligations under Article 3. . . .

[T]he Court considers that in the present case substantial grounds have been shown for believing that there was a real risk that the applicants would be subjected to treatment in Libya contrary to Article 3. The fact that a large number of irregular immigrants in Libya found themselves in the same situation as the applicants does not make the risk concerned any less individual where it is sufficiently real and probable. . . .

Relying on these conclusions and the obligations on States under Article 3, the Court considers that by transferring the applicants to Libya, the Italian

> authorities, in full knowledge of the facts, exposed them to treatment proscribed by the Convention.[15] . . .
>
> [T]he Court can only find that the transfer of the applicants to Libya was carried out without any form of examination of each applicant's individual situation. It has not been disputed that the applicants were not subjected to any identification procedure by the Italian authorities, which restricted themselves to embarking all the intercepted migrants onto military ships and disembarking them on Libyan soil. Moreover, the Court notes that the personnel aboard the military ships were not trained to conduct individual interviews and were not assisted by interpreters or legal advisers. That is sufficient for the Court to rule out the existence of sufficient guarantees ensuring that the individual circumstances of each of those concerned were actually the subject of a detailed examination. Having regard to the above, the Court concludes that the removal of the applicants was of a collective nature, in breach of Article 4 of Protocol No. 4.[16] Accordingly, there has been a violation of that Article. . . .
>
> The Court considers that the applicants must have experienced certain distress for which the Court's findings of violations alone cannot constitute just satisfaction. Having regard to the nature of the violations found in the instant case, the Court considers it equitable to uphold the applicants' claim and awards each of them EUR 15,000 in respect of non-pecuniary damage, to be held by the representatives in trust for the applicants.[17]

Stateless People

The UNHCR estimates that around twelve million people worldwide are stateless (HCR 2011, 2). Two UN conventions focus on stateless people: the 1954 Convention Relating to the Status of Stateless Persons (CRSSP 1954) and the 1961 Convention on the Reduction of Statelessness (CRS 1961). The 1954 Convention established a definition of a stateless individual: "a person who is not considered as a national by any State under the operation of its law" (CRSSP 1954, art.1[1]). The 1961 Convention states, "a contracting party shall grant its nationality to a person born in its territory who would otherwise be stateless" (CRS 1961, art. 1[1]). The Convention also orders that parties to the treaty may not deprive their nationals of citizenship if doing so would render them stateless (art. 8, para. 1). Although both of these treaties are hampered by relatively low rates of ratification,[18] widely endorsed and ratified documents also establish the right to acquire or retain a nationality: the UDHR (UDHR 1948, art. 15), the ICCPR (ICCPR 1966, art. 24), the CRC (CRC 1989, art. 7), and the CEDAW (CEDAW 1979, art. 9). The CEDAW further requires that countries offer nationality without regard to gender, the gender of the individual's parents, or the spouse's nationality.[19]

Smuggled and Trafficked People

Although they share many characteristics, trafficked and smuggled people fall into different legal categories. The United Nations Convention against Transnational Organized Crime Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (CTOCPT 2001) entered into force in 2003, and defines trafficking in persons as

> the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. The consent of a victim of trafficking in persons to the intended exploitation . . . shall be irrelevant where any of the means set forth in [this paragraph] have been used. . . . The recruitment, transportation, transfer, harbouring or receipt of a child [under eighteen] for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in [this paragraph]. (CTOCPT 2001, art. 3).

The UNCTOC Protocol against the Smuggling of Migrants by Land, Sea and Air (CTOCPS 2001) defines migrant smuggling as: "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident" (CTOCPS 2001, art. 3[a]). The major difference is in the consent or lack of consent by the migrant; no force, coercion, abduction, fraud, deception, or abuse of power against the migrant is required for a finding that smuggling took place (Piotrowicz and Redpath-Cross 2012, 234). All the transnational rights discussed thus far in this chapter are important for smuggled and trafficked people. Of particular relevance when considering these migrants are safety and criminalization/victim services.

Safety

The Anti-Smuggling Protocol requires that States Parties take "all appropriate" measures to protect migrants' right to life and to be free of torture or other cruel, inhuman, and degrading treatment or punishment (CTOCPS 2001, art. 16). Governments must also take affirmative responsibility for search-and-rescue operations at sea, providing assistance no matter what the nationality or status of the persons in distress (SOLAS 1974, sect. V, Reg. 33,

para. 1), and coordinating rescue operations to "ensure that in every case a place of safety is provided within a reasonable time" (para. 1[1]). Also, the Anti-Trafficking Protocol requires States Parties to "endeavor to provide for the physical safety of victims of trafficking in persons while they are in its territory" (CTOCPT 2001, art.6[5]).

Criminalization/Victim Services

The protocols require that migrant smuggling and trafficking be criminalized (CTOCPT 2001, art. 5, CTOCPS 2001, art. 6). The Anti-Smuggling Protocol requires that States Parties not criminally prosecute smuggled migrants simply because they were smuggled.[20] The Anti-Trafficking Protocol urges that States Parties affirmatively provide services for victims, such as housing, counseling and medical care, education, employment services, and a way to seek compensation from their traffickers (CTOCPT 2001 art. 6[3]). Parties to the Anti-Trafficking Protocol also have a duty to consider temporarily or permanently withholding the deportation of trafficking victims after considering their situations from a humanitarian standpoint and permitting them to pursue all of their legal claims (art. 7).

Case Example: Trafficking: *Jane Doe v. Reddy,* U.S. Court for the Northern District of California, applying international standards (*Jane Doe v. Reddy* 2003).

Eleven plaintiffs, all girls and young women, alleged that Lakireddy Bali Reddy and members of his family and employees in his real estate business fraudulently induced them to come to the United States from India on false promises that they would be provided an education and employment opportunities. Once there, however, the defendants allegedly forced them to work long hours under arduous conditions, sexually abused them and physically beat them. "Defendants allegedly exploited plaintiffs' youth, fear, caste status, poverty, unfamiliarity with the American legal system, inability to speak English and immigration status, for defendants' personal pleasure and profit." Among other claims, plaintiffs alleged that defendants' actions violated the Thirteenth Amendment (the provision of the US Constitution prohibiting slavery) and international law relating to forced labour, debt bondage and human trafficking. . . .

The defendants argued that forced labour claims must amount to "actual slavery" in order to be cognizable. The Court disagreed, noting that many cases and international instruments made clear that "modern forms of slavery violate jus cogens norms of international law, no less than historical chattel slavery." Defendants also argued that "there are no allegations that the

> [plaintiffs] were held prisoners in brothels or subjected to a life of hard labor in sweatshops." The Court rejected this assertion as well: "It is clear that the complaint herein alleges forced labour, which is prohibited under the law of nations. . . . [T]he complaint meets [due process] requirements by its assertions explaining that plaintiffs were brought to the United States and forced to work involuntarily and how defendants reinforced their coercive conduct through threats, physical beatings, sexual battery, fraud and unlawful substandard working conditions. These allegations are sufficient to state claims for forced labour, debt bondage and trafficking. . . ."
>
> The parties eventually settled before trial for $8.9 million. In the related criminal case, Reddy pleaded guilty to conspiracy and transporting minors for illegal sexual activity and paid $2 million in criminal compensation to four victims. (ILO 2009, 84)

"Traditionally Neglected Groups" (Bhabha 2012, 205, 207)

Migrant rights scholarship highlights five vulnerable groups omitted from the developing international migration law regime: elders, women, children, people with disabilities,[21] and gender/sexual minorities (Türk 2013, 7; Tabak and Levitan 2013, 47). Children and youth make up about one-third of all migrants from the global south (World Bank 2007, 189), and about 49 percent of all migrants worldwide are women (DESA 2008). Of these groups, standards for women and children migrants are the most developed. In its 2008 General Recommendation on women migrant workers, the Committee on the Elimination of Discrimination against Women noted, "The position of female migrants is different from that of male migrants in terms of legal migration channels, the sectors into which they migrate, the forms of abuse they suffer and the consequences thereof" (CEDAW 2008, para. 5). The committee further recognized that "[u]ndocumented women migrant workers are particularly vulnerable to exploitation and abuse because of their irregular immigration status, which exacerbates their exclusion and the risk of exploitation" (para. 22). A series of recommendations for protecting women migrants against discrimination and violence followed (para. 22). In 2005 the UN Committee on the Rights of the Child issued General Comment No. 6, clarifying that the CRC equally protects undocumented children and defining procedural and other safeguards for ensuring the best interests of such children (CRC 2005, para. 12). The international migration treaties are silent on lesbian, gay, bisexual, transgender/transsexual, and intersexed (LGBTI) rights, but soft-law standards address sexual minority–based refugee status and detention of undocumented LGBTI immigrants (HCR 2008, 2009).

CONCLUSION

International law allows governments wide latitude to decide which foreign nationals to admit and which to expel from their territories. National migration regimes provide grossly insufficient opportunities for low-wage workers to migrate legally. Trade agreements are highly developed for allowing free passage of goods, but international law does not provide similar safe passage for human beings. However, a burgeoning body of international treaty standards and international jurisprudence does require that governments ensure most fundamental human rights to undocumented immigrants. The human rights principle that animates constitutional orders around the world applies to international protection as well: governments must justify their actions by showing that the enforcement measures they take against undocumented immigrants are proportional to the desired ends. A long-standing treaty regime mandates that governments identify and grant non-refoulement to refugees fleeing persecution in their countries of origin. Extensive soft-law standards continue to expand protections for particularly vulnerable undocumented groups, such as smuggled, trafficked, and detained people; women; children; the disabled; and elderly migrants.

NOTES

1. Southern Poverty Law Center 2013, 18–41; Barnes 2013; Ruhs 2003, 10–22; Human Rights Watch 2010, 20–27.

2. See, i.e., CMW (2010, 8) (recommending that the Ecuadoran government take steps to decriminalize illegal presence); Cannon and Flynn (2010, 9–10) (discussing criminal prosecution of asylum seekers in Egypt, Lebanon, and Morocco).

3. See TRAC (2011). Thirty-seven thousand new illegal reentry prosecutions were anticipated for the 2011 fiscal year, constituting 23 percent of all federal lead prosecution charges. Note that the United States also has state-level criminal laws that generate the bulk of criminal prosecutions in the United States. See also Kreytak (2010): "Federal judge questions immigration prosecutions: Sparks suggests it's too expensive to jail those without any significant criminal history." In the United States the prison sentence for reentry after deportation can be up to twenty years. See USWDO (2011).

4. See, i.e., ICERD 1965, art. 14; OPICCPR 1966; ICRMW 1990, art. 77; OPCRPD 2006; OPICESCR 2008. The Rights of the Child Convention individual communications procedure (OPCRC 2011) is not yet in force.

5. See, i.e., Alston and Goodman (2013, 1503–1512); Lyon (2004, 571–573) (describing immigrants' and workers' rights organizations' amicus curiae intervention with the Inter-American Court of Human Rights in its deliberations on the rights of unauthorized workers).

6. Note that of the many countries that ratify each treaty, a small number limit their ratification by spelling out aspects of the treaty to which they will not commit. Relatively few of the reservations to the core human rights treaties relate to migrants. See Chetail (2012, 70–71).

7. This interpretation is subject to the application of art. 2, 3 of the Covenant, which states: "Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals."

8. ILO (1948) (149 ratifications), (1949b) (159 ratifications), (1930) (173 ratifications), (1957) (169 ratifications), (1951) (166 ratifications), (1958) (168 ratifications), (1973) (151 ratifications), and (1999) (169 ratifications). *See* ILO n.d.a.

9. See, i.e., ECHR (1950, Protocol No. 4, art. 4); ACHR (1969, art. 22, para. 9); OAU (1982, art. 12, para. 5); and CERD (2004, para. 26). States Parties should "[e]nsure that non-citizens are not subject to collective expu[l]sion, in particular in situation[s] where there are insufficient guarantees that the personal circumstances of each of the persons concerned have been taken into account" (ICRMW 1990, art. 22).

10. ICRMW (1990, art. 22[9]). This concept is also termed "portable justice." See, i.e., Caron (2007, 550).

11. I use the term "unauthorized workers" to denote people working in violation of immigration laws.

12. See, i.e., Council (2003), laying down minimum standards for the reception of asylum seekers; (2004, 30).

13. See CRSR 1951, art. 1(A)(2).

14. *Soering v. The United Kingdom* (COE 1989), para. 91 (interpreting article 3 of the European Convention to prohibit expulsion to a territory where substantial grounds have been shown for believing that the person concerned faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment).

15. Here the Court is referring to Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms as Amended by Protocols No. 11 and No. 14, Rome, 4.XI.1950. ("No one shall be subjected to torture or to inhuman or degrading treatment or punishment.")

16. Referring to Article 4 of Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms (of the Council of Europe), securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto as Amended by Protocol No. 11, Strasbourg, 16.IX.1963. ("Collective expulsion of aliens is prohibited.")

17. In addition to "non-pecuniary damages," the Court also awarded costs and fees. See Council (2012, paras. 212–218).

18. As of July 2013, the 1961 Convention on the Reduction of Statelessness has 53 States Parties (UN n.d.c.). As of July 2013 the 1954 Convention Relating to the Status of Stateless Persons has 78 States Parties (UN n.d.d.).

19. See CEDAW (1979, art. 9). With regard to the nationality of the spouse, note that the CEDAW uses the term "husband": "[States parties] shall ensure in

particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband." See CEDAW 1979, art. 9(2).

20. See CTOCPT (2001, art. 5), ("Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol"); CTOCPS (2001, art. 6).

21. See Bhabha (2012, 206–207) and Legomsky (2009, 50–51) (noting that refugees and migrant workers have received the most attention under international migration law, and that immigrant children are a more recent focus).

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7

With the Stroke of a Bureaucrat's Pen: U.S. State "Reforms" to Manage Its Undocumented Immigrant Population, 1920–2013

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INTRODUCTION

Throughout its history the United States, like all nation-states, has taken actions to manage and control its immigrant population. Historically, U.S. immigration policies have oscillated between "recruitment and restriction, acceptance and exclusion" (Massey, Durand, and Malone 2002, 8). Understanding the causes and consequences of a state's actions to manage its immigrants requires a recognition that the state has interests and that management of immigrants serves some of them. We take as our starting point Max Weber's definition of the state: "a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory" (1946, 78). Weber maintained that "if the state is to exist, the dominated must obey the authority claimed by the powers that be" (78). If a state has authority over a particular territory, then the political boundaries that distinguish its territory are also of central importance to that state. The capacity to control its borders is fundamental to the sovereignty of the state, and actions to maintain such control are some of the most important for any country.

We take the perspective that immigration reforms by the United States are often a means to resolve particular political crises of the state that result from

the presence of undocumented immigrants. However, as the state employs one strategy to address a potential political crisis generated by its own contradictory interests, it creates other problems for itself, namely, the threat to state legitimacy and potential political crisis that can result by using undocumented immigrant labor. Historically the United States has both promoted the use of undocumented immigrant labor and at the same time claimed to condemn such use. It must do the latter, because not to would be a threat to state legitimacy, as the citizenry has come to understand state legitimacy as depending in part on its ability to control its borders. This places the state in another contradictory position: it must allow the use of undocumented immigrant labor while at the same time appearing to condemn it, which it does in part through punishing undocumented laborers themselves and through militarizing the border. These are arguably performances of state power that serve to maintain the legitimacy of the state, which it obtains through contradictory interests: the continued healthy functioning of a capitalist economy that demands cheap, flexible labor, the rights and resources provided to a domestic working class, and the control of its borders and the flow of people across them.

The objective of this chapter is to analyze U.S. state actions to manage its undocumented immigrant population in historical perspective as a means to better understand how the state acts and interacts with its immigrant population. A cursory glance at state actions to manage immigration flows highlights major immigration reforms such as the 1924 Quota Act, the 1965 Immigration and Nationality Act, the 1986 Immigration Reform and Control Act, and the 1996 Illegal Immigration Reform and Immigrant Responsibility Act, all of which were passed by Congress, leaving an impression that the state primarily acts through Congress. However, a closer look reveals how the state steps in via government bureaucracies to manage political crises generated by the contradictory presence of undocumented immigrants when Congress fails to do so. These "bureaucratic reforms" have impacted the current status of state-migrant relations in the United States in important ways. We provide extensive historical evidence demonstrating how the state has used both legislative and bureaucratic reforms to deal with the "immigration problem" as it has changed over the years, by investigating the period 1920–2013.

IMMIGRATION REFORMS: 1920s–1980s

1921 and 1924 Quota Acts and the Great Depression Repatriations: 1920–1935

In the anti-immigrant climate that followed World War I, Congress had little trouble passing immigrant quota acts in 1921 and 1924, severely restricting immigration from Europe. The 1924 National Origins Act barred most

European immigration, instituting quotas based on the European immigrant population counted in the 1890 census. The National Origins Act emerged as a mechanism to maintain "the current racial composition of the population," and Congress decided that for such purposes, the 1910 quotas were "too generous" to southern and eastern Europeans (Anderson 1988, 146). Concern over maintaining the "current racial composition" emerged as a result of World War I, as the U.S. state feared that European immigrants, having suffered the negative effects of the war, would flood into its borders (Cardoso 1980; Hoffman 1974). Notably, the 1924 bill was sponsored by Senator Albert Johnson, then-president of the Eugenics Research Association.

However, immigrants from the Western Hemisphere were intentionally left out of the provisions of the new legislation, in part as a gesture of goodwill and economic self-interest (Cardoso 1980), as well as due to the recognition that imposing a quota on Mexican immigrants would be impossible to enforce, given that the lengthy land border could not be adequately policed (Zolberg 2006). As a result of the omission of Mexicans and other Latin American immigrants from the 1921 and 1924 quota acts, Mexican immigration increased dramatically during the 1920s, filling the void in labor demand of the booming economy that was created by the Immigration Acts of 1921 and 1924. But the omission of Mexican immigrants from the Quota Act of 1924 did not come without its critics. A coalition of restrictionists, including small farmers and labor unions, clamored for Washington to "plug the hole in the law" and impose quotas on Mexican immigrants (Hoffman 1974, 26). The public debate, inside and outside of Congress, grew more heated in the second half of the decade, but President Herbert Hoover was hesitant to support restrictive legislation, for fear of hurting relations with the government of Mexico (Cardoso 1980), and wanted to maintain a positive climate for expansion of U.S. trade and investments in that country (Cornelius 1978). The U.S. State Department opposed the Mexican quota as well, fearing it would endanger diplomatic relations with Mexico (Zolberg 2006).

In 1928 Hoover compromised by requiring the enforcement of the provisions of the Immigration Act of 1917, which effectively denied entry to most Mexicans by barring illiterates and demanding costly head and visa fees (Hoffman 1974). In 1929 Congress passed a law making it a felony to enter the United States without a proper visa (Cornelius 1978). These policy changes brought legal Mexican immigration down from a peak of 66,766 in 1927, to 38,980 in 1929 (Cardoso 1980), to 11,801 in 1930 (Zolberg 2006). Once the Great Depression hit in 1929, further restrictionist pressure in Congress became unnecessary, as the federal government launched a campaign against Mexican immigrants, forcing the repatriation of more than 400,000 Mexican Americans and Mexican nationals between 1929 and 1935 (Hoffman 1974).

There is a consencus in the literature that the economic crisis served as the impetus for mass repatriation. But scholars do differ in their emphasis on the critical factors that led to the enactment of the particular policy measures. Hoffman (1974, 39) stresses that policies determining deportation came from the national level, as President Hoover, believing that immigrants were holding down jobs that could have been held by native-born Americans, "endorsed a strenuous effort to curtail both legal and illegal entries and to expel undesirable aliens." Balderrama and Rodriguez (1995) argue that the American public sought a convenient scapegoat for their economic woes and found one in Mexican immigrants, sparking a "frenzy of anti-Mexican activity," which put pressure on employers to lay off Mexican workers and on local, state, and federal governments to deport Mexicans en masse. Cornelius (1978) explains that with the onset of the Great Depression, it was no longer in the federal government's interests to attract a large supply of Mexican workers, as it ceased being profitable or necessary. He also notes, however, that the federal government was only actively involved in removing about 82,000 of the 400,000 Mexican deportees; the rest were dealt with by local officials and police, who "in effect, ran their own repatriation programs" (1978, 16).

Roundups of Mexican immigrants by immigration service officers, in cooperation with local police, were concentrated in Texas, New Mexico, Arizona, and California, where the majority of Mexican immigrants resided. During the Great Depression the vast majority of more than 400,000 Mexican repatriations occurred between 1929 and 1935, with a peak of 130,000 in 1931. By 1937 this number had dropped to 8,037 (Hoffman 1974). This repatriation also reduced the size of the Mexican population in the United States by 41 percent, from 639,000 in 1930 to 377,400 in 1940. The mass repatriation also had the effect of reducing the out-migration rate from Mexico to 0.1 per 1,000, a dramatic decrease from the previous decade of 2.4 per 1,000 (Massey, Durand, and Malone 2002). However, soon thereafter, with the onset of World War II, demand for Mexican laborers would resume, and Mexican immigration would increase once again.

The Bracero Program and Operation Wetback: 1942–1954

After World War II began, the United States experienced dramatic labor shortages, particularly in agriculture. The federal government, along with growers, became concerned that the labor shortages could lead to shortages of harvesters, and therefore of food, as well as a rise in agricultural wages and inflation. Thus, in 1942 the United States instituted a contract-labor program, referred to as the Bracero Program, under an agreement with Mexico to facilitate the recruitment of Mexican laborers to work on U.S. farms (Galarza 1964).

The demand was easily met by the many Mexicans who sought economic survival through migration to the United States, as a result of the industrialization of the agrarian sector in Mexico, which put many *campesinos* out of work; food shortages; and a dramatic increase in the population of Mexico (Lytle-Hernandez 2006). In fact, the demand for these agricultural labor contracts far exceeded the supply, and many were turned away because they did not fulfill the stiff requirements. Thousands of those deemed ineligible decided to cross the border illegally anyway in search of work (Lytle-Hernandez 2006). This, in combination with the fact that many growers decided to use undocumented migrant workers instead of Braceros because "procedures for contracting them were too complicated and expensive" (Garcia 1980, 158), resulted in a dramatic increase in illegal Mexican immigration alongside a rise in legal Mexican migration during the years of the Bracero Program that preceded Operation Wetback in 1954. The growers' increasing use of illegal immigrant laborers rather than Braceros leads Ellerman (2009) to explain the deportation drive in 1954 as primarily economic, reasoning that the employment of undocumented workers threatened to undercut the dependability of Bracero labor.

In the early 1950s, while the documented and undocumented Mexican immigrant population was increasing, the United States went into an economic recession after the Korean War, and unemployment rates began to rise. This economic slump generated pressure for a new crackdown on Mexican immigrants, giving credence to the economic arguments made by anti-wetback groups in support of penalty legislation (Cornelius 1978; Garcia 1980). As Garcia explains, "while the rise in unemployment and the economic downswing were caused by a number of factors, many people attributed much of the fault to the presence of large numbers of undocumented workers" (1980, 158–159). Though little could be done about the Braceros, they reasoned, something could be done about the "wetbacks."

Most of the literature that chronicles Operation Wetback emphasizes the role of the public outcry against illegal Mexican immigrants, which gained strength in the early 1950s. Craig (1971, 126) notes that the "wetback phenomenon" became an embarrassing cause célèbre in the early 1950s, with journalists and congressmen "bemoan[ing] the many ills associated with wetbackism." He cites an intensifying demand from the public for the government to address the "wetback" problem. In a similar vein, Garcia (1980, 156) documents how "an aroused press and an angry public continued to voice concern over the 'wetback' problem and its impact on the country." At the same time, county officials asked the governor of California to compensate them for the major social and economic costs they bore due to the illegal influx; he in turn appealed to President Dwight Eisenhower for federal intervention (Zolberg 2006).

In August 1953, under increasing pressure from the public and upon recommendation by his closest advisors to address the "wetback" problem, President Eisenhower sent Attorney General Herbert Brownell Jr. on a tour of inspection of the borderlands, where he reviewed the situation firsthand by observing the Border Patrol and assessing public opinion (Galarza 1964). Upon his return Brownell "denounced the Wetback traffic as a problem of law enforcement of the first magnitude" (Galarza 1964, 70).

Though Brownell had considered a mass deportation drive for some time, it was a tricky political matter. In a situation similar to that preceding the Great Depression, the federal government was caught between restrictionist and antirestrictionist camps; while public opinion, by and large, wanted the government to crack down on illegal immigration, growers, who had become dependent on illegal immigrant laborers, resisted any moves to repatriate illegal immigrants en masse. General Joseph Swing, having been appointed commissioner of immigration in February 1953, took great pains to cultivate grower cooperation with a deportation drive, promising them assistance in securing Braceros to replace the "wetbacks." Obtaining their cooperation paved the way for a widespread repatriation campaign (Craig 1971).

In May 1954 Brownell unveiled Operation Wetback, announcing that the U.S. Border Patrol would implement an intensive and innovative law enforcement campaign designed to confront the rapidly increasing number of illegal border crossings by Mexican nationals (Lytle-Hernandez 2006). With a carefully planned media blitz, the repatriation drive began on June 17 (Garcia 1980). More than eight hundred border patrolmen, along with highway patrol, employees of the Department of Employment, city police, county sheriffs, and Mexican authorities, mobilized along the border of Texas, New Mexico, Arizona, and California and performed a series of raids, roadblocks, and mass deportations, arresting up to two thousand undocumented Mexican immigrants per day (Craig 1971). By the end of the year, Brownell announced that the summer campaign had been successful (Lytle-Hernandez 2006).

There are conflicting figures for the number of Mexican nationals that were repatriated in the course of Operation Wetback. While the federal government boasted that by the end of 1954, 1,089,583 had been deported, closer investigation shows that this figure refers to fiscal year 1954, which ends on June 30, meaning that the majority of these deportations occurred before Operation Wetback began, since the campaign started in mid-June. Furthermore, fiscal year 1955, which includes the largest portion of the summer 1954 campaign, registered only 254,096 deportations. Given this, Lytle-Hernandez (2006, 453) concludes that "law enforcement accomplishments of the summer of 1954 [were] less than they were portrayed to be." Similarly, Garcia (1980, 200) contends that the total number of aliens deported, as well

as the number of those who left voluntarily, was "exaggerated" by Swing, Brownell, and others involved in the campaign.

What explains this discrepancy? In a dramatic departure from the conventional understandings and interpretations of Operation Wetback and the events that led up to it, Lytle-Hernandez's (2006) account of the campaign demonstrates that unofficially, Operation Wetback had begun years before, which explains why the vast majority of the more than one million undocumented Mexican nationals who were deported in fiscal year 1954 were deported before the official campaign had begun in June. She finds that since the inception of the Bracero Program, the U.S. government, in close cooperation with and with encouragement from the Mexican government, had begun deporting thousands of undocumented Mexican immigrants both to the border and interior of Mexico. This campaign grew steadily and reached its peak in calendar year 1953, when the Border Patrol successfully deported 827,440 illegal Mexican immigrants. Given the new evidence Lytle-Hernandez acquired in her study, she concludes that "instead of being a major law enforcement campaign, the summer of 1954 can better be understood as a massive publicity campaign for what had happened the year before and a public claiming of migration control by the United States government despite the critical contributions and participation of the Mexican government" (443).

1965 IMMIGRATION AND NATIONALITY ACT

In 1952, over objections and a veto by President Harry Truman, Congress passed the Immigration and Nationality Act (INA), imposing an annual quota of immigrants for each country based on the proportion of people from that country present in the United States in 1920, perpetuating the national origins system, which President Truman found discriminatory and unnecessary (Calavita 1994). However, the quota only applied to Eastern Hemisphere countries (Europe, Asia, and Africa), establishing a ceiling of 150,000 immigrants per year from this hemisphere while excluding the Western Hemisphere from any such limit.

In 1965 Congress substantially amended the INA. The amendment eliminated the national origins quota system, replacing it with a new system of quotas that applied to all countries, eventually capping the annual number of immigrants per country at 20,000 and establishing preferences for family and occupationally based immigration. In the original amendment, passed in 1965, ceilings only applied to Eastern Hemisphere countries—170,000 per year, with country quotas of 20,000. Only in 1968, when a provision to the 1965 amendment was added, did the ceilings also apply to the Western Hemisphere, allowing an annual entrance of 120,000 immigrants from the

Western Hemisphere, but still without any annual country quotas specified. It wasn't until 1978 that another provision was added to apply the 20,000 annual quota to all countries.

As part of a "legislative triad," the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Immigration Act of 1965 have come to be understood as "the apotheosis of postwar liberalism, cultural pluralism, and democratic political mobilization" (Ngai 2004, 228). However, the INA contains both inclusionary and exclusionary elements and has been cited as a primary cause of a dramatic increase in undocumented immigration since its passage. This is due in large part to the equally distributed country quota of 20,000 immigrants per year, without consideration of geography or differences in immigration flows to the United States by country and the way that this has particularly affected the flows of Mexican immigrants. As Mae Ngai contends, "unauthorized migration increased radically in the late 1960s and mid-1970s as a direct result of the imposition of quotas on Western Hemisphere countries, especially Mexico" (2004, 264), and "the imposition of a 20,000 annual quota on Mexico recast Mexican migration as 'illegal'" (261). She points out that in the early 1960s, prior to the INA, annual legal Mexican migration comprised more than 200,000 Braceros and 35,000 regular admissions for permanent residency. The sudden imposition of an annual quota on Mexico could not halt the momentum generated by previous congressional and "bureaucratic" reforms that encouraged Mexican migration; many immigrants who previously held an authorized status would now be deemed "illegal."

1986 IMMIGRATION REFORM AND CONTROL ACT

On the one hand, the 1986 passage of the Immigration Reform and Control Act (IRCA) marked a new era of U.S. immigration enforcement. On the other hand, it maintained the same contradictions embedded in "Operation Wetback," which led Calavita to argue that the IRCA can best be understood as "an attempt to respond both to the long-standing economic realities of immigration and to the new restrictionism" (1994, 65). Similarly, Massey, Durand, and Malone concluded that the IRCA contained "both deeply restrictive and wildly expansive provisions" (2002, 49). The overarching objective of the IRCA was to reduce the flow and stock of undocumented immigrants, particularly Mexican immigrants, through several means. First, its legalization provision allowed undocumented immigrants residing in the United States since before January 1, 1982, to apply for legal residence. This was particularly significant, because the IRCA also contained a family reunification provision that allowed the legalized migrants to sponsor family members to join them in the United States. Second, it prohibited the employment

of illegal immigrants and imposed sanctions against employers who knowingly hired such workers. Third, it increased the size and budget of the Border Patrol to prevent entry of undocumented migrants. Fourth, it included the Special Agricultural Workers program, a special legalization program for undocumented farmworkers.

The most significant result of this legislation was the legalization of more than 2.7 million formerly undocumented immigrants. In addition, the rate of legal immigration greatly increased, to 11 per 1,000 by 1991 (exceeding the high rates during the 1920s), and the number of Border Patrol apprehensions declined in the years immediately after the IRCA's passage (Massey, Durand, and Malone 2002). The family reunification provision contributed to this dramatic increase in legal immigration, as family members joined legalized relatives in the United States. The family reunification provision in IRCA is also credited with the increase in permanent settlement following its passage. Bean, Edmonston, and Passel's (1990) study shows that the United States experienced a clear reduction in the flow of undocumented immigrants across the U.S.-Mexico border in the post-IRCA period, and that between 30 and 45 percent of the reduction can be attributed to IRCA.

Conversely, the Pew Hispanic Center, a nonpartisan research organization, estimates that the annual increase in the number of unauthorized immigrants more than doubled in the early 1990s. According to its calculations, the number of unauthorized immigrants grew by 180,000 a year in the 1980s, then rose by 400,000 per year between 1990 and 1994, and by 575,000 per year between 1995 and 1999 (*Christian Science Monitor* 2006). The perception of an increase in illegal immigration was reflected in public opinion, as Ellermann (2009, 68) cites: "there is general consensus that, throughout the 1990s, the population of illegal immigrants in the United States was expanding quite drastically."

IMMIGRATION REFORMS IN THE 1990s

The United States experienced a recession in the early 1990s following a stock market collapse in 1987. Zolberg (2006) contends that unemployment and economic pessimism among members of the general public were contributing factors to the dramatic changes in public attitudes toward immigrants during the same period. He cites polls taken in 1992 that indicate that sentiment against a continuation of current levels of immigration had risen to historic highs. Echoing Ellermann, Zolberg (2006, 387) attributes this negative turn in public opinion regarding immigrants to "perceptions of their growing presence in the country at large, which aroused fears of an irreversible transformation of American identity."

Soon these sentiments turned into a widespread anti-immigration backlash, with public debate dominated by vociferous claims that the state had lost control over its borders, which was extensively covered by the media. Legislators were exposed to strong pressures to enact restrictionist immigration reform (Ellermann 2009). The nationwide anti-immigrant sentiment intensified in 1994 after California passed Proposition 187, an initiative that sought to deny public, social, educational, and health services to undocumented immigrants in the state, by an overwhelming 59 percent majority (Ellermann 2009).

Immigration Reform through Border Control Operations

The mid-1990s witnessed another development, in which an enforcement bureaucracy undertook the initiative to implement a policy for immigration control ahead of any legislative considerations. Without consulting even the INS offices in Washington, D.C., on a night in September 1993 the chief of the Border Patrol office in El Paso created a human barrier of Border Patrol officers to halt unauthorized border crossings in his sector. He called his initiative "Operation Blockade," and it consisted of some four hundred Border Patrol agents lined up within eyesight of each other on the banks of the Rio Grande and in adjacent areas that had heavy unauthorized crossings. The human wall of hundreds of highly visible Border Patrol agents had the effect of quickly halting the unauthorized migrant flow within twenty miles of the El Paso area (Spener 2009). The operation was later diplomatically renamed "Operation Hold the Line," to lessen tension with Mexico. Months later the "reform" strategy of intensified border enforcement in selected areas became the model for the "Prevention through Deterrence" strategy used by the Border Patrol in other areas of the Southwest border.

The new enforcement policy of "Prevention through Deterrence" had the goal of placing Border Patrol concentrations at or near urban areas of heavy unauthorized migration in order to redirect the flow to unfamiliar and hazardous terrain that would cause migrants to turn back, or where Border Patrol agents felt they could better pursue illegal entrants. Congress soon endorsed the new enforcement plan, adding to the Border Patrol budget for more agents and the construction of physical barriers at the border.

Several new border operations were subsequently implemented in the "Prevention through Deterrence" strategy, including construction of physical barriers to halt and redirect unauthorized migration flows to arid or desert terrain. Operation Gatekeeper was implemented in the San Ysidro/San Diego sector in 1994; Operation Safeguard in the Nogales, Arizona, area in 1995; and Operation Lower Rio Grande in South Texas in 1997 (Dunn 2009).

More than symbolizing a strong U.S. determination to deal with unauthorized immigration at the border region, the "Prevention through Deterrence" measures also demonstrated the capacity of the enforcement agency of the Border Patrol to develop a new strategy and take the lead in reforming approaches to control the border. The fact that the initial measure of Operation Hold the Line was produced in the local Border Patrol field office of El Paso no doubt brought recognition to the value of on-the-ground planning for border control (Dunn 2009).

1996 Illegal Immigration Reform and Immigrant Responsibility Act

The next major legislative immigration reform after the enactment of IRCA in 1986 was the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in 1996. A product of growing national anti-immigrant sentiments, IIRIRA brought major changes in immigration control, while it continued congressional support for strengthening border enforcement. In addition to mandating the increase of border agents by one thousand annually, to reach ten thousand agents by 2001, the law provided $12 million to continue the construction of physical barriers ("the fence") at the U.S.-Mexico border. These resources enabled the continuation of past policies, but the new legislation also made major changes in immigration law. It increased the number of crimes for which immigrants can be deported, from only major crimes such as murder, possession or selling of illegal drugs, and weapons trafficking, to twenty-eight separate offenses, including theft (in some cases, shoplifting is a qualifying offense), drug possession, domestic violence, and unlawful carrying of a weapon. In addition, under IIRIRA these offenses are retroactive without limit. This means that any immigrant who was found to have been convicted of any one of these offenses at any time, even prior to the enactment of the law in 1996, was considered to be deportable under the new legislation (Rodriguez and Hagan 2004).

In addition, IIRIRA reduced the opportunities for immigrants to appeal their deportation orders and reduced the power of immigration judges to exercise discretion in deportation proceedings. The new law also made detention mandatory for most cases of deportation and hardened the criterion for cancellation of deportation from the previous condition of "extreme hardship" to "exceptional and extremely unusual hardship." To further increase enforcement, the new law also included a new measure under Section 287(g) of the law to promote the training and certification of state and local police forces in immigration enforcement (Rodriguez and Hagan 2004).

In sum, IIRIRA substantially restructured immigration enforcement by dramatically increasing the physical and legal resources for combating unauthorized

entry at the U.S.-Mexico border and by expanding legal measures, to dramatically increase the removal of immigrants to annual levels not witnessed in earlier periods of the country's history. As such, IIRIRA represented a new era of reform, one in which the thrust of government efforts in the sphere of immigration was directed more at restricting unauthorized immigration and at removing deportable migrants. This new legislative posture of the U.S. government contrasted with the earlier reform legislation of the Immigration Amendment Act of 1965 and IRCA of 1986, which gave preference to uniting families and legalizing immigrants, respectively.

Massive Deportations

As figure 7.1 demonstrates, IIRIRA had immediate effects, sharply raising the number of deportations (termed "removals" in the new law). In contrast to the Border Patrol policy of "voluntary departure" to Mexico, used for thousands of undocumented migrants located in the southwestern border region annually, deportations are official orders to leave the country and not return for a specified number of years or not ever return, depending on the reason for deportation. Furthermore, deported migrants can face prison time if they are caught again after having reentered the country illegally.

Formal deportations grew by 462 percent from when IIRIRA was enacted in 1996 to fiscal year 2011 (USDHS 2012a, table 39). Government enforcement agencies portrayed the massive numbers of annual deportations after the enactment of IIRIRA as a reform outcome, a way to promote homeland security and public safety by removing dangerous immigrants from the country. In spite of claims by U.S. Immigration and Customs Enforcement (ICE), a bureau of DHS, that its prime targets for deportation were dangerous, noncitizen criminals (USICE 2010), the overwhelming proportion of deportations were migrants who had not been convicted of a crime. This finally changed in fiscal year 2010, when convicted criminals accounted for 44 percent of all deportations (USDHS 2012a, table 41). The proportion of convicted criminals among total deportations increased to 48 percent for fiscal year 2011 (USDHS 2012a, table 41).

Massey, Durand, and Malone (2002) have argued that the increase in the unauthorized migrant population in the United States, which accounts for a large number of annual deportations, from less than five million in the mid-1990s to more than ten million in the first decade of the twenty-first century, has been a result of the intensified border enforcement. Once in the United States, unauthorized migrants fear returning to visit their home countries, because they know how difficult it will be to return to the United States, so the unauthorized migrant population expanded after the government increased

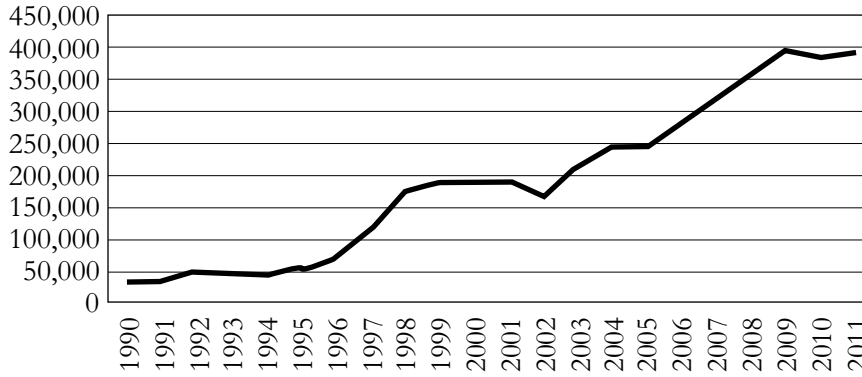

Figure 7.1
Migrants Deported by U.S. Government, 1990–2011
Source: USDHS 2012a, table 39

border enforcement. Yet Massey, Durand, and Malone (2002) show that the efficiency of border enforcement has declined over the years; that is, the number of arrests per border agent and per time spent in patrolling the border dropped as Congress kept spending more money on border enforcement. It has only been since the steep U.S. economic recession that began in late 2007 caused unemployment to rise sharply that the level of unauthorized entry activity and apprehensions of illegal entrants at the U.S. southwestern border region dropped dramatically (USDHS 2012a, table 39).

287(g): Promotion of State and Local Immigration Enforcement

Section 287(g) of IIRIRA introduced a major change in immigration reform. The measure, commonly referred to as "287(g)," promoted the involvement of state and local police forces in immigration enforcement through a training and certification program for state and local police officers. ICE took over the administration of Section 287(g) after the bureau was brought into existence with the creation of DHS in March 2003, which took over the functions of the former Immigration and Naturalization Service.

In 2010 ICE announced that it had "fundamentally reformed the 287(g) program" to strengthen public safety and standardized immigration enforcement across the country (USICE 2012a). The reforms included prioritizing the apprehension and removal of "criminal aliens," which showed results in the 2010 and 2011 deportation statistics, in which convicted migrants made up a larger proportion of total annual deportations, as previously mentioned. According to the ICE announcement, thirteen hundred officers had been trained through the 287(g) program, representing fifty-seven state and local

police forces in twenty-one states. The ICE budget to operate the 287(g) program shot up dramatically, $5 million in 2006 to $68 million in 2010 and for the following two years (USICE 2012a).

A survey of three hundred migrants deported from the United States, conducted in 2002 in El Salvador, found that the migrants were more likely to report being abused by arresting officers when the arresting officers were nonfederal police (Philips, Hagan, and Rodriguez 2006). That is to say, deported migrants reported experiencing more physical and verbal mistreatment at the hands of state and local police than at the hands of federal immigration agents. It is possible that federal agents are better trained, and certainly more experienced, in arresting immigrants. Nonetheless, according to the findings of the survey, increasing the number of state and local police in immigration enforcement may increase the amount of abuse experienced by immigrants when they are arrested.

A 287(g) training manual placed online through a Freedom of Information Act (FOIA) request indicates that the ICE training of state and local officers addresses several technical and organizational requirements in a one-hour lecture concerning the inspection of persons to determine their "alienage" and "removability" (USDHS 2007). Since ICE censored the section concerning questions used to identify "alienage" in the FOIA release, it is not possible to determine the training given to guard against mistreatment of persons being inspected by state and local police. A 2011 evaluation conducted by the DHS Inspector General concerning the 287(g) training by ICE indicates several areas in which the training program needs improvement, including training for 287(g) inspectors (USDHS 2011).

IMMIGRATION REFORMS IN THE 2000s

The Fallout of 9/11: New Laws, New Bureaucracies

The beginning of the twenty-first century brought the implementation of new enforcement measures after the terrorist attacks in the United States on September 11, 2001, a date commonly referred to as 9/11. From the perspective of the U.S. government, the introduction of new measures after the terrorist attacks was a reform of earlier policies that were considered to be no longer sufficient to protect the nation against terrorist attacks. With the new priority given to national security, the government created a new stringent security law in October 2001, the USA PATRIOT ACT, and reorganized immigration enforcement in March 2003 into bureaus created within the newly formed Department of Homeland Security.

Congress passed the PATRIOT ACT less than two months after the terrorist attacks to prevent terrorism, especially through enhanced powers of

surveillance, detention, and deportation of suspected foreign-born terrorists (Michaels 2005). The act expanded the power of surveillance by eliminating certain previous restrictions and by allowing intelligence gathering from both citizens and noncitizens, as well as allowing broad searches of computer network information. In addition, the act expanded the power of the U.S. Attorney General to extend the length of detention of foreign-born persons suspected of supporting terrorist activity, in accordance with periodic judicial review. One section of the PATRIOT ACT also gave legal immunity to sources assisting government agencies in wiretapping activity permitted by a court order, or conducted during an emergency situation, concerning illegal or suspicious acts specified by the law.

As mentioned previously, immigration enforcement was reorganized into bureaus of the Department of Homeland Security during its creation in March 2003, directly as a consequence of the 9/11 terrorist attacks. The organizational reform placed the Border Patrol in the bureau of Customs and Border Protection (CBP), citizenship and immigration services in the bureau of Citizenship and Immigration Services (CIS), and most of interior immigration and customs enforcement in the bureau of Immigration and Customs Enforcement (ICE). ICE became a new national police force, undertaking the principal enforcement activities of DHS, including the apprehension and deportation of all "deportable aliens." Just a few months after its creation, ICE produced the document *Endgame,* outlining a strategic plan to deport all "removable aliens" by the year 2012 (USICE 2003). Although the agency did not reach its 2012 goal, the strategic plan indicated its spirited vision of national enforcement, which by 2009 had raised annual formal deportations to almost 400,000, reaching a new plateau in immigration enforcement (USDHS 2012a). By 2012 ICE had a force of twenty thousand employees working in all fifty states and in forty-seven foreign countries (USICE 2012b).

Section 287(g) initially promoted state and local involvement in immigration enforcement, with the exception of a California state law passed in 1994. In the early 2000s, however, increasing numbers of state and local governments introduced their own laws to conduct various forms of enforcement among immigrant populations. The rationale usually given for the state and local laws was primarily the concern to regulate unauthorized migrants in their jurisdictions. Federal courts voided the parts of the laws that were considered to infringe upon the legislative domain of the federal government. According to a report of the Migration Policy Institute (MPI), in 2007 state legislatures alone introduced more than 1,000 bills related to immigration, passing 150 of the measures (MPI 2012). The new laws concerned such issues as identification, employment, driver's licenses, legal services, public benefits, trafficking, and voting.

Arizona became particularly noted for its measures of immigration enforcement when the state government enacted a law (SB 1070) authorizing state police to question the immigrant status of persons they suspected might be in the country illegally. Opponents criticized the law for its potential to promote racial profiling by police officers, but federal courts upheld the key provision, enabling state police to question suspected persons regarding their immigration status. Several other states, especially in the Deep South, passed similar laws after the U.S. Supreme Court reviewed and permitted the key provision of the Arizona law.

Arizona's "immigration reform" included a high-profile program to search for and arrest unauthorized migrants in Maricopa County. Sheriff Joe Arpaio led the program, which included posse-type groups conducting "neighborhood sweeps" to look for unauthorized migrants to arrest in areas of the county (Jonsson 2011). In addition, Sheriff Arpaio built a tent city to detain arrested persons. His high-profile approach to immigration enforcement in the county attracted national attention, and critics viewed his tactics to be extreme, including the detention of arrested persons in a tent city and the requirement that detainees wear pink underwear.

Emerging Environments of Fear and Insecurity

If ever the immigrant population reached an imperturbable condition in the late twentieth century after amnesty through IRCA and with the continuation of large immigration flows, the moment of relative security for immigrants ended with the beginning of large-scale deportations through IIRIRA and with the aggressive tactics of ICE searching for "removable aliens." Given that IIRIRA regulations for deportation were retroactive without limit, long-term immigrants who had not naturalized were at risk of deportation, including legal permanent residents who had not become citizens. Survey research found that just two to three years after the passage of IIRIRA, high levels of stress and fear were circulating among immigrants, partly related to the new conditions of enforcement. A survey conducted in Texas in 1998–1999 of 416 unauthorized and legal Mexican and Central American immigrants found high levels of fear of deportation (Arbona et al. 2010). According to the findings of the study, fear of deportation created acculturative stress for immigrants, and the fear was greater among men than women.

The immigrant atmosphere of fear increased in the 2000s when ICE dramatically increased the pressure in its search for deportable migrants. In addition, the pressure ICE put on employers to verify the legal status of their workers, including through workplace raids, caused immigrants to lose jobs and have to search for work in precarious, informal labor markets with

sub-minimum wages, or wage theft, such as in day-laborer pools on street corners. Immigration reform thus eventually brought economic restrictions to immigrant populations. While ICE was primarily targeting deportable migrants who were in the country without visas or legal immigrants who had violated immigration laws or were convicted of crimes, the fear of deportation affected a much larger immigrant and citizen population. Legal immigrants and citizens worried about the possible deportation of their legal immigrant or unauthorized immigrant spouses, kin, or friends (Hagan, Rodriguez, and Castro 2011).

National representative surveys conducted by the Pew Hispanic Center in 2007 found that 67 percent of the 1,312 Latino immigrants interviewed worried a lot or some that they, a family member, or a close friend could be deported (Pew Hispanic Center 2007). Only 31 percent of the Latino immigrants interviewed reported worrying little or not at all about deportations. Moreover, 75 percent of all 2,003 Latinos in the survey disapproved of workplace raids, and 79 percent disapproved of local police participating in immigration enforcement. A survey conducted by the Pew Hispanic Center in 2008 found similar high levels of fear of deportation and disapproval of workplace raids and local police participation in immigration enforcement (Pew Hispanic Center 2008).

The DREAM Act and Deferred Action for Childhood Arrivals (DACA)

The Development, Relief, and Education for Alien Minors (DREAM) Act could have been a means to quell fears of deportation in immigration communities to some extent, providing conditional permanent residency to qualifying undocumented youth who arrived in the United States as minors, reducing their risk of deportation. However, the bipartisan legislation, first introduced in the Senate in August 2001 by Senators Orin Hatch (R.-Utah) and Richard Durbin (D.-Illinois), has never become law. Several versions of this bill have been introduced by members of Congress in both the House of Representatives and the Senate (most recently in 2010), but they have not received enough support by lawmakers to pass out of Congress.

Widely seen as a response to the failure of the DREAM Act in Congress, on June 15, 2012, President Barack Obama signed the Deferred Action for Childhood Arrivals (DACA), a memo directing U.S. Customs and Border Protection (CBP), U.S. Citizenship and Immigration Services (USCIS), and ICE to practice "prosecutorial discretion," or deferred action, to temporarily suspend deportations of certain undocumented youth. The criteria for obtaining deferred action generally match the criteria established under the DREAM Act and cover individuals who came to the United States as minors and have

pursued education or military service in the United States (USDHS 2012b). Under DACA, qualifying youth may receive deferred action—a discretionary determination to defer removal proceedings of an individual as an act of prosecutorial discretion—for a period of two years, with possible renewal. Covered individuals may also obtain work authorization if they can demonstrate an "economic necessity for employment" (USDHS 2012b). It is estimated that 1.26 million individuals are immediately eligible for DACA, and approximately 500,000 more will be eligible when they turn fifteen years old (Batalova and Mittelstadt 2012). As of June 14, 2013, more than 539,000 individuals had filed DACA requests, and more than 365,000 of such requests had been approved (USCIS 2013). DACA is a policy set by the executive branch, and together, the DREAM Act and DACA demonstrate how the executive branch and legislative branch both attempt to make immigration reforms, given their capacities. Because DACA is not a legislative act, it cannot mandate DHS and other agencies to use deferred action.

Immigration Decline in the Context of Recession

Reported apprehension figures of Mexican migrants, mainly of unauthorized migrants arrested by the Border Patrol in the southwestern border region, dropped noticeably in 2007 by almost 20 percent from the previous year (USDHS 2012a, table 34). The number of Mexican apprehensions dropped 43 percent more by 2011, producing a Mexican apprehension figure of 489,547, a level of apprehension not seen since the 1970s. The context of this dramatic downswing was a historic U.S. economic recession that began in late 2007, increasing unemployment from 5.0 percent in 2007 to 10.0 percent in 2009 (U.S. Bureau of Labor Statistics 2012). Government officials gave credit to legislative and other administrative reforms for the drop in previous high levels of Mexican unauthorized immigration, but they also recognized the effects of the economic recession in reducing the long-term Mexican migration flow (USGAO 2012). But even without the continuation of the decades-old pattern of high levels of unauthorized immigration, a large unauthorized migrant population of more than ten million migrants remained in the country. This created a challenge for policy makers to develop new reforms, not so much to restrict migration, but rather to find ways to incorporate a long-term present migration population that had long lived without legal protection in the country. Soon after his inauguration for a second term, President Obama, as well as a bipartisan group of U.S. senators, publicly announced the need for immigration reform to deal with immigrant issues in the country.

A number of Republican congressional members who had previously resisted enacting a legalization policy for undocumented migrants feared that

the strong Latino support for the reelection of President Obama meant that Republicans in Congress needed to support immigration reform for the Republican Party to attract Latino voters in the future. After much debate and negotiation, fourteen Republican senators joined Democratic senators in passing a comprehensive immigration bill in the Senate on June 27, 2013. The bill, known as the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013, provided legal status and the possibility of citizenship for undocumented migrants, but only after they paid hefty fines and back taxes, and after the southwestern border was heavily reinforced with billions of dollars spent on surveillance equipment, structural barriers, and a doubling of the Border Patrol force. But the immigration reform bill faced very strong opposition by Republican members of the House of Representatives and as of this writing, the bill has not passed out of the House. Most recently some House Republicans have proposed a separate bill that would offer legal status to undocumented immigrants but no special pathway to citizenship.

Time will tell whether Congress will be able to address this most recent political crisis generated by the presence of undocumented immigrants in the United States or the U.S. state may once again act through the nonlegislative channels provided by government bureaucracies. As we have shown here, these bureaucracies have historically acted to create their own "immigration policies" through their regulation of the implementation of policy, leaving us with immigration enforcement measures that are both legislative and bureaucratic in nature.

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8

Implementing a Multilayered Immigration System: The Case of Arizona

Cecilia Menjívar

One of the most visible actions in response to perceived problems posed by the influx of immigrants to various communities in the United States has been a wave of state-level laws and local-level interventions throughout the country. In response to the apparent inaction on the part of the federal government to revamp federal immigration law to "fix" the "broken system," states around the country have introduced multiple bills and laws.[1] Thus, whereas in 2006 state legislators introduced 570 bills, enacted 84 laws, and adopted 12 immigration-related resolutions, in 2007 they introduced 1,562 bills, passed 240 laws, and approved 50 resolutions; by 2009, more than 1,500 immigration bills were introduced, 222 laws were enacted, and 131 resolutions were adopted (NCSL n.d.). Even though federal immigration law controls who enters the country and when, state and local laws shape the lives of immigrants in the country by determining what social benefits they can access and a host of other issues that influence quality of life. Although some of these measures seek to integrate immigrants and facilitate their adaptation (Mitnik and Halpern-Finnerty 2010), most are restrictive and exclusionary (Stewart 2012), with divisive consequences (Steil and Ridgley 2012). Thus, state and local initiatives and laws target an array of issues, ranging from penalizing employers for hiring undocumented immigrants, to fining

landlords who rent to individuals who do not have proof of legal residence, to blocking access to a variety of social and public services. The enforcement of these laws varies considerably from one location to another (Decker et al. 2009; Steil and Ridgley 2012; Stewart 2012).

Most of these state- and local-level initiatives share a reliance on strict enforcement and the criminalization of an ever-wider range of immigrant behaviors and practices, as lawmakers pursue a strategy of "attrition through enforcement."[2] This tactic seeks to wear down the will of undocumented immigrants by making their lives so difficult that they will "self-deport." As the mayor of Hazleton, Pennsylvania, one of the first cities to adopt measures against the hiring of undocumented immigrants, declared, his goal was to make the city "one of the toughest places in the United States for illegal immigrants" (Preston 2008). The mayor's strong words, however, obscure the fact that it was development policies he and other policy makers encouraged that had created the opportunities that attracted Latino immigrant workers to his city in the first place (see Fleury-Steiner and Longazel 2010).

So widespread is this strategy on the part of local and state governments that some scholars have argued that a devolution of some immigration powers from the U.S. federal government to state and local governments has taken place (Varsanyi 2008), whereby local states and municipalities are doing the enforcement job that the federal agencies are presumably unable or unwilling to do. These local state actions, however, rather than exerting their effect independent from the federal government's strategies, do not contradict, supersede, or perform actions that federal authorities give up in the pursuit of controlling immigration. Laws at the various bureaucratic levels work to reinforce one another, effecting a "force multiplier," as advocates for the increased participation of states in these matters have labeled this multipronged approach (Waslin 2010). Federal laws control who comes in, and those at the local level shape how immigrants live once they are in the country. Indeed, one may argue that a key feature of the U.S. immigration regime today is its multilayered character, composed of federal, state, and local legislation that immigrants encounter, as each layer adds power and control and exacerbates its effects on the lives of immigrants.[3] The current immigration regime is perhaps best conceptualized as a "*poli-migra,*" as a community organizer referred to it, noting the multiple "migras" that seem to exist today. Thus, from the point of view of the immigrants targeted (as well as their families and even U.S. citizen loved ones), policy distinctions at the various levels do not matter as much as the effects themselves, because they experience these effects with the amplified force of the power of the law in the various states implicated.

Some scholars have observed that research on the effects of state- and local-level laws on immigrants presents a lopsided image, focusing too much on

those that are exclusionary and negative in consequences without analyzing those that are inclusionary and help to promote immigrant integration (Mitnik and Halpern-Finnerty 2010).[4] Focusing empirically on the case of Arizona, I detail key pieces of legislation at the federal and state levels. I examine their implementation on the ground, which affects the "targeted" population of undocumented immigrants but also their family members, friends, coworkers, neighbors, and so forth, in practice affecting entire communities. I focus on those strategies that are directly exclusionary and hurtful to these immigrants and their loved ones and how those who are touched by these laws and their enforcement experience them as a form of violence. Arizona is one in a long list of similar cases around the country,[5] and taking a close look at it can shed light on how the multilayered immigration system affects the lives of immigrants—documented and undocumented alike. Identifying the link between the implementation of the *"poli-migra"* and the suffering of a large group of individuals lies at the core of advancing projects of human rights, a standpoint that can lead to fruitful discussions about justice for immigrants. In this light, I use the analytical lens of *legal violence* (Menjívar and Abrego 2012) to elucidate the violence embedded in the law and its implementation so as to capture its effects on the lives of immigrants and those close to them. Empirically I rely on the experiences of Central Americans, whose lives, in my view, evince the combined effects of a multipronged legal system and provide a particularly fertile ground for capturing the violence that current immigration laws make possible.[6]

In making the argument that federal and local laws work in conjunction to magnify the effects of each, it is useful to highlight a key aspect of this multilayered system. Even though federal preemption of immigration issues has been upheld consistently (Rodríguez, Chishti, and Nortman 2010), the laws at the state and local levels around the country today serve to blur lines between what the federal government does and what states do, thus positioning states as de facto enforcers of immigration law (Waslin 2010). Indeed, as Waslin notes, in the aftermath of the attacks of September 11, 2001, several actions on the part of federal authorities enhanced the position of the states in immigration enforcement. Calling attention to a 2002 legal opinion by then attorney general John Ashcroft that "declared that state and local police have 'inherent authority' to enforce civil and criminal violations in immigration law," Waslin (2010, 101) notes that the Department of Justice "had reinterpreted the law and overturned decades of legal precedent." Since that time, through two strategies—287(g) agreements and the registration of immigration violations into the National Crime Information Center database—federal authorities and state and local law enforcement agencies have worked closely in matters of immigration control. This blurring of lines in

enforcement is experienced on the ground as well, as immigrants who live in the contexts where such coordinated enforcement practices take place do not pause to differentiate whose policy is being applied when they drive in fear of being stopped and detained, when workplaces are raided and they or loved ones end up in detention, or when they send their kids off to school with a throbbing heart, uncertain if they will be home when the children return from school.

After briefly laying out the lens I use to examine the effects of the implementation of the various laws, I follow with an overview of the "legal layers" that Central American immigrants confront in Phoenix: the federal and state laws. The empirical cases from Phoenix illustrate the usefulness of a lens that picks up the violence embedded in the law today as well as its effects on the lives of undocumented immigrants and those close to them. I end with a brief discussion of what this case means in the context of the contemporary immigration regime and the potential applicability of this lens for debates about immigration policy.

A LENS TO EXAMINE VIOLENCE: STRUCTURAL, SYMBOLIC, AND LEGAL

Sociologist Mary Jackman observes that "conceptions of violence are usually restricted to physical behaviors and the threat of physical behaviors" (2002, 388) at an interpersonal level. She notes that two dominant assumptions have guided most examinations of violence: 1) that violence is motivated by the willful intent to cause harm and is prompted by hostility, and 2) that violence is socially or morally "deviant" from mainstream human activity. Thus, "[w]hen violence is motivated by positive intentions, or is the incidental by-product of other goals, or is socially accepted or lauded, it escapes our attention" (Jackman 2002, 388). In her view, examinations of violence have tended to leave out sources of material injuries, "such as loss of earnings, destruction, and confiscation; the psychological outcomes of fear, shame, anxiety, or diminished self-esteem; and the social consequences of public humiliation, stigmatization, exclusion, banishment, and imprisonment, all of which can have deeply devastating consequences for human beings" (2002, 393). Jackman's perspective is relevant to an examination of how laws are created and implemented, as it helps to recognize various forms of violence resulting from such legal strategies. Following Jackman's broader conceptualization of violence as an analytical parameter to delimit the immigrants' experiences I aim to capture, I use the concept *legal violence* (see Menjívar and Abrego 2012; Menjívar 2013). This lens, which incorporates structural and symbolic forms of violence, allows us to distinguish the violent effects embedded in the

law and its implementation from general effects, to differentiate between laws' intended effects and those that go beyond the purview of the law to a realm where implementation creates suffering and fear. As such, this lens can help us capture the "excesses" of implementing laws that increasingly criminalize immigrant behavior, strategies that are codified in the law and are thus formalized and normalized but that infringe on individuals' fundamental rights and lead to suffering in the short term and to serious obstacles to integration in the long term (see Menjívar and Abrego 2012).

In recent years several researchers have attempted to capture the violent consequences of contemporary immigration laws in the lives of immigrants in diverse contexts, arguing that these constitute forms of structural or symbolic violence. For instance, in a study of immigrant laborers in California, Holmes (2007) calls attention to the internalization of structural violence to explain how the exploitation of farmworkers is perpetuated. Walter, Bourgois, and Loinaz (2004) examine the embodiment of structural violence that results in patterns of social suffering among undocumented Latino men in California. Examining the effects of deportation among undocumented immigrants in Israel, Willen (2007) notes that such campaigns are built on structural and symbolic forms of violence that at the same time exacerbate the effects of the ever-present threat of deportation. Spener (2009) uses the concepts of personal, structural, and cultural violence to analyze the tragedies involved in crossing the Mexico-U.S. border. And in a study of Indian migrant laborers in Bahrain, Gardner (2010) used the concept of structural violence to understand the implications of unequal labor recruitment practices among this group.

Here I use the lens of legal violence, which incorporates different forms of mostly nonphysical violence (Menjívar and Abrego 2012) to which I would like to call attention. Bringing together conceptualizations of structural and symbolic violence as they coalesce in the lives of immigrants, legal violence unearths the suffering among contemporary immigrants with tenuous legal statuses (i.e., undocumented and temporary statuses) in the United States. Legal violence refers to the suffering and pain, through exploitation, exclusion, and discriminatory practices, that result from and are *made possible* through the implementation of the body of laws that delimit and guide targeted individuals' lives on a routine basis (Menjívar and Abrego 2012). Under certain circumstances policy makers and political leaders enact laws that are violent in their effects, but such outcomes often are interpreted as the "unintended consequences" of the law. In other cases, the implementation of the law comes with the explicit intent to create fear and terror. The increasing trend in the criminalization of undocumented immigrants today is a form of legal violence, because these strategies, which lead to suffering among a large

group of people, are embedded in legal practices, sanctioned, and actively implemented and legitimated, and are therefore "misrecognized" as "normal" and natural, in Pierre Bourdieu's (2004) conceptualization. It is legitimized violence, normalized and accepted and acutely experienced as suffering by those who are targeted (the undocumented), but largely out of sight (and recognition) among those whose social standing does not position them within the reach of these strategies.

Legal Framework—Federal and Local

This section outlines the various levels of the legal context on which I am focusing here. Even though in practical terms they exert their influence together and exacerbate the effects of each, for ease of presentation and analysis I lay them out separately. The lives of Central American immigrants in the United States present a unique opportunity to examine these different levels. The legal regime includes general federal laws that apply to all immigrant groups, federal laws that apply specifically to Central Americans (as an expression of a lukewarm reception and token acceptance of dangerous conditions in the countries of origin), and local laws that affect all immigrants in the specific location in which they live. The experiences of Central Americans with the various legal layers make this a particularly instructive case. As a Salvadoran woman in Phoenix explained, "I live with the law in my life." And even though this multilayered context affects all immigrants, social position, life circumstances, and the immediate context add nuance and variation in how immigrants experience the law on the ground and how they respond to their situations (Garni and Miller 2008).

Federal Legal Context

Central Americans' experiences are shaped by a generally restrictive immigration regime, in particular the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which has enabled the deportation of hundreds of thousands of immigrants (Rodriguez and Hagan 2004).[7] Perhaps the piece of the IIRIRA that has attracted most attention is Section 133, which spells out the 287(g) program allowing federal authorities (ICE/Department of Homeland Security) to enter into agreements with local law enforcement agencies to target "criminal aliens" for deportation and thus in effect allowing local law enforcement to enforce federal immigration law. Created during the Clinton administration, endorsed and encouraged under the Bush administration, and heavily used under the Obama administration, the program was active in approximately sixty-seven municipalities throughout the country.

However, IIRIRA has created other mechanisms that have made it possible for the federal government to deport a record number of individuals in the past few years (Kohli, Markowitz, and Chavez 2011). As Hagan, Rodriguez, and Castro (2011) observe, IIRIRA has done so a) by making possible the deportation of legal permanent residents and b) through the creation of the 287(g) program, through which local police and federal immigration officials (ICE) enforce federal law. Furthermore, IIRIRA has reduced the threshold for crimes and offenses that may be considered grounds for deportation (Stumpf 2006).

The year before IIRIRA passed there were 69,680 deportations; this figure has increased every year, reaching a record of 392,000 in 2009 (USDHS 2010) and close to 400,000 deportations in 2010 and 2011 and 419,384 in 2012. Slightly over half of the 396,906 people deported in fiscal year 2011 committed a felony or a misdemeanor, including traffic offenses, disorderly conduct, possession of marijuana or liquor, and "illegal entry," even though the program is supposed to target "the worst criminals."[8] And since IIRIRA went into effect, between 1997 and 2005, 54,250 Guatemalans and 42,862 Salvadorans were deported.[9] While the magnitude of these figures might not be cause for alarm, they point to a worrisome trend: whereas in 1998 Guatemalans and Salvadorans (together with Hondurans) accounted for approximately 9 percent of total deportations, they made up 17 percent in 2005, and 21 percent in 2008 (USDHS 2009), and today the three Central American countries rank at the top, after Mexico, in the number of deportations annually, even though these three groups make up a small portion of the foreign-born population. Thus, even though the three Central American groups are a relatively small proportion of the undocumented population, they are disproportionally represented in detentions and deportations.

The 287(g) program was also used to support greater scrutiny of workers, targeting Latino communities with particular vigor.[10] These (and similar other) new methods of immigration enforcement have led to the increased criminalization of immigrants and their behavior, such as adding charges of felonious identity theft to the use of fake documents to secure employment, an offense that used to carry a lesser penalty. And although the 287(g) program's main goal was to identify undocumented immigrants who pose great risk to the public, a recent Department of Homeland Security (USDHS/OIG 2010) report found that in a sampling of 280 undocumented immigrants identified through the program, only 9 percent (or twenty-six cases) were accused of major offenses or violent crimes. The use (and abuse) of programs such as the 287(g) has given rise to serious concerns and complaints; however, this is not the only program of its kind.

In 2008 the federal government introduced "Secure Communities," a program that further strengthens the collaboration with local law enforcement

created through the 287(g) agreement. Rather than relying on the training of local law enforcement to assist federal enforcement efforts, however, the Secure Communities program is based on electronic data sharing (Kohli, Markowitz, and Chavez 2011). Under this program, fingerprints of anyone arrested or booked by local police are checked against Department of Homeland Security and FBI databases. Introduced during the Bush years, the program has expanded swiftly during the Obama administration: originally piloted in 14 jurisdictions, as of 2011 it operated in 1,595 jurisdictions in forty-four states, and by 2013 it existed in all jurisdictions nationwide (Kohli, Markowitz, and Chavez 2011). Importantly, whereas participation in the 287(g) program was left up to the municipalities (thus only a small number of cities and states entered into the agreement), the Secure Communities program is a national mandatory program for all municipalities. And according to a recent report, although Latinos make up 77 percent of the undocumented population, they constitute 93 percent of individuals arrested through the Secure Communities program (Kohly, Markowitz, and Chavez 2011).

Another "legal layer" at the federal level that Central Americans confront is constituted by the dispensations that the U.S. government extended in a tepid recognition of the dangerous conditions in the sending countries, made possible in no small part by U.S. policies in the Central American region throughout the years of political conflicts. Immigrants' rights groups lobbied on their behalf, and eventually Congress granted Temporary Protected Status (TPS) from deportation to all Salvadorans who arrived prior to September 19, 1990. Guatemalans were never extended this protection, because U.S. officials argued that they did not deserve it, in spite of reports by the U.S. State Department itself noting the Guatemalan government's atrocious human rights record, which translated into almost a quarter of a million Guatemalans disappeared or dead during the thirty-six-year civil conflict. TPS allowed Salvadorans to live and work in the United States for a period of eighteen months; it was extended a few times and expired in September 1995.

Central Americans who arrived in the United States prior to January 1, 1982, were eligible for legalization under the provisions of the Immigration Reform and Control Act (IRCA) of 1986, but the many thousands who arrived at the height of the political conflicts in their countries after that date were ineligible for this provision. Most of the Guatemalans and Salvadorans who filed for political asylum in the 1980s were turned down. But as a result of the settlement of a class action suit (*American Baptist Churches* [ABC] *v. Thornburgh* legislation) in 1990 that alleged discrimination against Guatemalans and Salvadorans on the part of the Immigration and Naturalization Service, they were allowed to resubmit asylum applications. In fiscal year 1992 the success rate for Salvadoran asylum applications increased to 28 percent, and

for Guatemalans it went up to 18 percent (National Asylum Study Project 1992). The benefits of the 1997 Nicaraguan Adjustment and Central American Relief Act (NACARA) were extended to some Guatemalans and Salvadorans who arrived by a particular date and who had registered under the ABC settlement, a process that has translated into long waiting lines (a decade or longer in some cases) for the adjudication of these cases.

Although the political conflicts officially ended in 1992 in El Salvador and in 1996 in Guatemala, immigration from both countries has continued. The structures of inequality at the root of the civil conflicts—and of emigration—are still in place and are now exacerbated by high rates of unemployment and underemployment, as well as by high levels of violence associated with "common crime." The social channels that have facilitated this migration have expanded and matured, as more people have relatives and friends in the United States. In addition, El Salvador suffered two earthquakes in early 2001 that worsened the social, political, and economic problems left by the years of civil war. Salvadorans who arrived after the earthquakes were granted TPS for a period of 18 months, a dispensation that has been extended several times and has been renewed through March 9, 2015. Importantly, this is temporary status, as made clear by the multiple deadlines for application and re-registration. Hondurans arriving after hurricane Mitch in 1998 were granted TPS, which has been renewed multiple times; it is currently set to expire January 5, 2015. However, Guatemalans who endured the destruction of hurricane Stan in 2005 have been denied this temporary protection.

Although one might imagine that these dispensations represent a form of relief for Central Americans that offsets the effects of the IIRIRA 1996 law, the 287(g) agreements, and Secure Communities, among other programs, when they take place in the generalized hostile climate of immigration law they do not necessarily help. These programs are either temporary, like the TPS, in which case immigrants who are covered are regularly reminded that their relief will end (each renewal is given for eighteen months, and no one knows whether they will be extended), or if permanent (NACARA), take years, if not decades, to be adjudicated. The increasing percentage of Central Americans among deportees every year points to the vulnerability of these immigrants even when they presumably have a certain measure of protection at the federal level.

Local-Level Legal Context

The context into which Central Americans come is also constituted by state- and local-level laws that vary from state to state or municipality to municipality, but in general they have targeted immigrants throughout the

United States. Local and state governments have enacted public ordinances to penalize the presence of undocumented immigrants in multiple ways; each new state that passes these laws seems more extreme than the previous. In this regard, Arizona has been at the forefront, though by no means was it the first state to take a strong anti-immigrant stance, and at this writing it is not the most extreme. For example, the first states to negotiate and enter into agreements through the 287(g) program were Florida and Alabama, in 2002 and 2003, respectively (Waslin 2010), and Alabama's SB 56, the most draconian of these state laws (at this writing), was passed in June 2011. The most controversial portions of some of these laws have been placed on hold by federal judges, as in the case of Arizona's SB 1070, but others were left in place for a period of time before they were placed on hold, as in the case of Alabama's SB 56.

In early 2010 Arizona legislators, eager to please their constituencies by showing that they were "doing something" about immigration and border control, passed HB 1070 (later Senate Bill 1070), which Governor Jan Brewer signed into law on April 23, 2010; it was slated to take effect on July 29 of the same year. Among other provisions, this law 1) requires law enforcement agencies who come into *legal contact* with an individual to determine his or her legal status if the authorities find it reasonable to suspect the person is in the country undocumented; 2) makes it illegal for undocumented workers to seek work in public places and for employers to stop on a street to pick up and hire undocumented workers (the last two are directed at day laborers, the overwhelming majority of whom are Latinos); 3) charges a person with trespassing if the person cannot produce an alien registration card; and 4) allows law enforcement agents to arrest a person without warrant if there is probable cause to believe the person has committed a public offense that makes the individual removable from the United States (Arizona State Senate 2010).[11] This package was supposed to make the state of Arizona the most inhospitable place, so that undocumented immigrants (and their families) would "self-deport."

SB 1070 attracted significant national and international attention because of its severity at the time it was signed into law; it was deemed the nation's toughest anti-immigrant law. However, one must keep in mind that this law did not emerge out of the blue; SB 1070 was one piece of legislation in a long string of local efforts seeking to penalize the presence and behaviors of undocumented immigrants in Arizona, with the objective that they would "self-deport." Nor is SB 1070 the last or most severe effort. For instance, in early 2011, emboldened by the apparent success of SB 1070, the Arizona Senate Appropriations Committee passed a new package of bills intended to halt the practice of granting U.S. citizenship to U.S.-born children of undocumented

parents and to prevent undocumented children from attending school, deny undocumented immigrants marriage licenses, and prohibit them from purchasing cars. These bills were voted down and never reached the full legislature, because the Chamber of Commerce lobbied against them under the pressure of the boycott on Arizona post-SB 1070. The Arizona Employers for Immigration Reform has actively opposed this type of legislation, opposition that seems to be having an effect in the state legislature. In the end, although SB 1070 attracted considerable attention, it is not the only piece of legislation that seeks to make it intolerable for undocumented immigrants to live in the state.

Most provisions of SB 1070 were struck down in a U.S. Supreme Court decision in June 2012, but its most controversial piece, section 2B, which requires that officers make a reasonable attempt to determine the immigration status of a person they detain, was upheld. One must keep in mind that this law is superimposed on other pieces of legislation that were passed earlier, such as the voter-approved Proposition 200 ("Protect Arizona Now" or "Arizona Taxpayer and Citizen Protection Act") of 2004, requiring proof of eligibility to receive social services such as retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment, or similar benefits that are provided with appropriated funds of state or local governments, and requiring state and local workers to report immigration violations to federal authorities in writing. The Arizona attorney general subsequently narrowed the scope of its implementation. In addition, this law requires voters to document their U.S. citizenship when registering to vote and when voting, but on June 17, 2012, the Supreme Court ruled that Arizona may not require proof of citizenship to vote. In 2006 Arizona voters approved Proposition 100, which denies bail to undocumented immigrants accused of felonious crimes; Proposition 102, which bars undocumented immigrants from collecting punitive damages in civil lawsuits; Proposition 103, which makes English the official language of the state; and Proposition 300, which denies in-state college tuition to immigrants who cannot produce proof of permanent legal residence or citizenship and bars undocumented immigrants from accessing subsidized child care and adult education programs (Arizona Legislative Council 2006). On January 1, 2008, the Legal Arizona Workers Act (LAWA), targeting businesses that "intentionally" or "knowingly" hire undocumented immigrants, went into effect.[12] At the time it was signed it was the most aggressive of its kind in the country. This law was challenged in the courts for a few years, but the U.S. Supreme Court upheld it in early 2011; thus, it is still in effect.

In addition, the former Maricopa County attorney issued an opinion in 2006 reinterpreting a 2005 human smuggling law to charge immigrants as

co-conspirators in their own smuggling, a move that made unauthorized entry a criminal rather than a civil offense; thus undocumented immigrants and smugglers could be charged with felonies, and thus deportable crimes. In late 2009, as part of the 2010 state budget, the Arizona Legislature signed into law House Bill 2008, a section of which requires those who seek "any state or local public benefit to prove citizenship by providing a driver's license, passport, or other legal identification" (Benson 2009). It is unclear what the reach of this new law will be, as it requires local government employees to verify eligibility for a range of public services or risk misdemeanor charges. But just two weeks after the law went into effect, Arizona's Department of Economic Security provided federal immigration authorities with information on approximately eight hundred individuals who had applied for benefits who were "believed to be" undocumented immigrants (Newton 2009).

The blurring of lines between federal powers and state responses in immigration matters can be seen in several areas. For instance, the Maricopa County Sheriff's Office (MCSO)[13] was one of the most vigorous users of the 287(g) agreement, encouraging citizen volunteers to patrol streets and conduct traffic stops for minor infractions, often in neighborhoods with high concentrations of Latinos. Through the 287(g) agreement, the MCSO deported 26,146 immigrants (out of 115,841 deported by sixty-seven municipalities nationwide) between 2006 and 2009, when the federal government terminated this agreement with the MCSO. Thus, the MCSO alone deported about a quarter of all immigrants in the country, even though its share of the undocumented population is relatively small. Los Angeles County offers a good comparative case here. The Los Angeles County Sheriff's Office, in second place to the MCSO in deportations during the same period, deported 13,784 immigrants, or about half of what MCSO deported, even though it is estimated that about 2.6 million undocumented immigrants (out of more than 10.3 million immigrants) live there (Pastor and Marcelli 2013), compared to about 460,000 undocumented immigrants living in Arizona, or about 12 percent of Arizona's population (AP 2010). Thus, Arizona's largest county—where Phoenix is located—was already contributing a large share of deportees nationwide, even without SB 1070 going into effect.[14]

But apparently the zeal with which the MCSO was using the 287(g) agreement and the results it was generating, including multiple reports of abuse and racial profiling that led to several lawsuits, set off an inquiry by the federal government, a rewriting of these agreements, and an investigation by the Department of Homeland Security into the MCSO's actions. As a result, the agreement as such ended with the MCSO in 2009. The MCSO can still identify undocumented immigrants in jails, but it can no longer conduct raids ("employer sanctions law investigations," as they were called) and sweeps

("crime suppression operations") under the federal program. Importantly, the termination of the federal agreement, as we will see below, did not translate into the cessation of workplace raids and absence of fear, because state and local law enforcement agencies could make use of the battery of state and local laws to conduct raids and traffic stops to question a person's legal status. At the time of this writing, MCSO's activities have been suspended (though not definitively ended) after a federal judge ruled in May 2013 that the MCSO systematically targeted (and racially profiled) Latinos in its immigration patrols. A federal judge appointed a monitor that the ACLU nominated to oversee court-ordered reforms at the MCSO's office. However, the MCSO has continued to conduct workplace raids; a raid in November 2013 was the seventy-fifth workplace raid by the MCSO.

Enforcement: How Laws "Feel" on the Ground

This multilayered legal regime makes the law "palpable" for many immigrants (undocumented and documented alike) who live in Arizona's Maricopa County, often through effects that point to the violence embedded in the different components of the regime and its implementation. As a Salvadoran man who has Temporary Protected Status said to me once, "the laws here are harsh. You feel that; you can feel them [the laws] every day. One cannot avoid thinking this all the time." Indeed, the laws I outlined above create a multilevel onslaught on neighborhoods where Latinos live and in workplaces that hire them, particularly in Maricopa County. These are measures above and beyond strategies to address increases in the undocumented population. In the following section I discuss how they are enforced and provide a glimpse of the experiences of those who are the targets.

Enforcing the Law(s)

In information provided by the MCSO, from September 2007 to October 2009, that is, when the agreement with the MCSO was in place, the MCSO carried out 1) forty-two operations in drop houses (places where smugglers bring immigrants before they contact their relatives), where 244 smugglers were arrested together with 1,427 "co-conspirators" (immigrants who under the interpretation of Arizona law mentioned above were charged as "co-conspirators" in their own smuggling); 2) twelve "crime suppression sweeps" (random patrols in areas with high concentrations of Latinos), leading to 677 arrests, including 324 undocumented immigrants but, importantly, also of 354 documented immigrants and/or U.S. citizens; and 3) twenty-six "employer sanctions investigations" (workplace raids) that generated 327

arrests, including 212 charged with identity theft or forgery of documents.[15] The operations have continued even after the 287(g) with the MCSO ended, mostly by making use of the 2002 Department of Justice opinion referenced above, which gave local law enforcement officers "inherent authority to make arrests for violations of federal immigration law" and the use of LAWA (Hensley 2010). Thus, the MCSO continued to conduct "crime suppression sweeps," including one around the days when SB 1070 was supposed to take effect in summer 2010, deploying hundreds of deputies to patrol the roads countywide, perhaps to reassert the power of local law enforcement in light of the suspension of the 287(g) agreement.[16] Although only two hundred deputies in the MCSO were fully trained under 287(g) in enforcing immigration law, some operations have included many more deputies, including one, post-287(g), in which four hundred deputies were deployed to patrol the county's highways (Hensley and McCullough 2010).

Indeed, the MCSO conducted a "crime suppression operation" in October 2011, two years after federal officials took away its authority to conduct street-level operations, sending approximately two hundred deputies and posse members into a mostly industrial area of the Phoenix metropolitan area that has a high concentration of Latino residents. When asked whether the operations had changed now that MCSO operates without federal authority, the MCSO responded that since federal authorities had already trained MCSO officers in immigration enforcement, they were going to continue with the operations. "You can't erase the training," observed the Maricopa County sheriff (Kiefer and Hensley 2011). Importantly, these enforcement efforts continue even as the undocumented population in the country has decreased, from a high of 560,000 in 2008 to approximately 360,000 in 2010 (González 2012). Indeed, the numbers were already declining in 2009, *before* the signing of SB 1070.

These actions, far from securing the state or addressing pressing financial problems, create a climate of fear in the lives of immigrants by brutally restricting their lives, plans, and dreams, as a recent report (Theodore 2013) has shown. This is especially the case when the above-mentioned "crime suppression operations" and "employer sanctions law investigations" include deputies in black ski masks carrying weapons, images that highlight the violence (and terrorizing element) embedded in the implementation of the law. Or when the MCSO places billboards and announcements on its Web site for individuals to call its dedicated hotline to report "illegal aliens." Or when the traffic stops and "crime suppression operations" are announced in advance (but not the workplace raids), without precise information about the exact location so as to keep everyone in some (mostly Latino) neighborhoods "on alert." Such announcements (when street-level operations were conducted)

would be broadcast on Spanish-language radio stations so that people could be on the lookout. Word about these operations would spread like wildfire in Latino neighborhoods with high concentrations of immigrants; a community organization even created a calling tree to text people alerting them of an imminent MCSO operation. Keeping these communities on the edge and provoking anxiety and fear at the community level demonstrates, according to the MCSO, that it had accomplished its mission. Creating this climate, the MCSO assumed, drives immigrants to "self-deport," the objective at the heart of the "attrition through enforcement" strategy pursued though various state- and local-level ordinances and laws.

In addition to the these street-level operations, the MCSO has continued to conduct workplace raids, which ostensibly are carried out to make sure employers were in compliance with the 2008 Legal Arizona Workers Act, but also work in conjunction with the signature federal-level "silent raids" of the Obama administration. Though these "employer sanction/identity theft operations" invoke the 2008 LAWA, they also refer to identity theft, a felony charge against workers suspected of using borrowed Social Security numbers to secure employment. By early 2012 the MCSO had conducted fifty-eight such operations,[17] and on February 8, 2013, it conducted its seventy-first workplace raid in the Phoenix metro area. Fearful employers in Arizona have fired workers, even documented ones, "just in case." Unlike the traffic stops conducted in neighborhoods with large concentrations of Latino residents, workplace raids take place all over the county (the law is in effect throughout the state, but is enforced more visibly through workplace raids in Maricopa County). Thus immigrant workers, even those who work away from Latino neighborhoods, have been perennially fearful that officials will show up at their place of employment at any moment. As former Phoenix mayor Phil Gordon noted, the daily intimidations and fear that undocumented immigrants endure in today's climate in Maricopa County have created a "reign of terror" (Finnegan 2009). But according to the officials in charge of implementing the various laws, the more fear and edginess their operations create in the (Latino) immigrant community, the more efficacious their strategies seem to be.

From this discussion it is perhaps relatively easy to spot the violence in the laws and their implementation. In fact, the "attrition through enforcement" strategy adopted in various cities across the country, not just in Maricopa County, explicitly aims to instill fear in the population. But the lens of *legal violence* I use here permits us to unveil other, less evident, but equally harmful forms of violence that are embedded in the implementation of the law. For example, it allows us to discern how these laws exacerbate the exclusion and exploitation of immigrant workers, thus fomenting and aggravating structural

and symbolic violence. The media portrayals that depict the operations to implement the law (which embolden officials through the public support these media portrayals generate) serve to create further conditions for symbolic violence. Immigrants internalize and come to accept the humiliations and dehumanization as "normal" consequences of the law being enforced (see Menjívar and Abrego 2012).

Experiencing the Enforcement of the Law

What effect have these strategies had on the everyday lives of immigrants—undocumented and documented alike?[18] What effect have they had on the lives of immigrants who already have a heightened awareness of the law by virtue of the temporary permits they hold and the legal limbo, or "liminal legality" (Menjívar 2006), in which they live? Central Americans, as do other Latino immigrants who live in Maricopa County today, have altered their routines, behaviors, and everyday practices to avoid any situations that could put them—or a family member—in contact with law enforcement agents (see also Gonzales and Chavez 2012). They have taken the bus instead of driving, walked instead of taking public transportation, changed bus routes, kept their children from attending after-school activities, and adopted many other strategies that allow them to feel safer in their everyday lives. But they also have postponed larger decisions, like getting married, having children, or purchasing a home, because they do not know where they will be in a few months or a few years. They have become "hyperaware" of the law (Menjívar 2011) and worry about the immediate danger of being detained as well as about an uncertain future, and they remain deeply aware that their tenuous legal status, in the "reign of terror" in which they live, makes them acutely vulnerable. This is how the violence inscribed in the laws and their implementation today seeps through these immigrants' minds and bodies. Indeed, they describe their experiences in a language that highlights the legal violence they experience. They often talk about living "anguished" or "in constant fear" or mention nightmares, depression, or other physical ailments that reveal the fear in which they live, responses that parallel what scholars (Gonzales and Chavez 2012) have identified among other immigrants living under similar conditions of legal uncertainty.

For example, Central Americans describe their daily routines with words that evoke the direct political violence that some of these immigrants lived through in Central America during the decades of civil war. They highlight the anxiety, apprehension, fear, and uncertainty of living in a context that parallels the direct political violence of their native countries. But there are other parallels in today's climate in Phoenix that are reminiscent of the state

violence in Central America two decades ago. Unlike crime suppression sweeps, announced on the radio several hours before they take place, workplace raids are unannounced and can happen anytime, anywhere. Thus, MCSO officers can show up at dry cleaners, car washes, and restaurants during busy business hours or at office buildings at night, acting on tips from disgruntled former workers or upset customers (Lacey 2011). The uncertainty embedded in this strategy (the MCSO has consciously made it a part of its tactics), the reliance on informers, and the ever-present threat of authorities who can take people away in Phoenix is not lost on the Central Americans who lived with the fear of a knock on the door in the middle of the night under the reign of terror in their countries of origin. There are multiple other parallels to political violence in how immigration law—at the federal and state levels—is implemented in Maricopa County today.

Immigrants take precautions when they are driving or out in public because their *deportability,* or the mere threat of deportation (see De Genova 2002), makes them hyperalert. In the case of Clara, a Salvadoran, and her husband, they try to never ride in the same car together, because they fear what would happen to their children if they were detained together (and sent to a detention center or deported right away):

> Look, Cecilia, this situation is scary; it gives us fear. Yes, everyday, I don't lie to you, it's constant. So no, we don't drive together. What if we are stopped and we get deported? We'll be taken to jail, and the kids, what? Who's going to take care of them? Who's going to stay with them? We worry; we live anguished. So he goes in one car, with our neighbor, and I go in another one, with my cousin. The same when we go to the market. He goes in one car and I go in another.

Clara's fears are not unfounded. In late 2012 she was stopped by the police while driving on the freeway, and given that Section 2B of SB 1070 is in effect, the police officer asked her a series of questions to determine whether she was in the country legally. Without a criminal record, Clara was let go and not sent to ICE detention, but not before she was held by the side of the road while the police officer spoke with ICE. During the time they waited by the side of the freeway, Clara called me because she was afraid her teenage daughter, who was in the car with her, would be sent to a detention center as well, and she wanted me to take care of her daughter. She describes those moments, as well as the days that followed, as terrifying because she thought the police and/or ICE would come after them now that they had entered her information in the system. She was particularly scared because there have been cases in which parents are separated from their children in the course of conducting their daily routines. For instance, in Phoenix a single father with three

young U.S.-born boys was apprehended on his way home from work and held at a detention center. A neighbor who witnessed the incident placed an urgent call to one of the boys' cell phones (the boy was in his sixth-grade class when he got the news). The boys, all under eighteen years of age, survived alone for one week before neighbors started to care for them.

Even when these immigrants have a temporary permit or are waiting for their applications to be adjudicated, they are still fearful of being detained and deported. A Honduran woman had been hospitalized in Phoenix for some time, and the hospital could not continue to cover the cost of keeping her; thus they wanted to deport her, even though she had TPS and technically was not deportable. But hospital personnel, as well as other professionals in similar circumstances, do not always understand the technicalities of the law, the TPS special dispensation, or the extended lives in limbo of Central Americans. For many officials and "street-level bureaucrats" (Lipsky 2010) in social service agencies, not trained in the intricacies of immigration law, a "green card" (legal permanent residence) is the only proof of legality they may recognize. In another case, Manuel, the son of a family I have known since 1998, has TPS and has been waiting for eighteen years for a resolution on an application for family reunification submitted through his father. He is careful not to go out on weekends, "for the fear that one always carries." Noting the difficulties with people not familiar with the Central Americans' convoluted set of special permits and temporary protections, he explained that he is afraid that he might be detained first, and by the time the authorities investigate his record, he might find himself on a plane back to his native El Salvador. Even his mother, who is now a legal permanent resident, is always careful to carry her "green card" with her because she is also afraid that she will be questioned and then sent to detention. As she said (echoing her son's point of view on this matter): "I fear . . . [that] I will be stopped and deported because now they're deporting even people who are here legally, just because of how you look!" These narratives reflect the climate of insecurity and fear for (mostly Latino) immigrants, undocumented, documented, and those in in-between statuses, in Maricopa County today.

There are other less visible but equally damaging ways in which legal violence manifests itself, often with long-term effects. The increasing restrictions on what immigrants can do and their exclusion from social benefits are deeply damaging for the long-term livelihood of these immigrants (see Menjívar and Abrego 2012). For instance, Proposition 300, the Arizona law that denies in-state college tuition to immigrants who cannot produce proof of legal permanent residence or citizenship and bars undocumented immigrants from accessing subsidized child care and adult education programs, may not result in immediate fear and anguish (or other forms of identifiable and immediate

suffering) as in the preceding stories. However, this law has profoundly injurious effects for the long run, as it jeopardizes immigrants' futures and creates new forms of structural and symbolic violence in their lives and thus exclusion. One must therefore keep in mind the short-term (and often more easily identifiable) violence embedded in today's laws as well as the long-term injuries that they inflict, which exacerbate the effects of other inequalities.

DISCUSSION AND CONCLUSION

I have made use of an empirical case that until recently was seen as exceptional, when Arizona led the way in implementing "extreme" immigration enforcement. With several other states either having already passed even tougher laws or considering doing so, Arizona is no longer the most extreme case. The contemporary regime of exclusion we see in Arizona is not so different from what happens, or can potentially happen, in other immigrant-receiving areas. Federal immigration laws that restrict the numbers of those coming in and deport those already in the country (undocumented and legal permanent residents alike), together with the increase in state- and local-level legislation activity aimed at making the lives of immigrants extremely difficult, operate with varying levels of intensity throughout the country. In this sense, as one example of a broader trend, the case of Arizona is instructive. It provides a window to examine what can happen when states and the federal government share responsibility in immigration enforcement, exacerbating the effect of each governmental level and creating a "force multiplier" with deleterious consequences for those who are targeted (and beyond).

I focused on the case of Central Americans because their experiences provide a unique opportunity to capture the "excesses" of the law and how these can become a form of violence. Their experiences of living in legal uncertainty for extended periods of time within a multilayered legal context made up of the federal- and local-level legislation help us to disentangle the various layers that make up the legal regime and shows how each layer acts to exacerbate the power of the others to shape immigrants' everyday lives. Like Arizona in general, the case of Central Americans is no longer exceptional. Indeed, my own ongoing research among other Latino immigrant groups in the Phoenix metro area shows that the Central Americans' experiences are increasingly common and are shared by other groups, particularly Mexicans. As a sign of how the changes in the laws over time are negatively affecting the lives of many immigrants, above all Latinos, Mexican immigrants have started to narrate experiences in similar ways as the Central Americans, comparing the high levels of violence in Mexico to what they are now experiencing in Phoenix and alluding to the dramatic changes from even just a few years ago.

The immigrants' references to punitive immigration laws demonstrate the power of these laws to potentially violate individuals' human rights, corroborated by a federal court ruling, which make them suspect in the eyes of others and even lead them to accept their self-depreciation, exploitation, and suffering as normal consequences of law enforcement and to impose categories of domination on one another. This is why I argue that the contemporary immigration regime—the different "layers" of laws that governments at various levels have instituted and their implementation on the ground—can be thought of as *legal violence* (see Menjívar and Abrego 2012), manifested in harmful ways in the lives of immigrants, with short-term (and usually more visible) implications as well as long-term effects. These effects are not counted or tabulated in the way we are used to seeing them in reports on what we think of as violence, and thus we may miss such effects as violence. However, it is imperative to call attention to the injurious effects of today's immigration regime, not only on the lives of the "target" population of undocumented immigrants, but also on the lives of documented immigrants and even U.S. citizens; using the lens of *legal violence* allows for this recognition. As history has demonstrated, the dehumanization of entire groups of people sets the stage for abuse and egregious human rights violations (see Massey 2007). Although the effects of the laws and their implementation we see around the country today are often couched in the language of "*unintended* consequences" of the law, the statements of public officials who want to satisfy voters by "doing something" about the immigration "problem" point in another, more *intentional,* direction. A first step in the right direction would be to recognize the short- and long-term consequences of the inhumane treatment and injurious actions resulting from the implementation of the multilayered system of laws. This necessary step will set the conversation on the right track for proper immigration reform.

NOTES

1. Scholars have examined the reasons behind the increase in state-level legislative activity. Chavez and Provine (2009) observe that economic indicators, crime rates, and the size and growth of the foreign-born Latino population have little explanatory power; instead, conservative citizen ideology appears to drive this kind of legislation. And even though city size seems to be a strong predictor of the proposal and passage of these laws, party composition shows more consistent, statistically significant results (Ramakrishnan and Wong 2010). Whereas at the state level party membership or conservative ideology seems to drive these legislative efforts, this is not the case at the federal level, where regardless of party affiliation, the same approach of merging immigration and criminal law has been firmly maintained by the last three administrations (Ramakrishnan and Wong 2010).

2. Another characteristic of state laws is that they end up tied up in federal court, as federal judges block the implementation of these laws' most controversial provisions in efforts to uphold federal preeminence in immigration matters. Such has been the case with Alabama's HB 56, Arizona's SB 1070, Georgia's HB 87, and Utah's HB 497, among others. However, even if these laws are held up in court, the fact that they have passed and been signed into law has sent a powerful message to communities where Latino immigrants, documented and undocumented, live.

3. Another key feature that distinguishes the present era of mass deportation from earlier ones is, Kanstroom (2007) notes, the presence of a vast state technology that enables the melding of two different methods of deportation: extended border control and interior social control.

4. A look at the state- and local-level laws that these authors examine (i.e., Mitnik and Halpern-Finnerty 2010) shows a clear pattern: the more inclusionary laws were passed earlier, in the 1980s, 1990s, and early 2000s, whereas the legislative activity seen in recent years has focused on harsh and exclusionary legislation to "control" the inflow, which is seen as problematic.

5. The list is long, and the time period extends beyond the window in which Arizona's SB 1070 garnered much attention. Examples include Oklahoma's H 1804, passed in 2007, which prompted about ninety thousand undocumented immigrants to leave the state and a loss of about $1.9 billion to that state's economy; Georgia's S 529, in 2006, which left a shortage of workers in the agriculture and hospitality sectors; and Prince William County in Virginia, where in 2007 the board of supervisors approved an ordinance to check the immigration status of those arrested.

6. For a parallel examination of the criminalization of immigrants and its effects, see Willen's (2007) work on the experiences of undocumented immigrants in Tel Aviv. She describes the strategies that undocumented immigrants deploy to cope with the constant threat of arrest and potential physical violence. One Thai woman described how she and her flatmates take turns sitting up each night keeping watch on the street for any suspicious vehicles.

7. Space is limited, so I cover a sampling of these federal programs here.

8. Several reports note that ICE now operates to meet an annual quota of 400,000 deportations, with officers having stepped up efforts to reach this goal (New York Civil Liberties Union; http://www.nyclu.org/content/ice-scandal-of-week-400000-deportations-goal-fy10) .

9. See DHS Statistical Yearbook 2005, Table 41, "Aliens removed by criminal status and region and country of nationality: Fiscal years 1998 to 2005—continued," and DHS Statistical Yearbook 2000, Table 66, "Aliens removed by criminal status and region and country of nationality, fiscal years 1993–2000."

10. A recent report by the Department of Homeland Security Office of Inspector General that audited the 287(g) agreement (USDHS/OIG 2010) noted that while the agreement has boosted the agency's efforts to remove undocumented immigrants from the country, there have been many instances of noncompliance with the agreement and serious flaws. Although the report does not mention Maricopa County, it points out that one of the jurisdictions in the agreement has been the focus of a

racial-profiling lawsuit and a Department of Justice investigation of discriminatory police practices, which is the case for Maricopa County.

11. An amendment (HB 2162) changed "legal contact" to "legal stop, detention, or arrest," a modification that still has potential for racial profiling, among other concerns.

12. Under the 2008 Legal Arizona Workers Act (LAWA), employers who hire unauthorized workers could have their business licenses suspended for up to ten days and be put on probation. A second offense can lead to a revocation of the license. The county attorney's offices across Arizona's fifteen counties enforce the law, which also requires Arizona employers to use E-verify, the federal electronic system, to validate Social Security numbers and employees' immigration status. Largely seen as redundant because according to federal law it is already against the law to "knowingly" or "intentionally" hire undocumented immigrants, the state version goes further in its punitive consequences than its federal counterpart.

13. Throughout this chapter, I refer to the MCSO and not to individuals in that agency, so as not to personalize these matters or focus on the actions of one individual. It is easy and tempting to do so, but centering the discussion on one person obscures the fact that today's efforts and strategies to keep immigrants out are the result of well-coordinated efforts by a broad network of public officials, politicians, and interest groups with wide-ranging, nationwide, well-financed networks.

14. Another instructive case is Alabama. At this writing, Alabama has the nation's strictest immigration law, even though the undocumented population there is estimated to be only around 120,000, or about 2.5 of its population of 4.7 million, and only a fraction of the 11 million undocumented nationwide.

15. Although the MCSO has gained notoriety due to its enforcement practices, not all politicians in Maricopa County agree with the agency's strategies. A former Phoenix major and a chief of police, for instance, have strongly opposed these practices and criticized them publicly. Former mayor Phil Gordon, with support from some legislators, even asked the U.S. Department of Justice to investigate the MCSO.

16. Since being stripped of its authority to conduct street-level enforcement, the MCSO also has resorted to patrolling highways in search of human traffickers and drug smugglers, a tactic that further fuses immigration issues with drug smuggling and criminal activities.

17. Similar operations have taken place in other states. For instance, traffic stops in southern California have surpassed those in Maricopa County, and workplace investigations and audits of private businesses suspected of hiring undocumented workers have taken place in that state as well (see Wozniacka 2012).

18. This section draws on a series of studies of immigrants of Latin American origin that we have conducted in the Phoenix metropolitan area since 1998. With my assistants, we have conducted more than eighty interviews (and reinterviews) with Guatemalan and Salvadoran immigrants (and recently with Hondurans); have followed a core of participants over the years; and have spoken with many others, including community workers, religious leaders, teachers, consuls, and social workers. In addition, we have done fieldwork and spent time in places where immigrants conduct their lives, such as health clinics, schools, supermarkets, and churches. This

long-term contact with the immigrants has helped me to capture what legal uncertainties translate into in real life, as well as to make inferences about the added effects of local-level initiatives in the past few years.

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9

The Power of the Latino Vote: Instant History, Media Narratives, and Policy Frameworks

Roberto Suro

In U.S. presidential politics, races are now instantly transformed into history on election night. Every race since the greatest cliffhanger of them all in 2000 has generated some doubt about the outcome up until election day. Then, as exit poll data course through newsrooms and actual results become available in the central time zone, the outcome materializes. Along with the victor come the explanatory narratives spun by anchors and analysts, who need to fill airtime until the polls close in the West. Simple vote tallies for two candidates are not nearly enough to get through the night. Stories must be told. And stories that are novel, snappy, and convincing get retold and posted and printed and tweeted and retweeted until they become sticky, contagious, and viral. The proverbial first rough draft of history emerges from a handful of instant insights.[1] The narrative marches backward from election day through the campaign, finding validation in the debates, the conventions, the primaries, and on back to Iowa. Dots are connected to create causality until the map of blue and red states becomes the readily comprehensible and unsurprising result of known events. Before dawn, all suspense has been eliminated, not only about who won but also about why.

One particular political narrative sprang out of election night 2012 with such force that it transformed the immigration policy agenda with effects still

evident more than a year later. The media mechanisms that generate such potent political narratives have been assessed in detail elsewhere and are not our concern here (Lippman 1992; McCombs and Shaw 1972; Lakoff 2008). Instead our interest lies with what happened after the tale was told.

The votes were still being counted on the night of November 6, 2012, when the conventional wisdom congealed around the idea that Latino voters had played a decisive role in President Barack Obama's victory. The national exit poll conducted for a consortium of news organizations calculated that 71 percent of Latino voters had supported Obama, compared to 27 percent for Governor Mitt Romney, and Latinos accounted for 10 percent of the electorate, a greater share than ever before (CNN 2012). These findings marked relatively small changes compared to the 2008 results, as discussed below, but nonetheless the numbers drove one of the major media narratives used to explain the election's outcome. According to this storyline, Obama lost the white vote, including the vote among white women, by more than expected, but minority voters carried the day for the president, with heavy turnout and lopsided margins.

The emerging media consensus made Latinos into political protagonists as never before. For the first time they were portrayed as an essential element of a presidential campaign victory. But even more important was the role ascribed to Hispanics for the future. Obama's 2012 success was explained as part of a historic shift in the nation's demography that would continue to play out for several more elections to come. Simple yet powerful, the narrative of rising Latinos and declining whites carried an elemental appeal.

This narrative was not the only explanation bandied about on election night by any means, but the alternative narratives were all much more complicated. Of course the two candidates presented starkly different personal qualities. Each of their campaigns had produced distinctive successes and failures. Obama and Romney stood for different ideologies and had taken different positions on key policies. In addition, both the domestic and international contexts helped shape voter attitudes. With the passage of time all of these factors, and others, would contribute to analyses of Obama's victory, but complicated intersectional narratives must wait for the later drafts of history that are written with at least some hindsight and at greater length than is available on election night.

That first rough draft of history is best told in shorthand. A fresh face—Latinos—burst onto the scene full of youth and momentum. The vaunted force of old—whites—was revealed to be aging and weak. The consequences are epochal, especially for the audience, which is made up mostly of white people who are middle-aged and older. And of course what better vehicle for that narrative than the reelection of a nonwhite president whom most white

voters opposed. This narrative developed on November 6, 2012, in an unprecedented media environment. Facebook and Twitter had been in their infancy in 2008, so election day 2012 was the first to be fully narrated in social media. The distilling, intensifying, and echo chamber effects of earlier hypermedia environments presumably intensified with the new volume of traffic generated by new media platforms. The speed with which the rising Latinos/declining whites narrative became conventional wisdom is evident in the coverage posted by *Politico,* the online news site that markets an insider's view of politics and policy. At 6:48 AM (EDT) on November 6, *Politico* started the day by proclaiming, "The presidential race is tied going into Election Day" (Hohmann 2012). The election was a horse race when the polls opened; either candidate could have won, and the result was sure to be close. Not quite eighteen hours later, at 11:39 p.m., *Politico* posted a story headlined "2012 Election Outcome: Media Says GOP Must Deal with Non-whites" (Byers and Weinger 2012). Before midnight the rising Latinos/declining whites narrative had been repeated so many times that the narrative itself had become a story worthy of note for *Politico,* because so many media voices were predicting grave consequences for Republicans in future elections. Instead of a horse race between two well-matched candidates, the *Politico* article quotes one analyst after another as saying that the election result signaled long-term population trends.

The "story of this election is demographics," NBC's Chuck Todd is quoted as concluding. The *Politico* article quotes ABC News contributor Matthew Dowd as saying, "I think what's happened is the Republicans have bet on winning elections on a dwindling share of the population, which is white males, and Democrats have bet on the fastest increasing center of population, which is Latino voters."

As noted by *Politico* on election night, conservative commentators used bold terms to describe the outcome. "The white establishment is now the minority," said Bill O'Reilly, a prominent commentator and host on Fox News. "The demographics are changing: It's not a traditional America anymore."

On NBC Mike Murphy, a Republican campaign strategist, reduced the entire election to one factor that spelled defeat for his party: "we have a Latino problem that just cost us a national election" (Glueck 2012).

POLITICS BECOMES POLICY

It was also conservatives who on election night began to tie the outcome to immigration policy. George Will, the newspaper columnist and ABC contributor, attributed Romney's drubbing among Latinos to his positions on immigration, starting with his opposition to the DREAM Act, a measure that

would have granted a path to citizenship for certain unauthorized migrants who were brought to this country as children. "[Romney] came out against the DREAM Act, promising to veto it," Will said on ABC, as quoted by *Politico,* "and a few months after that he was using the language of 'self-deportation,' that is making life difficult enough for the 11 million immigrants in the country that they would deport themselves. It is awfully hard to unring that bell" (Byers and Weinger 2012).

By the morning after the election, some leading conservative voices were calling for the GOP to change its position on immigration. Sean Hannity, another star of Fox News, said on his radio show that his position on legalization for unauthorized migrants had "evolved" as a result of the election (Weiner 2012). In 2007 Hannity had led the charge against an immigration reform bill in the Senate because he claimed it would give "amnesty" to lawbreaking migrants. His change of heart was not the result of a reevaluation of the merits of the policy, but rather a simple act of political expediency after an unanticipated election loss.

"We've gotta get rid of the immigration issue altogether," Hannity said on November 7, 2012. "It's simple for me to fix it. I think you control the border first, you create a pathway for those people that are here. You don't say, 'you gotta go home.' And that is a position that I've evolved on. Because you know what—it just—it's gotta be resolved."

Latino advocates drew an explicit connection between the Latino vote and Obama's victory and then quickly turned to renewed demands for immigration reform with a path to citizenship.

Jorge Ramos, the anchorman for Univision's flagship evening news broadcast, started the show on November 7 by saying, "Barack Obama was elected president, in large measure due to the support of millions of Latino voters. Ten percent of voters across the country were Hispanic. This is how Barack Obama won. Seven out of every ten Latinos voted for the president, seven out of every ten." A day later, Ramos was saying that many Hispanics believe "that it is necessary to settle accounts with President Barack Obama so that he will truly keep his promise" to enact immigration reform (Tomas Rivera Policy Institute 2013).

Some Latino veterans of the immigration wars in Washington were even more explicit about stating what they expected in return for the Latino vote. "The sleeping Latino giant is wide-awake and it's cranky," said Eliseo Medina, international secretary-treasurer of the Service Employees International Union, in an interview with the *New York Times* the day after the election. "We expect action and leadership on *immigration* reform in 2013. No more excuses. No more obstruction or gridlock" (Preston and Santos 2012).

The initial drafting of the reform legislation proceeded quickly after the election. Both a team at the White House and one in the Senate, supervised

by the so-called Gang of Eight, outlined sweeping reform packages that would overhaul virtually every aspect of U.S. immigration law, with hundreds of pages of provisions. It was a big job, but both teams worked quickly, because both had a massive head start. Instead of drafting a bill from scratch, they were merely modifying the big piece of legislation, 1,000 pages plus, that the Senate had considered in spring 2007 but failed to pass when the debate ended in a procedural stalemate. By inauguration day the basic elements of those packages were well known in Washington, and both the president and the senators had scheduled events to unveil their proposals. On the Sunday after Obama took his second term oath, two of the eight, Senators John McCain (R-AZ) and Robert Menendez (D-NJ), appeared on the ABC News show *This Week* to talk about the fast-moving deliberations. McCain had been one of the major players in the 2007 debate; indeed, he had helped write and cosponsor the legislation. Nearly six years had passed, marking two presidential elections, including his own run, and the worst economic downturn in living memory. Now it was all going to march forward again, and really for only one reason.

McCain announced that the gang was prepared to go public the coming week with a set of principles that could be translated into legislation. Obama was set to do the same with a major speech. The goal was to get bipartisan action out of the Democratic-controlled Senate by midsummer in the hope that the Republican-controlled House would follow and the law could be enacted by the end of the 2013 congressional session.

Explaining to ABC's host, Martha Raddatz, why something so elusive in the past now seemed plausible in such a short time frame, McCain said, "It is not that much different from what we tried to do in 2007, Martha. What's changed is—honestly, is that there is a new, I think, appreciation on both sides of the aisle—including maybe more importantly on the Republican side of the aisle—that we have to enact a comprehensive immigration reform bill."

Raddatz then pressed McCain to explain why he thought there had been a change of heart among the many Republican members of Congress who repeatedly had fought hard—and successfully—to defeat proposals for a path to citizenship, which they harshly termed to be "amnesty."

McCain replied that he would give his colleagues "a little straight talk." He said he would tell them, "Look at the last election. Look at the last election. We are losing dramatically the Hispanic vote, which we think should be ours, for a variety of reasons, and we've got to understand that."

For McCain the election produced an irresistible political imperative. It was important for Obama too, of course, but he had other means to convey his appreciation for Latino voters.

Obama did not explicitly mention the Latino vote in his speech that week. Instead, he used some heavy-handed symbolism to make the same point as McCain. The speech was delivered at a predominantly Hispanic high school in Las Vegas, and the news coverage underscored the obvious. As the *Los Angeles Times* put it, "Obama said he had come to Nevada—where the growth of the Latino population and its political activism has transformed the state's politics—to lay down his markers on the issue" (Parsons 2013).

When Obama, chanted, "Now's the time!" repeatedly—four times according to the White House transcript—insisting that the moment had come for passage of comprehensive immigration reform, the audience responded in Spanish, cheering "Si se puede! Si se puede!" (White House Office of the Press Secretary 2013). The answer required no translation or explanation.

If an opportunity developed to renew the immigration policy debate in January 2013, it was because of the election, or more precisely, the election narrative of Latinos rising and whites declining. That simple notion, encapsulated perfectly in the call and response between Obama and his Las Vegas audience, was repeated and repeated for the next six months as the Senate debated and then passed a comprehensive immigration reform bill on June 27 with a vote of 68 to 32, with 14 Republicans supporting the measure.

Even as the legislation moved to the Republican-controlled House, the narrative persisted. Interviewed on the NBC News Sunday show *Meet the Press* three days after the Senate vote, the Democratic leader in the House, Representative Nancy Pelosi (D-CA), said she was optimistic about the legislation's prospects for one simple reason: supporting legalization is "certainly right for the Republicans if they ever wanna win a presidential race" (NBC Universal 2013).

The Senate had just passed the most sweeping revision of immigration policy since 1965, and Pelosi had an exquisitely simple explanation for what had just happened: "We wouldn't even be where we are right now if it had not been that 70 percent of Hispanics voted for President Obama, voted Democratic in the last election. That caused an epiphany in the Senate, that's for sure. So all of a sudden now we have already passed comprehensive immigration reform in the Senate. That's a big victory."

Before proceeding to discuss how the immigration policy agenda was influenced by the narrative of rising Latinos/declining whites, it is important to spend a moment examining the actual dimensions of the Latino vote in favor of President Obama.

The margin of error on the national exit poll conducted by Edison Research is about plus or minus 3 percent at a 95 percent confidence interval (Edison Research 2013). In 2008 Obama captured 67 percent of the Latino vote compared to the 71 percent calculated for 2012. The 4 percent difference is

perilously close to the edge of statistical significance. It is by no means a dramatic swing. Obama's 2012 Latino vote share was not unprecedented either. President Bill Clinton took 72 percent in his 1996 reelection, and even Michael Dukakis got 69 percent in his 1988 losing effort. Similarly, the 10 percent Hispanic share of the electorate estimated in the 2012 exit poll is only a modest increase over the 9 percent in the 2008 exit poll, and the 28 percent total share of the electorate for all nonwhite voters—far from a majority—was up only marginally from the 26 percent in 2008 (Lopez and Taylor 2012).

In addition, as more detailed data became available, the 2012 exit poll was shown to have overestimated the Latino share of the electorate. Analyses of the November 2012 supplement to the Current Population Survey showed that Latinos accounted for only 8.4 percent of all voters, and moreover that the voter turnout rate for Latinos had actually declined compared to 2008 (Lopez and Gonzalez-Barrera 2013).

THE LIMITS OF NARRATIVE

It seems self-evident that major developments in the political sphere, like a presidential election, should exercise a powerful role in defining policy agendas. This is obvious when a new administration takes office, or control of Congress changes from one party to another. However, an election can also signal important changes in public opinion about which issues should take precedence in decision making or which policy alternatives should receive favorable consideration. That was certainly the case regarding immigration in 2012, when the election changed the politics of immigration without having changed the leadership of any branch of government.

Nonetheless, as John W. Kingdon (2010) demonstrates in his classic study of federal decision making, *Agendas, Alternatives, and Public Policies,* the political sphere alone does not determine which issues get attention in Washington, and much less, which actual policies get enacted. In addition to political developments, Kingdon argues that agendas are set when there is a successful coupling of a problem and a policy alternative. The policy window opens when there is widespread agreement among elected officials, bureaucrats, advocates, lobbyists, the media, and other participants in the policy process about how specifically to define a problem and which programmatic alternatives are likely to provide a solution. Three "streams," to use Kingdon's formulation, must flow together for there to be successful agenda setting: the understanding of a problem, the articulation of policy alternatives, and political consensus.

The 2012 election, and in particular the rising Latinos/declining whites narrative, provided the political element for a new consideration of immigration policy but did nothing to develop a new definition of the problem or a

new formulation of policy alternatives. Instead, the renewed debate centered on very old and very well-worn ideas about both the illness and the cure. As a result, the deliberations that ensued between the election and the passage of legislation by the Senate in June 2013 did not generate new policy alternatives. Though the bill passed by the Senate in 2013 differed in many important details from the bill that had failed to pass in 2007, the policy structure and all the key elements were the same.

Moreover, the political developments of 2012 did not significantly change the participants in the policy debate. Some new players joined the discussion, but the fundamental array of interests was the same as it had been in the past several rounds of immigration policy debates. "Strange bedfellows" is the term often used to describe the bipartisan, nonideological coalitions that come together to produce immigration policy (Tichenor 2008). Despite the prominence given to Latino voters as a key constituency for the Democratic Party, partisan politics played a secondary role in the immigration policy debate that followed the 2012 election. At the simplest level, the "Gang of Eight" that guided the development of legislation in the Senate was comprised of four Democrats and four Republicans. The same "strange bedfellows" phenomenon was evident in the odd combination of interest groups—evangelical Christians and Silicon Valley entrepreneurs, for example—that came together on immigration in 2013 even as they fought each other on other issues—marriage equality in this case.

So while the 2012 election changed the politics of immigration, other elements of the policy process remained the same. Both the framework of policy alternatives and the array of interests that fought over those alternatives reflected long-standing patterns in immigration policy making. A closer examination of these two elements, the policy framework and array of interests, is critical to understanding what happened after the election helped open a new round of debate on immigration policy.

CLOSING THE BACK DOOR AND OPENING THE FRONT

In 1981 a congressionally mandated commission on immigration policy reported its conclusions after ordering studies by top scholars, holding hearings, and engaging in extensive bipartisan deliberations. The commission chair, the Rev. Theodore M. Hesburgh, then president of the University of Notre Dame, summarized the conclusions this way: "We recommend closing the back door to undocumented/illegal migration, opening the front door a little more to accommodate legal migration in the interest of this country, defining our immigration goals clearly and providing a structure to implement them effectively, and setting forth procedures which will lead to fair

and efficient adjudication and administration of U.S. immigration laws" (Hesburgh 1981).

Hesburgh's doors and all the immigration laws enacted in the United States in the past three decades are designed around a very specific mechanism: the management of illegal flows (the back door) and the management of legal flows (the front door) are not only part of the same structure, but their proper functioning is also entirely interdependent. Closing the back door (exerting control) provides moral, social, and political justifications for opening the front door (allowing admissions). Moreover, the system of admissions has no credibility, no effectiveness, if it can be wantonly circumvented because controls are lax. Likewise, effective admissions can take the pressure off controls sufficiently to let them function properly. So, closing the back door enables a nation to open the front, and keeping the front open allows it to shut the back.

With powerful simplicity, the back door/front door formulation evokes the ideal that the control of migration across borders is an exercise of national sovereignty. The modern nation is not a nation—it is not a homeland—unless it has boundaries, and those boundaries serve not only administrative functions but also as a basis for defining a national identity (Calhoun 2004). Those boundaries evolved into borders, and since the early twentieth century governments have increasingly policed those borders in an effort to ensure that migration takes place through points of entry where decisions are made about who should be admitted and who should be excluded (Goldin, Cameron, and Balarajan 2011). Thus, the prevailing immigration policy framework claims its political authority as an essential function of the nation-state.

President Obama articulated this construct in an expression he has used often in portraying his position on immigration. For example, during a speech in El Paso in May 2011 he said, "We're here at the border because we also recognize that being a nation of laws goes hand in hand with being a nation of immigrants" (White House, Office of the Press Secretary 2011). Many politicians of both parties have used that construct—the nation of immigrants and of laws—because it succinctly expresses a framework that, as we shall see, has guided U.S. immigration policy for at least three decades. The nation of immigrants thrives on effective admissions. The nation of laws requires effective controls. These are seen as two halves of a whole. Admissions and controls are inextricably intertwined and interdependent. This framework has endured even as key policy instruments have evolved over time and the political rhetoric has changed to suit the moment. It has even survived continued controversy and periodic failure. As Obama noted, "We've often wrestled with the politics of who is and who isn't allowed to come into this country. This debate is not new."

"Not new" is an understatement. The debate, as we shall see, has revolved around the same concepts of interlocked controls and admissions since the late 1970s, with the result that advocates on all sides agree only on the conclusion that the resultant immigration system is broken. And yet with each new debate, including the one that followed the 2012 election, policy makers have returned to the same basic framework.

The Hesburgh commission was one of the first formal responses by Washington to the current wave of immigration, which started to produce growth in the foreign-born population during the 1970s after hitting a historic low as a share of the population in the census at the beginning of that decade (Daniels 2004). The back door/front door formulation formally became policy in the Immigration Reform and Control Act of 1986, which drew much of its design and political impetus from the Hesburgh report. That legislation sought to tame illegal migration by operating on both controls and admissions simultaneously. It imposed sanctions on the employers of unauthorized migrants in a new enforcement effort meant to eliminate the "jobs magnet" for future border crossers. The law also offered a package of legalization programs that were meant to provide a path to citizenship for current unauthorized migrants while ensuring that admissions were sufficiently robust to ensure that demand for low-skilled labor, especially in agriculture, would be satisfied by legal workers (Cooper and O'Neil 2005). Implementation of the 1986 law not only failed to achieve the intended results, but actually helped fuel the growth of the unauthorized population, thus breeding deep cynicism over the prospects for an effective immigration policy. Both loopholes and weak enforcement mechanisms were written into the controls. Meanwhile, the legalization programs failed to capture the entire unauthorized population, leaving a large residual population that preserved the mechanisms of illegal migration. No significant new means of legal immigration were created to provide channels for future flows of low-skilled migrants. Nonetheless, the same basic architecture of simultaneous increases in enforcement and admissions was duplicated in the most prominent, comprehensive reform proposals put forward from the mid-2000s to the end of Obama's first term (Skrentny 2011).

The debates of 2006 and 2007, for example, played out under different political circumstances and featured somewhat different policy proposals, but both ended in stalemate. The first started when a Republican majority passed a tough control bill, and immigration rights supporters around the country demonstrated against it and in favor of generous admissions. A Democratic majority in the Senate then passed legislation that included a sweeping legalization program. The two houses never tried to reconcile their opposing views, and both bills died. Democrats then won the congressional elections of

2006, retaking control of the House of Representatives and expanding their margin in the Senate. With the active support of President George W. Bush, a bipartisan group of senators drafted a vast, comprehensive immigration reform bill that included tougher controls, a legalization program, and an overhaul of visa categories to create legal channels for future flows. That effort ended in stalemate a few votes short of enactment because of opposition from a cluster of progressives, union supporters, and conservatives, each objecting to different provisions (Suro 2010).

Highly acrimonious rhetoric from advocates on opposing sides accompanied both of these debates, yet there was no disagreement on the need for an immigration regime comprised of admissions and controls. All sides claimed the ideal of a nation of immigrants and a nation of laws. All participants wanted to close the back door and open the front. The bitterest confrontations centered on sequencing—for example, whether tougher border controls need to precede a legalization program—or on which element deserved a greater emphasis—for example, whether an effective legalization and visa system can obviate the need for vast investments in enforcement. Even when advocates disagreed on something as fundamental as the desirable size of the foreign-born population and the pace of demographic change that it promotes, all sides insisted that their aim was to fix a broken system by establishing an effective synchronization of controls and admissions. In the debates of the mid-2000s proponents had different visions of the desirable ends and the acceptable means, but amid the overheated rhetoric on both sides, they agreed on the basic policy framework.

A three-part structure for comprehensive immigration reform emerged from the debates of the mid-2000s and was codified in the 2007 legislation drafted by Senators Theodore M. Kennedy (D-MA) and John McCain (R-AZ) as a bipartisan compromise. This framework comprised increased enforcement both at the border and in the interior, legalization with a path to citizenship, and an overhaul of the legal immigration system that included an expanded temporary workers program. That was the framework endorsed by President Obama in his 2008 campaign and that he promised to enact in his first year in office (but never did). It was the framework put forward by Senators Charles E. Schumer (D-NY) and Lindsey O. Graham (R-SC) in 2010 as another bipartisan proposal (Schumer and Graham 2010). That framework was also the starting point for the bipartisan negotiations that Schumer, Graham, and McCain convened following the 2012 election and that by January 2013 had become the "guiding principles" promoted by the Gang of Eight for the legislation eventually passed by the Senate Judiciary Committee (Lizza 2013).

In the three decades since Hesburgh first proposed his formula, the two key elements—the back door and the front, controls and admission—had

become starkly distinct and highly polarized. The 1986 reform, IRCA, represented an effort to craft a grand bargain in which nobody got all of what they wanted, and both admissions and controls were adulterated in order to produce a winning compromise. All the bipartisan efforts of the 2000s were undertaken from the point of view that IRCA had failed and thus rejected the idea of seeking a compromise or middle ground in the mix of admissions and controls. Rather, the goal was to balance the two, and as one element got weightier, so did the other. The result was a policy framework in which the two key elements were seen as at odds and counterbalancing. More admissions required more controls, and vice versa.

That polarization was startlingly evident when the full Senate debated comprehensive immigration reform in June 2013. On the one side, pro-admission forces led by Senators Schumer and Robert Menendez (D-NJ) insisted that no legislation was possible without a path to citizenship for the current population of unauthorized migrants. "Without a path to citizenship, there is not going to be a bill—there can't be a bill," Schumer told reporters as the House began to consider the bill, adding, "it was our bottom line from the beginning" (Lillis 2013). The legalization measure in the bill that finally passed was the most sweeping admissions measure enacted during the current era of immigration. In principle, it provides immediate legalization and then eventual citizenship for most of the eleven million unauthorized migrants in the United States. But passage of that measure in the Senate only became possible when the legislation was amended to include the most sweeping control measures ever enacted. An amendment sponsored by Senators Bob Corker (R-TN) and John Hoeven (R-ND) added $40 billion of new spending on border control measures, with a doubling of the number of border agents to forty thousand plus seven hundred miles of new physical barriers and a panoply of electronic detection equipment. The 67 to 27 vote to close debate on that amendment was the critical step toward enactment of the bill itself three days later by a similar margin (Parker 2013).

Legalization with a path to citizenship was presumably the policy response to the political narrative of rising Latinos/declining whites. The supporters of generous immigration policies of the Gang of Eight insisted that this weighty act of admission was an indispensable element of immigration reform. Senate passage of that admissions measure, however, was possible only with the adoption of an equally weighty control measure—the unprecedented militarization of the U.S. border with Mexico that is required by the Corker-Hoeven amendment. Thus, the Senate legislation does not embrace a middle-ground compromise between admissions and control, but rather enacts the extreme positions of both with the idea that they will counterbalance each other. Moreover, as has been the case since the Hesburgh Commission first

articulated the framework, the operations of the front door and the back door are inextricably linked. A condition of the Senate bill is that the border controls must be in place before unauthorized immigrants can acquire citizenship.

STRANGE BEDFELLOWS AGAIN

Most U.S. immigration debates going back to the late nineteenth century share a common attribute: if policy gets made, it is the work of an ad hoc coalition that crosses partisan and ideological boundaries. Whether it was Boston Brahmins and organized labor working together to restrict immigration in the 1910s or California fruit growers joining civil rights organizations to promote legalization programs in the 1980s, immigration has consistently mobilized a wide array of economic, social, regional, and ethnic interests that do not find ready expression in typical political formations.

Perhaps the most extensive studies of this phenomenon have been authored by Daniel J. Tichenor, a political scientist at the University of Oregon. He emphasizes the degree to which immigration policy has defied the standard categorizations that are applied to U.S. politics as well as the party structures on which the mechanics of policy making are based:

> Immigration is a potent cross cutting issue in American national politics, one that defies the standard liberal-conservative divide and that produces fierce internal conflicts for the major parties. Consequently, decisive congressional action in this area typically hinges upon the construction of uneasy coalitions of odd political bedfellows in which distrust and rival interests abound. (Tichenor 2008, 39)

A Pew Research Center report in June 2013 showed how that phenomenon played out in public opinion during the Senate debate (Dimrock et al. 2013). A survey asked, "When should undocumented immigrants be allowed to apply for legal status?" Two alternative answers were offered, effectively forcing respondents to choose between the policy options then under consideration in Washington. One was "while border improvements are being made"; the other was "only after borders are effectively controlled." The question produced clear preferences only among respondents who identified themselves at the far ends of the ideological spectrum. Two-thirds of Tea Party Republicans (67 percent) said border controls should come before legalization. Meanwhile, three-quarters of liberal Democrats (74 percent) said that legalization should go forward while border controls are being improved. In all the other ideological categories, which comprise the great majority of American voters, opinion on this issue was divided inconclusively. Non–Tea Party Republicans and Independents were divided exactly in half in the Pew

survey. A slight majority of conservative and moderate Democrats (53 percent) favored going forward as controls were improved. This fragmentation along ideological and partisan lines means that the alignments, which typically produce governing majorities, do not function with immigration policies. Instead, new constellations of interests form when immigration gains a place on the policy agenda.

If neither ideology nor partisanship serves as an organizing principle for those constellations of interests, then how can we understand the forces that shape immigration policies? A number of scholars have suggested alternative means to understand how these strange bedfellow coalitions are formed. Gary Freeman, a professor of government at the University of Texas at Austin, offers a perspective grounded in the political economy of immigration. Having discussed why partisan politics fail to clarify immigration decision making, Freeman developed the following arguments in a much-cited article, "Modes of Immigration Politics in Liberal Democratic States," published in 1995:

> The direction of policy is mostly a function of which fragments of the public have the incentives and resources to organize around immigration issues. As it turns out, those who benefit from immigration in direct and concrete ways are better placed than those who bear immigration's costs. Immigration tends to produce concentrated benefits and diffuse costs, giving those who benefit from immigration greater incentives to organize than persons who bear its costs. It is useful to think of immigration regulation and control as a public good that lacks a concrete and organized constituency to produce it. (885)

Those benefits and costs come in multiple forms. Tichenor, for example, argues for a model that emphasizes both economic interests as well as social or cultural values (Tichenor 2002). So, for example, business interests that seek immigrant workers as well as political interests that favor free trade and open markets will support expansive policies toward immigrant admissions. Thus restaurant owners and investment bankers could find common cause in measures that open channels of immigration. Meanwhile, interests that favor tight labor markets or that specifically seek to avoid competition from immigrant workers might argue for restriction, and some leaders of organized labor and of African American communities have found themselves in this camp in previous immigration debates. On the social or cultural side, groups representing the same ethnicity or nationality as arriving immigrants have favored generous policies, and so have religious denominations and political groups that take a distinctly cosmopolitan view of the United States. Meanwhile, cultural nationalists who see immigrants as a threat to American identity have resisted expansive policies in numerous debates.

As with the framework of admissions and control, the 2012 election did not change this distinctive feature of immigration policy making. The election outcome created a more prominent role for interests that would fit under the heading of "cosmopolitans" in Tichenor's framework. "Cosmopolitans endorse expansive alien admissions and full inclusion of newcomers in the national political community," Tichenor (2008) argues. "They believe that large-scale immigration is socially and economically beneficial to the United States, and that the country's assimilative capacities are vast." He puts figures like Ralph Waldo Emerson, Jane Addams, and Edward Kennedy in this category, and in the contemporary era Latino elected officials and advocacy groups like National Council of La Raza, the National Immigration Forum, and America's Voice carry the cosmopolitan banner.

During the 2013 debates, the cosmopolitan interests fought primarily for a legalization program that included a path to citizenship for unauthorized migrants. As the National Council of La Raza, the nation's largest Hispanic civil rights organization, put it in their statement of principles on immigration, "The 2012 election was a breakthrough moment for Latino voters and, consequently for the immigration debate. . . . Establishing a roadmap to citizenship for the 11 million aspiring Americans—75% of whom are Latino—would probably be the single most important socioeconomic advancement for the Hispanic community in decades" (National Council of La Raza 2013).

However, as in past rounds of immigration policy making, no single interest held sway in 2013. For example, a critical breakthrough in the development of the legislation occurred when the U.S. Chamber of Commerce and the AFL-CIO negotiated a set of principles to guide the development of temporary worker programs (Khimm 2013). For the Latino interests that emerged empowered by the election, policy making with strange bedfellows involved a series of profound compromises to maintain the prospect of a pathway for citizenship. The most obvious compromise involved the acceptance of a vast increase in border controls after having opposed such measures for decades, and indeed some Latino and immigrant rights activists broke away from the coalition in favor of the Senate bill because of their displeasure with the border measures (Santos 2013). Moreover, Latino interests had to compromise on the criteria for future immigration flows.

Hispanic immigration, particularly the unauthorized migration, has been dominated by low-skilled workers. In order to win passage of the Senate bill, the cosmopolitans had to form an alliance with Silicon Valley business interests, which sought greatly increased access to immigrant high-tech workers (Mascaro 2013). Over the course of the debate Facebook cofounder Mark Zuckerberg led the formation of a new advocacy group, Fwd.us, which engaged in a massive lobbying and advertising campaign to win votes for

immigration reform, including a path to citizenship (Sengupta 2013). But the price of this support was a reformulation of the visa preference system to favor new migration by highly skilled newcomers through a point-based system that rewards higher education, English-language proficiency, and high-tech job skills. Although other features of the bill would produce a short-term increase in family-based migration that would allow immigrants already in the United States to sponsor relatives, the intent is to shift away from the family pathways that have favored legal immigration by Latinos. Even immigration rights advocates who strongly supported the Senate bill found reasons to be concerned about the kind of immigration that would be favored by the Zuckerberg-inspired legislation.

The American Immigration Council, a nonpartisan group that strongly supports legalization of unauthorized migrants, offered this assessment of the new system for future flows of legal immigration:

> Proponents of a point system have argued that we must move away from family-based immigration to a system that is tied to economic necessity. The merit-based point system is designed to balance a range of factors in assessing who should be admitted to the United States, but it remains an experiment. Supporters argue that similar systems have been used in other major industrialized nations. Critics have pointed out that it puts some applicants at a disadvantage, such as women, people who work in the informal economy or do unpaid work, relatives of U.S. citizens with insufficient formal education and employment history, older adults, and applicants from less-developed countries. (Immigration Policy Center 2013)

CONCLUSION

Immigration policy continues to respond to a peculiar set of dynamics that help shape both policy alternatives and the coalitions that promote them. These formulations predate the current era of immigration. Indeed, the basic policy framework linking admissions and controls was first introduced to policy debates in the 1970s when the foreign born were at a historic low point as a share of the total population. When the Hesburgh commission first proposed that closing the back door of unauthorized migration was a precondition to opening the front door of legal migration, less than a million Mexicans lived in the United States. When the Senate voted to use that same framework as the basis for a comprehensive reform in 2013, more than twelve million people born in Mexico made their homes here. These changed circumstances arguably should have produced new policy alternatives, but they have not. For example, the development of a large, permanent population of Mexican workers entrenched throughout the United States might have prompted consideration of policies that envisioned a transnational labor market as part of a more general intertwining of the U.S. and Mexican

economies. However, rather than opening spaces for the discussion of new policy frameworks, Washington policy making has remained locked on the old back door/front door formula. Thus, the Senate insisted on $40 billion in additional reinforcement of the back door as part of the bargain for opening the front door with a legalization program.

The ability of Latino voters to affect immigration policy needs to be measured against the deeply entrenched policy frameworks and coalition-building formulas that are typical of the issue. The number of voters and their power relative to other ethnic or racial blocs have been growing slowly, and each new presidential cycle brings new records in the vote total. However, the 2012 outcome shows the limitations of Latino voting power in controlling the immigration policy agenda. Under highly favorable circumstances an election narrative of Latino empowerment succeeded as an agenda-setting exercise. The Latino vote for Obama ensured that immigration would be on the issue agenda for 2013, but not how it would be debated or even less how it would be resolved.

As was stated over and over again by pundits on election night 2012, fundamental demographic trends guarantee that the narrative of Latinos rising and whites declining is in its early chapters. The effects are certain to grow more profound in elections through the 2020s at least. The aftermath of the 2012 election demonstrated both the strengths and the limits of Latino political power regarding the immigration policy agenda. It will take several more presidential cycles to learn whether the emergence of a new Hispanic electorate, an electorate born out of an era of migration, will lead to a remaking of U.S. immigration policies.

NOTE

1. The expression "first rough draft of history" as a description of journalism's mission first appeared prominently in the *Washington Post* and was popularized by the newspaper's longtime publisher, Phillip L. Graham.

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10

Amnesty in Immigration: Forgetting, Forgiving, Freedom

Linda Bosniak

In many national settings, the politics of immigration are contested by way of debates over "amnesty." While the forms that immigration amnesty may take can and do vary, the term broadly denotes a process through which unauthorized immigrants residing in a national state are given the chance to transition to legal status there. Amnesty for immigrants thus effectuates a kind of legal alchemy: through such policies, the irregular is made regular, the unlawful lawful. Amnesty, in this way, serves as a conduit from the farthest margins of citizenship to its possible, eventual center.

Not surprisingly, amnesty's transformative potency makes it extremely controversial. Indeed, the idea of amnesty has become a rhetorical flash point in many countries of immigration. On one side, the term is deliberately deployed by anti-immigration activists as a term of condemnation and derision, meant to delegitimize policies that would protect and incorporate immigrants. Fueling the condemnation is the conviction that amnesty rewards lawbreakers and incentivizes further lawbreaking. From the critics' perspective, what is needed is not regularization of these immigrants but a renewed commitment to rounding them up and ejecting them, as well as to tightening the borders against future illegal entrants and visa violators. In the United States especially, we hear attacks against what some term "the amnesty industry"

(immigrants' rights and protective organizations), against "backdoor amnesty" (discretionary measures undertaken by the executive branch to grant short-term forms of relief to some irregular immigrants outside the context of legislation), and against what some have dubbed "anchor baby amnesty" (territorial birthright citizenship for children of undocumented immigrants).

On the other side, many advocates for immigrants often invoke the idea of amnesty in an affirmative, aspirational way. Activist groups portray amnesty as a core political goal, and intellectuals continue to develop arguments on its behalf. It is true that some pro-immigrant activists have made a point of using different language in response to a perceived hijacking of the term by opponents; these advocates deploy the terms "regularization" or "legalization" instead. But for many in the immigrant rights community, the idea of "amnesty" remains compelling, still representing a fulfillment of justice rather than its perversion.[1]

Amnesty's outsized performative role in the immigration debates inevitably prompts questions about the concept itself. I regard debates over amnesty, broadly, as condensed sites for arguments about social accountability, by which I mean arguments about answerability, responsibility, and rectification for perceived social harm. In every policy context, amnesty-talk implicates, and is understood to implicate, questions of how to move forward in the face of some social or political schism attributed to a particular set of political or social actors. Yet the amnesty concept is polysemantic and evokes multiple ways of thinking about accountability in its various dimensions. It is divided on questions of who is accountable, what accountability is for, and what holding accountable entails.

In this chapter I address how amnesty arguments are made and what they signify. My motivating case is immigration amnesty, but I look at amnesty debates in other policy settings as well. Amnesty has been a contentious idea in a variety of contexts, from transitional justice to draft avoidance to parking and library fines. Surveying these debates, I hope, can help to highlight what is at stake in the immigration arena. My aim is to use the concept of amnesty as an optic for examining key normative and practical questions that commonly structure our debates over irregular immigration.

In this respect, the chapter primarily provides a diagnostic analysis of the structure of common normative arguments over amnesty. However, in the last section I enter the normative fray somewhat by critically examining the main strategy that political and legal theorists have employed in advocating for immigration amnesty: the argument that an immigrant's time and ties in the receiving society justify amnesty. I suggest that this justification for amnesty, though apparently inclusionary, ultimately condones and reproduces some of national citizenship's marginalizing aspects. I conclude with a

brief depiction of an alternative account of amnesty, one that promises a more critical approach to national citizenship and its exclusions.

AMNESTY'S MEANINGS

Let's begin with the fact that amnesty is an official act. We usually do not say, except in a metaphorical way, that a private entity can grant amnesty. Amnesty is a disposition extended by the state to another party.[2]

The class of amnesty's possible beneficiaries, however, is broader than its dispensers. Amnesty may be granted or denied to a party who might be an official or ex-official within the state. The grantee may also be a belligerent in a conflict or a private individual or a group of individuals. Note, however, that the parties affected by the state's amnesty decision—whether affirmative or not—usually extend beyond the grantor and grantee. Others—relatives, descendants, the public in general—are affected by the outcome in various symbolic and material ways. This is why the amnesty issue often becomes a heated question of collective political identity.

But what is the substance of this official act? Etymologically, the term amnesty comes from the Greek "a" plus *mnēstia*, meaning nonremembrance. It is common to characterize amnesty as a kind of forgetting, in part by noting that amnesty shares a cognate with amnesia. On this reading, amnesty is an act of official forgetting.

Assuming this is so, one must then ask what is being forgotten. The general presumption is that the object triggering the need or request for amnesty is a transgression or an offense of some kind. For amnesty to be relevant, there must have been a bad act. As it happens, much of the debate in any given amnesty setting concerns the question of whether the act or omission at stake should indeed be regarded as transgressive or offensive in the first place. But it is only if and when there is a transgression, claimed or acknowledged, that the amnesty question becomes relevant.

Beyond the question of amnesty worthiness, moreover, one needs to ask exactly what it means to "forget." With a little reflection, it seems clear that the idea of forgetting or nonremembrance is too facile to capture amnesty practice fully. Or perhaps it is more useful to say that, to the extent amnesty is always about forgetting, forgetting can take a variety of forms.

For instance, the forgetting that amnesty effects may be direct: it may involve an intentional overlooking or erasure of an act or transgression. Amnesty here would entail an act of what the common law once called "oblivion." Acts of oblivion presuppose that "certain kinds of conflict would be better forgotten than remembered for the continued health of the polity" (Meyler 2011, 13).

But amnesty sometimes also denotes the distinct idea of pardon or clemency. Indeed, forgiveness is probably the predominant contemporary understanding of the term; dictionaries consistently include this sense of the word as the first definition. On this understanding, there is also a forgetting, but what is forgotten is not the triggering act itself so much as the consequences that were—or were to have been—imposed on the actor.

Add to this the fact that the concept of amnesty is commonly associated with the idea of freedom from official restraint or oppression. The most widespread instance of this understanding is embodied in the name of the human rights organization Amnesty International. Amnesty International is commonly referred to by the media just as "Amnesty" (as in "Amnesty calls for release of prisoners of conscience"). This is not an outlying usage; in fact, it may be many people's first association with the term.[3] Arguably, this version of amnesty entails a forgetting as well, but what is to be forgotten is not so much the underlying act as attribution of responsibility and penalty to the originally designated perpetrator.

We thus might say that amnesty contains constitutive aspects linked variously to erasure, pardon, and freedom. In practical terms, however, these overlap to some degree and tend to combine in certain patterned ways. The result, I suggest, has been development of three distinct amnesty models, which are in play in different settings and at different moments. I call these (1) forgive-and-forget amnesty, (2) administrative-reset amnesty, and (3) vindicatory amnesty. Talk of amnesty may be intended to invoke one or more of these frameworks and may be perceived according to one or more of these understandings, with intention and perception not always corresponding and not always internally consistent. Nonetheless, these three models are broadly distinguishable and can be identified in multiple settings.

Forgive and Forget

At the heart of amnesty as forgiving and forgetting is the notion that the amnesty recipient is the perpetrator of an officially cognizable offense or transgression of some sort. Amnesty here entails a pardoning of the underlying action and erasure of its effects. But the disposition of amnesty also correspondingly legitimates the state's claim that the act in question was wrong. Amnesty therefore performs a kind of expressive indictment alongside its grant of clemency.

Some dislike employing amnesty as a remedy for social rupture for just this reason; the symbolic cost to the beneficiary is too steep. The debates in the United States over possible amnesty for draft avoiders during the Vietnam War era provide a good example. Many of the potentially covered people

rejected amnesty, notwithstanding its benefits, on grounds that it would entail acknowledging fault for what they claimed was a justifiable act (Laufer et al. 1981, 166).

However, it is more often critics of the triggering action for whom the state's granting of clemency is controversial. Critics argue that amnesty produces impunity by way of its toleration of the offender's conduct rather than imposition of punishment. In addition, some maintain that amnesty's toleration of wrongdoing is unjust to those who did not offend. Thus, as *Time* magazine mused in a 1972 editorial on amnesty for draft resisters: "Would it be fair to those who fought to forgive those who refused?" One response to this concern is to insist on imposing amnesty with conditions on the recipient—for example, fines, loss of benefits, community service, public apology, a required oath of allegiance—in order to expressively underline that amnesty is a settlement based on beneficence rather than any sort of entitlement, and to ensure that responsibility or fault continues to attach to the underlying act.[4]

There are also those who object that the problem with forgive-and-forget amnesty lies not only with the forgiving, but also with the element of forgetting itself. The impulse to oblivion that accompanies the pardon, in this view, is one of avoidance and repression. One hears in the transitional justice context, especially, the common view that amnesty's forgetting stands directly against any process of accountability. From bitter experience, we know that "we must never forget," yet amnesty represents precisely "enforced forgetting" (Ricoeur 2004). Amnesty for human rights crimes is not merely inadvisable, according to many, but should be outlawed altogether (Laplante 2011, 915).

Certainly there are countervailing opinions. Some maintain that one need not forget in order to forgive. Defenders of the amnesty extended as part of South Africa's Truth and Reconciliation process, for example, make a point of saying that "amnesty does not erase the truth" or the past—that is, pardon does not entail oblivion (*Transitions* 2011). Others affirmatively emphasize the virtues of forgetting as part of reconciliation and "moving on together."[5] However, on the whole, the kind of forgetting that is linked to or entailed by forgiving is deemed by many to be unforgivable.

Administrative Reset

A second model approaches amnesty as a kind of administrative or political reset mechanism. As before, the state views itself as responding to an offense or transgression that is recognized as such. But instead of dwelling on the fault or responsibility of the perpetrator, the starting premise of proponents is that, as a descriptive matter, the law at issue is largely unenforceable. Under this approach, amnesty functions as a response to administrative

failure; there is a pragmatic need to bring the law and actual behavior into closer alignment for purposes of effective governance and systemic legitimacy. The amnesty mechanism serves, therefore, as account clearing and slate wiping; the transgression is to be institutionally forgotten in favor of systemic functionality (Vedantam 2007).

We most often see this sort of amnesty conception at work in such apparently mundane regulatory contexts as tax collection and library and parking fines, as well as the more charged settings of firearms, narcotics, and pit-bull control. The associated supporting discourse sometimes suggests that the transgression was, in fact, not so bad anyway (parking and libraries and marijuana), or else that its badness is counterweighed by the costs to the social order of widespread noncompliance.[6] Further, proponents of amnesty as reset sometimes maintain that a de facto amnesty is the state's unacknowledged policy in any event, whether through governmental incapacity or refusal. In this view, it is far preferable to govern transparently and directly rather than covertly or inadvertently.

Since the administrative-reset approach to amnesty specifically sidelines questions of justice, it is rarely invoked in the human rights setting. Actors in the transitional justice debates tend to characterize any impulse to clear the decks as evincing moral failure. Outside the human rights arena, meanwhile, critics of amnesty as reset sometimes complain that the desire to "start clean" ends up condoning and rewarding the activity in question. Tax amnesties, for example, have "angered law-abiding taxpayers who dislike seeing tax breaks given to abusers of the system" (Leonard and Zeckhause 1987, 55).

Vindication

In addition to forgive and forget and administrative reset, there is a third amnesty model: amnesty as vindication. This understanding of amnesty departs from the others in two key respects. First, amnesty here represents a commitment to protect, rather than censure, the purported transgressors. Those to whom amnesty is extended are approached now as victims rather than malefactors. In addition, the grant of amnesty is understood to be an acknowledgment by the government that either the violated rule or norm, or the beneficiary's prosecution for it, was not justifiable in the first place. The laws or policies that defined the underlying act as a transgression are now deemed to require interrogation themselves—either because they are intrinsically unjust or because they have been wrongly applied.

This understanding of amnesty as vindication is associated most closely with the sense of amnesty as freedom. Through it, the state is understood to convey that the offender requires release from penalty, at least in part because

the government itself got things wrong. A normative reframing is undertaken, in other words: the former accountability calculation has been replaced by a new one, pursuant to which the original offender turns out to have behaved in a way that now appears comprehensible, excusable, and, perhaps, justifiable. There are strands of this vindication usage in various amnesty contexts. One of the clearest is the draft resistance setting. According to the aforementioned *Time* article on draft amnesty published at the close of the Vietnam War: "Nearly everyone, even those few who still favor pursuing the war, now agrees that the U.S. should never have become involved in the way that it did. Why punish those, ask the proponents of amnesty for avoiders, who saw the light first?" (1972). Here, the transgressors in the situation are no longer the draft avoiders but the war makers. The nation was not victimized by the resistors' actions but redeemed by them; meanwhile, the resisters require deliverance from the unjustified hardships imposed by enforcement of the draft avoidance penalties.

Jean-Paul Sartre elaborated this understanding of amnesty precisely in a *New York Review of Books* essay on draft resistance. "By amnesty," he wrote, "deserters and resisters of the Viet Nam war . . . did not mean 'pardon,' nor even forgetfulness. Certain of the justice of their cause, they simply wanted their rights recognized. And this could not be done unless the government was to reverse itself publicly, and, so to speak, say, 'If these men have the right not to wage this war, then we on our side had no right to declare it'" (Sartre 1973). This notion of amnesty entails a normative reversal: the purported perpetrators were actually in the right, while the government itself is at least partly culpable.

At a perhaps less politically elevated level, some U.S. states have proposed laws that would not only decriminalize marijuana possession, but also "grant amnesty to anyone convicted of marijuana related crimes" (*Morse v. Frederick* 2000). This discourse invokes the analogy with past government prohibitions on alcoholic beverages, which are today widely regarded not only as misguided as social policy, but also as unduly intrusive in individuals' private lives.

AMNESTY-TALK AND IMMIGRATION

Across policy contexts, people tend to think they know exactly what is at stake when any question of amnesty is on the table, as if the word had a clear and determinate meaning. To some extent they are right: amnesty-talk always implicates, and is understood to implicate, questions of how to move forward in the face of social or political conflict. Any discussion of the subject presupposes some preexisting, officially cognizable trouble or violation or rupture to which "amnesty" would—either appropriately or not—serve as an institutional response. Yet as I argued previously in this chapter, distinct understandings of

amnesty take us in very different directions. At times, amnesty-talk looks backward and emphasizes fault, even when pardoning it. At other times, talk of amnesty is solution-driven and emphasizes future political workability rather than liability. Occasionally, amnesty gestures toward protection and exoneration of the ostensible transgressor while also indicting the state. Each of the three versions of amnesty outlined above conceives of the character, agents, causes, and consequences of the underlying trouble distinctly and approaches possible solutions divergently as well. In short, political actors argue about social and political accountability by way of amnesty-talk, but the concept itself offers no consistent understanding of what such accountability entails and stands for no consistent approach for achieving it.

It is therefore not surprising that the idea of "amnesty" in the immigration context, as elsewhere, cuts in various directions. I do not refer here to the fact that different parties' conceptions of the design and operation of any possible immigration amnesty program (whether they are for or against it) vary greatly, although this is true.[7] I mean instead that parties' conceptions in this debate of what is wrong, who is wrong, and what amnesty would or would not accomplish are extremely diverse.

In practice, the center of gravity in the immigration amnesty debate lies at the intersection between forgive and forget and administrative reset. Parties fight over amnesty both within and between these frameworks. Forgive-and-forget approaches treat the issue at hand as a moral one—as one turning on the questions of whether to overlook, or absolve, the immigrants for the original transgression of irregular status (acquired through unlawful entry or visa overstay), and if so, on what basis. In this version of the debate, the familiar contending tropes of amnesty as either serving indefensibly to "reward lawbreakers" or rightfully "acknowledging immigrants' de facto membership" duke it out. Administrative-reset amnesty arguments, in turn, are largely pragmatic in tone and content. Advocates and opponents focus on past government border enforcement deficiencies and on getting things rationalized and going forward. In this setting, parties dispute whether amnesty correctly recognizes the reality of border failure and the persistent market demand for immigrant labor, whether it runs the risk of incentivizing future illegal immigration, and whether amnesty will ultimately advantage or undermine the national community.

Beyond the debates within each framework, parties often argue, at a metaethical level, about how to go about talking about the amnesty issue in the first place. At stake is the propriety of stressing moral themes of fault and forgiveness versus pragmatic considerations of social utility.[8]

It is, however, vindication arguments in the immigration amnesty debates that are of particular interest to me here. Amnesty's proponents, it appears,

are equivocal about such arguments. On the one hand, supporters of immigration amnesty commonly characterize its potential recipients as victims whom such a program would serve to protect. In so doing, advocates engage in a moral reframing: the dominant view of immigrants as predatory opportunists is reversed, and they are now portrayed as hapless prey. Amnesty is characterized as emancipatory in the sense, and to the extent, that it will release its beneficiaries from the endless threat of deportation and vulnerability to social exploitation associated with their unauthorized status.

On the other hand, amnesty supporters very rarely express the idea that amnesty rightfully emancipates irregular immigrants from unjust laws or unjustified enforcement of laws—that is, that amnesty represents a necessary repudiation of the country's border control policies, which construct them as illegal—in the first instance. Nor do they maintain that the original act of the immigrants (whether via unauthorized entry or visa overstay) was justified. Although one occasionally sees intimations of such views in pro-amnesty rhetoric, this is not a standard framing. Indeed, in most cases advocates conspicuously avoid such claims, and instead conjoin their call for amnesty with a commitment to a renewed enforcement of national borders. Certainly this is the public stance taken by even the most liberal of pro-immigrant activists and scholars. Whether for reasons of political expediency or principle or both (Bosniak 1996, 2012), amnesty proponents routinely couple their calls for an incorporation of (some) territorially present insiders with continued, and perhaps enhanced, commitment to border restrictions.[9]

The fact that this is the standard framing among amnesty supporters has sometimes led more radical immigrants' rights advocates to specifically eschew amnesty as a policy. Their position is that amnesty performs precisely the converse of vindicating the immigrants: instead, it effectively impugns them while also reifying and legitimizing the border laws that defined them as unauthorized to begin with.[10]

In short, amnesty's supporters often engage in discursive reframing by inverting the dominant narrative of immigrant as transgressor—with the immigrant now characterized as deserving victim, and amnesty pitched as providing a degree of rightful recognition and liberation from the legal structures that subordinate and marginalize. Nevertheless, most supporters do not say that the border rules that make unauthorized immigrants unauthorized—which constitute them as such—should be regarded or addressed as unjust, nor that, even if the laws are just, the immigrants' initial breach of them was defensible. In fact, most often amnesty advocates make a distinct point of emphasizing their concession to, if not their affirmative support for, the nation's border control rules going forward and concede some degree of fault or culpability on the part of the immigrants.

Opponents of amnesty, by contrast, insist on characterizing amnesty as vindication for immigrants, full-stop. They argue that amnesty is objectionable, first of all, because it badly mischaracterizes the relative moral roles of immigrant and government. In particular, they ridicule the notion that illegal aliens need protection from the state. But in addition, they emphasize that amnesty represents, and communicates, an indefensible justification of the immigrants' actions. As they see it, the trouble with amnesty goes beyond the fact that it provides beneficiaries with an undeserved windfall, unfairly advantages them in relation to those who have "played by the rules," and will encourage more of the same, thereby representing moral hazard. Above all, opponents view amnesty as condoning, or endorsing, immigrants' original and ongoing violation of national law and, by implication, as delegitimizing the state's project of border control.

Amnesty Theory and the Border

At the level of legal and political theory, most scholars who address the immigration amnesty question write on its behalf. They seek to provide justificatory ground for amnesty policies and to help think through the proper design of amnesty programs so that they best conform to these justifications (see the essays in Carens 2010).[11] Certainly there are dissenting voices, but not many (i.e., Swain 2009). Overall, academic commentators are amnesty champions.

The central justificatory account for according amnesty to irregular immigrants in this recent literature is based on an argument about the significance of time and ties. The claim attributes normative effect to the immigrants' residence in the receiving state. It links time spent in the destination state with quality and significance of connections made, or assumed to have been made, and uses these connections as a basis for affording recognition and regularization. This view holds that longer-term irregular immigrants have become de facto members of the national community and must be recognized as such.

The particular way in which this argument is articulated varies among scholars. For Joseph Carens, "the longer the stay, the stronger the claim." For Ayelet Shachar, "rootedness [constitutes] a basis for membership" (Shachar 2009, 19).[12] For Hiroshi Motomura (2010), "affiliations" justify regularized status. These formulations diverge somewhat in emphasis and specifics (see also Rubio-Marin 2000).[13] However, all maintain that although the proposed subjects of amnesty originally transgressed against the state (whether by entering the territory without authorization or by violating the terms of their initial visas), this original transgression has been overtaken—superseded—by an altered social reality.[14] These individuals' enmeshment in the day-to-day

life of the resident country—as workers and consumers and family members and students and worshipers and home dwellers—produces a concrete social membership which, with time, comes to eclipse the original offense. An "incremental process, in which [the immigrant's] center of life-gravity shifts" to the country of residence (Shachar 2009), recalibrates the calculus of blame and responsibility. Akin to property law's adverse possession concept in Shachar's analogy—or to a statute of limitations (Ngai 2005)—the immigrant was once, but is no longer, blameworthy.

This claim about the normatively transforming effect of time and ties is often coupled with more instrumental arguments. For example, deportation of the entire class of undocumented immigrants would be "impracticable" in any event. Further, "[d]eeply rooted immigrants" are integrated so fully into national life that it would be impossible to extricate them without unacceptable social costs to ourselves (Shachar 2009).[15] The core of the argument, however, is the claim that the immigrants' original trespass has effectively been cured by subsequent events.

In the context of today's inflammatory immigration debates, these time-and-ties arguments for amnesty are extremely compelling. They appear—and are intended to appear—sober and moderate and accessible. For those of us engaged in day-to-day exchanges about irregular immigration—in the classroom, in the media, around the dinner table—they are often the best we can offer. Clearly they will not be convincing to many: the incessant anti-amnesty drumbeat in much popular commentary attests to this. But in response to those who argue that unauthorized immigrants are opportunistic lawbreakers whose ongoing illegal status should disqualify them from any social and political recognition, the supersession argument seems deeply humane and sensible.[16] It has the potential to persuade, because it supports immigrant regularization by reference to familiar intuitions and commitments—to individual dignity, community values, democratic equality, and basic decency.

But the time-and-ties claim is premised on another commitment as well. This is a commitment to endorsing enforcement of national borders—not merely at the nation's edges, but also in the interior, by way of the deportation power. Indeed, its proponents make a specific point of conceding the continued authority of border rules. According to Shachar, recognizing the moral significance of rootedness would "likely require [legalization supporters] to make concessions, such as accepting the . . . greater enforcement of border control and stepped up labor sanctions, possibly including tighter employment and employee identification and verification systems" (Shachar 2009, 46, n. 168). According to Carens, time-and-ties amnesty is not inconsistent with "a government's moral and legal right to prevent entry in the first place

and to deport those who settle without authorization, so long as these expulsions take place at a relatively early stage of residence" (Carens 2009).

Even if proponents did not say so directly, moreover, acceptance of the legitimacy of national borders is arguably inherent in the time-and-ties argument. Supporters seek an exemption from application of the basic border rules in a certain set of circumstances, but not in all. They do not question the initial assignment of irregularity of status, and they do not directly question the underlying rules that define such status. This supersession rationale for amnesty begins with the notion that the immigrant committed an original wrong, or violation, against the state. It accepts that the wrong persisted after the initial entry or overstay—that is, it presupposes that this wrong or violation continued for at least some period after the triggering act. However, it maintains that this wrong is "capable of 'fading' in [its] moral importance by virtue of the passage of time and by the sheer persistence of its effects" (Waldron 1992, 15).

What we see, in short, is that time-and-ties amnesty promises to forgive and forget some border transgressions and to wipe the slate clean going forward in relation to these. It allows for a post hoc excuse in some circumstances. But what it does not do is vindicate the amnesty recipients' initial act, nor does it interrogate the validity of the state's underlying border norm. Some immigrants deserve incorporation not because they were justified in their initial entry or presence, but because circumstances have changed. By virtue of their time and ties here, they have "earned" their way out of the internalized exclusion of unauthorized status and onto a path to full membership (Carens 2009). However, the government is not asked to "reverse itself publicly," to paraphrase Sartre, and to say, in effect: if these people have the right to remain, then we on our side had no right to exclude them.

Realism, Idealism, and Social Criticism

I have no doubt that in order for an argument on behalf of immigration amnesty to have a chance of gaining policy traction in today's political climate, it will have to be coupled with an acceptance of border control. Anything else is a complete policy nonstarter for the foreseeable future. Still, theorists need not be confined by the demands of short- or medium-term policy relevance. Political advocates must tailor their arguments to popular consumption, but theorists need not—and arguably should not. Why, then, do so many seem to feel compelled to present themselves as feasibilists rather than visionaries?

Fifteen years ago Carens published a paper on method that defended what he called a "realistic approach" to the ethics of migration. We ought to think about "what is possible" as well as what is desirable, he wrote. We ought to be

attentive to "constraints which must be accepted if morality is to serve as an effective guide to action in the world in which we currently live" (Carens 1997, 156). This would mean—as he put it—that "[w]hatever we say ought to be done about international migration should not be too far from what we think actually might happen" (157). For psychological, sociological, and epistemological reasons, "[w]hat is morally obligatory [should] depend to an important extent on what is [already] being done" (160). Of course, what is already "being done" in relation to migration is the maintenance of an international political system divided into nation-states deemed to hold sovereign authority to control their membership via border controls at the frontier and in the interior.

At the time he published that paper, Carens was best known for his earlier, deeply idealistic treatment of immigration matters. In a 1987 article, "The Case for Open Borders," Carens had argued that national immigration controls contravene basic liberal egalitarian commitments. (As a shorthand, I will call this paper "Carens 1.") However, in the subsequent methodological article ("Carens 2"), Carens suggests that "realistic" approaches have been undervalued and underutilized in political theory on migration, and he endorses making greater—although not exclusive—use of them. Again, according to Carens 2, the "bedrock" element of the realistic approach in the immigration setting starts "with a recognition that every state has the authority to admit or exclude aliens as it chooses since that authority is widely acknowledged to be one of the essential elements of sovereignty" (Carens 1997, 158).

I noted previously in this chapter that the time-and-ties justification for regularization, which Carens has most recently championed in "The Case for Amnesty" (2009; "Carens 3"), rests on what we now see he regards as this realist baseline. While maintaining that "the longer the stay, the stronger the claim," Carens also accedes that states retain the right to control their borders: "Nothing in my argument denies a government's moral and legal right to prevent entry in the first place and to deport those who settle without authorization, so long as these expulsions take place at a relatively early stage of residence" (Carens 2009, 27). This is not an affirmative case for state border control and deportation authority, but it is a legitimizing concession.[17]

In response to Carens, one may raise at least two kinds of objections. First, his effort to salvage commitments to border exclusion alongside his commitment to incorporate (a portion of the) already-present immigrants ends up, in my view, partially undercutting the normative realism he wishes to exemplify. At least on measures of internal coherence and practical effectiveness—surely necessary constituents of any realistic theory—the time-and-ties position founders in some respects. To mention just a few: making amnesty contingent on an immigrant's presence for a minimum number of years correspondingly

excludes those who fall short of the cutoff. Line-drawing choices are inevitably difficult, but in this case, drawing the line at seven or ten years or even five means that amnesty will be withheld in some cases where it is—by dint of the significant ties immigrants have formed over time—arguably warranted, according to the approach's justifying rationale. Further, the division of the class of undocumented immigrants into the deserving longer-term and all the rest ensures that there will remain a sizable class of undocumented immigrants whose continued presence will undermine many of the aims that proponents claim justify amnesty in the first place, including protecting against exploitation and achieving the administrative and political gains of a reset. Finally, since amnesty is almost always conceived and described as a one-off event (indeed, proponents make a point of emphasizing its delimited, one-time-only character), and since the national border will undoubtedly remain permeable to some degree notwithstanding any enhanced enforcement, the class of the still-undocumented will continue to grow.[18]

But beyond this internal weakness, I contend that the difficulties with the approach are more thoroughgoing. The problem lies with the methodological preference for ethical realism itself. Carens states in his methods essay (Carens 2) that the realistic approach to morality has been "less developed theoretically" than the idealistic approach, and he therefore justifies elaborating and defending the former at great length (Carens 1997, 157).[19] Yet whether or not it is (or remains) true that realistic approaches have been insufficiently explored in political philosophy, realism clearly dominates methodologically at the level of applied ethics. In migration scholarship, this is especially the case. Views that morally decenter the state or question its exclusionary prerogatives are exceptional in scholarly immigration conversations in law and political philosophy.[20] What Carens describes as the bedrock of realistic immigration views—the legitimacy of national borders—is a largely uncontested operative baseline in the field (Bosniak 2006). Ironically, his own early piece on open borders (Carens 1) seems often to be a category of one: when you need a citation for idealist (non-state-centric) immigration theory, you invoke this early Carens; otherwise, you are likely to locate yourself somewhere on the long spectrum of ("realistic") liberal nationalist views, pursuant to which at least some exclusion at the national borders is eventually conceded. Notwithstanding the many differences among approaches, all versions of liberal nationalism accept that national borders function as a preconditional, enabling frame for liberal society.

As I say, this is the conventional wisdom, and more often than not, the legitimacy of state border authority is presumed rather than defended. However, Carens himself expressly defends the exclusion position in his methodological essay (Carens 2). States' general authority to control borders, he

maintains, derives from the pervasively and authoritatively "entrenched character of the state as an institution" (Carens 1997, 158). Proposals imposing "new external constraints on a state's power to set its own migration policies . . . have no chance of being implemented or even of being given serious consideration. An ethics of migration that requires abolition or even radical transformation of the state system is not a morality that can help us to determine what is to be done in practice." And since morality should arguably serve as a guide to "what is possible . . . in the world in which we currently live"—that is, since "moral norms should not stray too far from what most actors are willing to do much of the time" in order for morality to be meaningful (156)—a theoretical acceptance of state border authority as starting point is appropriate and necessary.

I absolutely understand the desire to be relevant. But the trouble with realism as characterized by Carens is that it functions as justification and even apology for existing conditions; it takes them as given and grants them normative weight by virtue of their existence. Carens states that he recognizes the dangers here, noting that realism can serve to "legitimate . . . policies and practices that are morally wrong" (1997, 167). And once again, he does not urge exclusive reliance on realistic approaches to migration. But realistic theory, he argues, holds a crucial—and defensible—place in immigration theory.[21]

Carens is right that idealistic approaches to ethics have their own pathologies. I agree that moral knowledge is inevitably "rooted in a particular social and historical context" and that idealism can be remote from "the shared moral understandings of our fellow citizens" (1997, 163). Michael Walzer, whom Carens cites approvingly, has powerfully criticized certain dominant forms of ideal theory, including pronouncements of principle characterized as if they were "discovered" objective moral truth, as well as "invented moralities," grounded in some agreed-upon procedure (Walzer 1987, 5, 10). Walzer seems to me wholly right when he says that all social theory ordinarily can do is give shape and content to shared understandings and intuitions via the process of interpretation.[22] "Interpretation," however, is not a simple positivist enterprise, and the understandings and intuitions that theory draws on need not be the dominant and the commonplace—a society's received, and naturalized, wisdom (1987, 29–30). Interpretive social criticism entails identifying and fleshing out more subterranean themes in social consciousness precisely in order to challenge prevailing arrangements and understandings. This kind of critical theory may, it seems to me, be fairly characterized as both realistic and idealistic. It is epistemologically realistic in that it draws on actual intuitions and traditions of thought—however incipient or unpopular—as the ground for its claims. But it is also normatively

idealistic in that it seeks to move beyond existing institutional power arrangements in substance.

Normative ideas that push beyond the liberal nationalist frame are already out there. We do not have to make them up out of whole cloth; we can find them in various corners of public discourse. In the immigration setting, specifically, there are resources to draw on, including some that go beyond familiar forms of liberal cosmopolitanism. The recent emergence of claims by young DREAMERs announcing that they are "undocumented, unafraid and unapologetic" gesture directly toward moral reversal. Certain transnational migrant rights and justice organizations—including No Borders, No One Is Illegal, and No More Deaths—have begun to articulate a morality, grounded in a rigorous humanitarianism, which specifically interrogates the necessity and legitimacy of borders to cross-national movement. Various progressive religious and transnational labor solidarity groups are likewise fundamentally critical of the prevailing normative migration order. These groups espouse the view that border controls "can never be fair to those threatened by them."[23]

Scholars across the disciplines have begun to approach such groups as part of a new social movement—and to flesh out their claims theoretically and read them historically in relation to earlier transnational social campaigns (i.e., Hondagneu-Sotelo 2008; Anderson et al. 2009; Cook 2010; Nyers 2010; Pallares and Flores-Gonzalez 2010; de Graauw 2012). As a whole, this work shows that even while many pro-immigrant advocates experience themselves as constrained by dominant conventions of "normative nationalism" (Bosniak 2006, 2012), some have begun to press up against it. Their efforts offer concrete discursive resources for developing critical theoretical approaches that take us beyond the nationalist bedrock that grounds "realistic" migration theory. The kind of border skepticism these groups proffer doubtless appears fringy and out of touch with the mainstream—but of course, that is true of most other radical social movements in their earliest phases.

IMMIGRATION AMNESTY AS VINDICATION?

To return to amnesty, I stated that immigration amnesty advocates rarely, if ever, make the full vindication argument. They do not say, to paraphrase Sartre once again, that the government must "reverse itself publicly" on the legitimacy of border exclusion and acknowledge that its own policy of exclusion was wrong. Nor do advocates generally argue that the immigrants were justified in having violated the law initially (though some say their violation was understandable). Instead, amnesty advocates generally concede the state's right to exclude; they concede its retrospective right to have excluded the immigrants for whom amnesty is now sought and its prospective right to exclude new immigrants in the future. In short, they concede both the migrant's original misfeasance and the defensibility of the national frontier going forward.

However, these concessions are not inherent in the idea of amnesty. A demand for immigration amnesty could conceivably be framed not only as a case for forgiving or forgetting or deck clearing, but also as a demand for freedom and exculpation. I have argued here that the concept of "amnesty" at least permits this.

So what might a vindication account of immigration amnesty look like? Making arguments of this sort will not come easily, but they are not inconceivable, and some are even discursively familiar. By way of conclusion, I want to briefly suggest four possible, partly overlapping, argumentative approaches.

First, a conception of vindicatory amnesty might be based on the claim that the receiving state has forfeited its exclusionary authority. The state purports to enforce its borders but in fact has engaged in long periods of de facto tolerance—sometimes quite "open tolerance" (Motomura 2010, 235)—of irregular entrance and presence. In some versions of this account, the stream of migrant labor is opportunistically managed and even disciplined via mechanisms of immigration enforcement. In others, the tolerance bespeaks lack of capacity and will as much as any instrumental self-dealing. But in all versions, the gap between the alleged violation and the actual condoning arguably supports extending protections to the tolerated class. The U.S. Supreme Court itself once articulated this conviction in a case about school access for undocumented immigrant children:

> Sheer incapability or lax enforcement of the laws barring entry into this country . . . has resulted in the creation of a substantial "shadow population" of illegal migrants—numbering in the millions—within our borders. This situation raises the specter of a permanent caste of undocumented resident aliens, encouraged by some to remain here as a source of cheap labor, but nevertheless denied the benefits that our society makes available to citizens and lawful residents. The existence of such an underclass presents most difficult problems for a Nation that prides itself on adherence to principles of equality under law. (*Plyler v. Doe* 1982)

It is not a long step from here to say that the reality of state collusion or incapacity with regard to the reproduction of irregular immigration supports broader civic and political incorporation of immigrants as well.

Second, vindicatory amnesty claims might rest on the idea that, because the receiving society directly reaps the benefits provided by the irregular migrant population, it owes these migrants recognition and membership in return. The argument focuses mainly, though not exclusively, on the economic contribution made by the immigrants to the receiving society.[24] Immigrant rights' organizations commonly call for "full legalization for all people who work and pay taxes" (Franco 2007). The underlying ethic here could be

framed as one of contractarian reciprocity, or as one of natural rights,[25] or alternatively as a stand against social exploitation and domination. The latter claim might emphasize the often grueling and "menial" labor that irregular immigrants tend to perform in receiving societies and approach status regularization as a necessary and just acknowledgment of that fact. Walzer made an argument to this effect when he contended, years ago, that "hard work"—hard in the sense of "harsh, unpleasant, cruel, difficult to endure"—should itself be considered "a naturalization process, [one which] brings membership to those who endure the hardship" (Walzer 1983, 65–166).

Third, a conception of vindicatory amnesty might be based in ideas about what the receiving country owes to certain classes of irregular immigrants by virtue of the history of the specific migration process of which they are a part. Rogers Smith recently offered a version of such an argument (2011, 545–557),[26] maintaining that "Mexicans may be owed 'special access' to American residency and citizenship, ahead of the residents of the many countries less affected by U.S. policies, and in ways that should justify leniency toward undocumented Mexican immigrants" (545). According to Smith, "the U.S. government . . . used [its] coercive authority in the late nineteenth and early twentieth centuries in ways that displaced substantial populations from their former lands and homes and made them eager to gain better economic opportunities in the United States" (550). Smith's claim is not that immigrants are owed reparations or recompense for the past coercion; rather, the receiving state's own purported commitments to human rights and democracy currently, coupled with the history of its coercion, entail obligations of recognition and incorporation to those affected today.[27]

Finally, a conception of vindicatory amnesty could emphasize the receiving state's role in producing calamitous political or economic conditions abroad that propelled portions of the sending state's population to depart. Again, Walzer's argument in *Spheres of Justice*—this time about obligations produced in certain refugee scenarios—could support such a claim. "Toward some refugees, we may well have obligations of the same sort that we have toward fellow nationals. This is obviously the case with regard to any group of people whom we have helped turn into refugees" (Walzer 1983, 49). Walzer here advances an idea of national "owing"; the receiving state's past conduct abroad generates a later responsibility to extend protection to those populations who fled here as a result of it.

Obviously all these arguments require extensive fine-tuning and development, either on their own or in combination. There may also be other ways to frame vindicatory amnesty claims in the immigration setting. But my point for now is that the amnesty idea need not be limited to arguments for state sufferance of irregular immigrants via forgetting and forgiving and

administrative fixing. A claim for regularization, articulated as "amnesty," can also embody claims pressed by immigrants against the destination state, or, even in the absence of such claims, a recognition by the destination society of its responsibility to the immigrants present within. The vindication brings with it recalibrated understandings of blame and responsibility embedded in the situation of transnational migrants irregularly present in bordered national states. A critical migration theory can help to elaborate this emancipatory facet of amnesty's meaning.

NOTES

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1. The amnesty concept is not always deployed directly as part of a political fight. News outlets and governments sometimes speak of immigration amnesty in a neutral, descriptive way to designate regularization of status. In these settings, amnesty is presented simply as one policy option among others. Commonly, however, the word carries an emotional charge.

2. It would generally be nonsensical, except in a metaphorical way, for me to talk about seeking or granting amnesty in the setting of family and friendship.

3. I have identified these three denotative meanings mostly through looking at the word's use in different contexts. All these meanings are also found in dictionaries. In order of frequency, forgetting is first, pardon is second, and liberty is third.

4. President Gerald Ford called his program "earned re-entry."

5. For example, President Ford on issuing amnesty (which he ultimately recharacterized as "clemency') for draft avoiders in 1974: "The primary purpose of this program is the reconciliation of all our people and the restoration of the essential unity of Americans." "President Gerald R. Ford's Remarks Announcing a Program for the Return of Vietnam Era Draft Evaders and Military Deserters," September 16, 1974. http://www.fordlibrarymuseum.gov/library/speeches/740077.asp.

6. As an example of the latter, many universities have recently implemented "medical amnesty" rules, which insulate students reporting drug- and alcohol-related illness from charges for underage drinking (Lewis and Marchell 2006).

7. There is a great range of proposed ideas on issues of immigrant eligibility, associated penalties, duration of program, availability of a "pathway to citizenship," and so forth.

8. Amnesty advocates will deploy pragmatic arguments against opponents' moral ones, and moral arguments against opponents' pragmatic ones. It is common to hear both kinds of arguments strategically utilized by both sides.

9. I say "some" because virtually all proposed amnesty or legalization programs would extend regularization to only a portion of the irregular population—based on years present (discussed in text below), criminal history, family ties, or other factors.

10. The nongovernmental organization (NGO) No One Is Illegal (n.d., 12) states: "We consider it vital to question the assumption that immigration amnesties are necessarily progressive and benign. Just the contrary, we consider they can be positively dangerous for many undocumented people."

11. "Irregular migrants should be granted amnesty—allowed to remain with legal status as residents—if they have been settled for a long time" (Carens 2009).

12. "[T]he longer the person resides in the polity, the deeper his or her ties to its society, the stronger the claim for inclusion and membership" (Schachar 2009, 19).

13. Ruth Rubio-Marin (2000) argues for regularization for long-term undocumented immigrants by virtue of their "social membership."

14. See the discussion of supersession of wrongs in Waldron (1992).

15. Moreover, permitting so many to remain in an irregular status guarantees their continued exploitation and marginalization. This is indefensible in human rights terms and contrary to the national interest in maintaining public safety and welfare.

16. It does beg various questions, however. For example, is it appropriate to treat presence as a proxy for ties? For a discussion of the normative weight given to territorial presence in arguments about immigration, see Bosniak (2007, 389–410).

17. To use David Owen's phrase, Carens has here chosen to "build features of the existing normative architecture of politics" into his account.

18. I have made these arguments in more detail in Bosniak (2010, 2012).

19. Carens ultimately pronounces himself agnostic about the relative merits of realistic and idealist approaches, contending that both are valuable and necessary. He suggests that his preferred approach may be to "try to combine the two" (Carens 1997, 168). Thus, "one might try to take as a presupposition of a given inquiry a world divided into sovereign states like the one we live in today and begin a discussion of the ethics of migration from that point without accepting all of the other constraints that the most realistic approach might impose" (168). I believe that Carens's later (post-1987) work on migration can be characterized as framed by these assumptions.

20. This is probably less the case in the fields of sociology and anthropology, where the critique of "methodological nationalism" has been more fully embraced (i.e., Wimmer and Glick Schiller 2003).

21. Carens has briefly explained his shift away from his earlier liberal approach to immigration in Carens (2004). (Chronologically, this piece could be called "Carens 2.5.") Carens there states that after writing on behalf of open borders in the 1980s, he turned his attention to claims of aboriginal peoples in Canada and in Fiji, and found that both cases "succeeded in challenging my liberal presuppositions in ways that I found fruitful. . . . I now have a more complicated view of the ways in which the claims of culture and community should be taken into account and a deeper appreciation of their moral weight. . . . I am confident that turning my attention to cases that did not fit comfortably with my presupposition has enabled me to reflect more deeply about citizenship, culture, immigration and community" (125–126). That Carens recognizes that deep tensions exist between substantive normative

commitments—liberal universalism and communal particularity—is laudable. I am skeptical of his efforts to resolve this tension in ways that, substantively, give a trumping effect to nation-state closure and, methodologically, privilege the feasible in this arena.

22. Carens seems to describe realist immigration theory at three levels: in substantive terms (the view that states have authority to admit or exclude aliens as they choose); in meta-ethical terms (the view that we should "avoid too large a gap between the 'ought' and the 'is'" in order to ensure that theory is relevant to policy); and in epistemological terms (the view that "our moral knowledge . . . is rooted in a particular social and historical context"). I embrace realism in the third sense, but not the first and second.

23. See No One Is Illegal (n.d.); No Border Network, "Freedom of Movement and Equal Rights for All," http://noborder.org/; "No More Deaths—No Mas Muertes," http://www.nomoredeaths.org/; and "Faith Based Principles for Immigration Reform," http://www.cpt.org/work/borderlands/reform_principles/.

24. In the context of an article on naturalization, Jonathan Seglow extends the contribution argument to include "migrants active in unwaged voluntary activities," characterizing these activities as adding "to social, as opposed to economic capital" (2009, 791).

25. Here one might posit the Lockean idea of the "mixing of labor" as underlying the immigrant's claim for recognition (Waldron 1992, 6–18).

26. According to Smith's "principle of constituted identities," "the greater the degree to which the U.S. has coercively constituted the identities of non-citizens in ways that have made having certain relationships to America fundamental to their capacities to lead free and meaningful lives, the greater the obligations the U.S. has to facilitate those relationships" (2011, 545–557).

27. "In sum, governments that are committed to respecting and assisting people's aspirations to lead free and fulfilling lives and who have exercised their coercive power to make those people's aspirations what they are, have special duties to help them pursue their preferred ways of life" (Smith 2011, 548). Note, however, that Smith's argument resembles those of Carens (1997), Motomura (2010), and Shachar (2009), in that he couples a call for inclusive amnesty policies for a large portion of extant irregular migrants with a concession to border enforcement. He calls for "credible efforts to enforce effectively the immigration limits that remain" (553). I have described such positions elsewhere as "hard on the outside and soft on the inside" (Bosniak 1996, 124). Further, some of these arguments seem to implicate national obligations that should extend to persons located beyond our territorial borders—beyond those who happen to be territorially present. On this, see Bosniak (2007).

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11

Outlawing Transnational Sexualities: Mexican Women, U.S. Immigration Policy, and National Security

Luz María Gordillo

> They turned on the cooling system so that the lettuce would arrive fresh. It was so cold, I have never been so cold in my life; I mean, that kind of freezing cold. When we arrived I couldn't feel my ears.[1]

Born in the early 1980s, Gaby grew up in San Ignacio Cerro Gordo, a small town in the state of Jalisco in Mexico. One of eight children, she was very attached to her mother, until love struck. She met Gabriel, six years her elder, who, like many other conationals from their town, had immigrated to the United States when he was seventeen. Gabriel acquired permanent residency because his uncle, a former Bracero, had become a permanent resident and had worked for years navigating the complex paperwork necessary to apply for family reunification. After years of dating, in 1998 Gabriel and Gaby got married and immigrated permanently to Detroit.[2]

Gaby had been residing in Detroit, Michigan, with her husband Gabriel and their son Leo for approximately five years, but had gone back and forth between her community of origin in San Ignacio Cerro Gordo and Detroit. When I interviewed Gaby in 2003 she had crossed back and forth between Mexico and Detroit at least twice, because although her husband Gabriel was a permanent resident, she

had been waiting more than five years for a visa to be assigned to her. Therefore, due to circumstances beyond her control—including the fear of not seeing her mother again and Leo's hospitalization in Mexico—she had to cross the border undocumented. The first time she crossed with her brother Victor; the second time she also left with another brother, Henry, two female friends, and an older woman from the town. Both trips were made with the aid of coyotes.

In her living room in San Ignacio, with her husband Gabriel and their son Leo sitting next to her, she narrated her second horrible experience of border crossing. Hiding behind haystacks on a spring night in early April 2000, Gaby, her brother Henry, and three other Mexican immigrant women from San Ignacio waited by the side of the road near Calexico, California, for a lettuce truck to transport them to Los Angeles, where Gabriel, a green card holder, and Leo, a U.S. citizen, would be waiting for her after flying from Mexico to California. It was the fifth day since Gaby and her conationals had started out on their trip north from San Ignacio Cerro Gordo, Jalisco, in the western part of Mexico. Gaby's life-threatening border-crossing was imprinted in her mind as part of her immigrant experience. Her experience was a direct result of the immigration laws and practices launched in the 1990s, which heavily militarized the Mexico-U.S. border, endangering the lives of hundreds of Mexican immigrants. As part of a campaign to "protect" the nation from what has come to be understood as a threat to national security—the Mexican immigrant—programs such as Operation Gatekeeper, led by the then Immigration and Naturalization Service (INS)—now the Department of Homeland Security (DHS)—would become part of the vain effort to curtail undocumented immigration from Mexico.

State intervention through immigration policy and implementation affects and is affected by Mexican women's movement back and forth from Mexico to the United States. Moreover, Mexican women's presence—regardless of legal status—in the United States adds to the complexities of understandings of state power and sovereignty when construed as a threat to the national security of the country. Through the lens of gender and analyzing case studies, this chapter looks at relationships among state supremacy, capitalist mercantilism, immigration policy making, and enforcement and the movement of Mexican women back and forth between Mexico and the United States.

Immigration policy making and implementation, major components that define national security, link state power and defense systems with the movement of people through border control and management. Historically, the state's power and sovereignty have transformed because of changes in territory and economic, political, and sociocultural realities; however, analysis of people's movement—and more specifically women's—though an integral variable in the internationalization of capital in the twentieth and twenty-first centuries,

continues to be understudied. Inasmuch as massive migrations have given way to new systems of globalized labor relations that are unregulated, unattended, and filled with vicissitudes, these global diasporas in turn are fragmenting and dislocating understandings of nation-states' power and sovereignty.[3]

National security and its popular xenophobic social constructions against immigration have historically been understood within military and political contexts that one way or another were viewed as a palpable threat to U.S. national security—such as Japan and the Japanese in 1942, Russia and Russians during the Cold War in the 1950s, and Vietnam and the Vietnamese during the Vietnam War in the 1960s—but were not necessarily related to Mexican laborers hired to work in the United States, for example during the Bracero Program.[4] And although domestic conflicts associated with national security have previously focused on technologies for spying and surveillance defense systems, represented by the Federal Bureau of Investigation (FBI), as well as on drug trafficking (Drug Enforcement Administration, DEA), two domestic enemies have been socially constructed and have invaded U.S. civil society's imagination: first the Arabs, and after the 9/11 attacks Muslims in general, regardless of country of origin; and second the Mexican immigrant, more specifically, with the advent of the feminization of labor in the 1980s, the Mexican immigrant woman.[5]

GLOBAL CAPITALISM AND THE DISLOCATION OF INTERNATIONAL LABOR RELATIONS

When Mexico, the United States, and Canada signed the North American Free Trade Agreement in 1994 (NAFTA), they were engaging in a global trend underlined by neoliberal ideologies to boost global capitalism.[6] Ironically, it was assumed that one result of NAFTA would be to alleviate some of the undocumented migration from Mexico to the United States, yet statistics prove that undocumented migration continued, albeit with dangerous consequences. Rising numbers of undocumented immigrants demonstrated that boosting the trade of goods without facing the movement of labor would have significant aftereffects (Hing 2010, 9). Immigration policies were unaffected by the signing of the agreement. While Gaby, an undocumented Mexican worker from the state of Jalisco, almost froze crossing the border, hiding inside a refrigerated lettuce truck due to restrictive immigration policies; the lettuce, perfectly wrapped and packaged in large crates for such long voyages, was protected by trade laws that facilitated its movement nationally and transnationally. The discrepancy between curtailing human capital access and encouraging the movement of consumer goods (from toys to military tanks) as well as technology (from computer chips to sophisticated defense systems)[7] was part of a global economic system that ignored the dislocations of developing

countries' local economies and global workers' circumstances and why they migrate. The serious consequences of the systematic negligence in confronting transnational labor needs in an economic system that relies on global markets can be traced historically.

Insofar as laws governing the mobility of lettuce, for example, helped boost the economies of global nations that were already reaping the benefits of a burgeoning global economy, laws governing the mobility of transnational workers focused on deterrence, while at the same time their cheap labor was coveted. In her study focusing on global economies and immigration, Saskia Sassen noted, "Current immigration policy in developed countries is increasingly at odds with other major policy frameworks in the international system and with the growth of global economic integration. There are, one could say, two major epistemic communities—one concerning the flow of capital and information, the other immigration" (1999, 21). It is important to deconstruct the way that these two epistemic communities affect and are affected by the creation and enforcement of immigration policies and practices that affect Mexican immigrant women when moving from one nation-state to another.

Mexican women's immigrant experience—a collection of occurrences starting from the community of origin and ending in the receiving nation—is directly influenced by the legal processes governing their migration at the time of entrance into the United States. Such experience is also linked to their immigration and nationality status. Despite the great demand for unskilled cheap labor in the United States, due in large part to its economy undergoing a major shift from manufacturing to service, the state refuses to recognize the discrepancies between its demand for an exploitable labor force and the fair allocation of wages. Restrictive immigration laws and the implementation of measures to curtail immigration affect Mexican immigrant women in various ways; they have been affected by global economies in their communities of origin by, for example, transnational corporations that dislocate local economies. Inasmuch as immigration laws are representative of the state, they create and re-create social meaning, as "law produces categories that are seen as social problems" (Ngai 2004, 67). These "social problems" are then feared for their capability to "make home" and thus reproduce and produce families and communities that are deemed to be inassimilable into the social fabric; thus they are construed as being un-American. This chapter unpacks major historical immigration policies and practices aimed at curtailing the movement of Mexican immigrant women in defense of U.S. social polity and thus national security. It makes connections between the production and enforcement of immigration policies and practices and the severe impact on Mexican immigrant women's experiences while they are joining the global movement of laborers. Underlining the state's historical anxiety about the sexuality of

Mexican women, I explore on the one hand how Mexican immigrant women in the United States are constructed and demonized as immigrant "Outlaws," and on the other hand, how Mexican immigrant women become historical signifiers of resistance and disruption to the border's systematic, strict, and militarized control, emblematic of state power and sovereignty.

LAW, WOMEN'S MORALITY, AND THE CONSTRUCTION OF "UNACCEPTABLE" SUBJECTS

The history of immigration policies and practices reveals a system that has cultivated and enforced different practices that exclude or include whomever the state considers to be either an "unacceptable" or "acceptable" member of the U.S. social polity. Unfortunately this system of exclusion or inclusion also unfolds as a narrative of racist, sexist, and Eurocentric policies and practices that have severely affected a large proportion of immigrants in the United States. Among those who have been historically constructed as "unacceptable" were Chinese and Mexican immigrants in the nineteenth and twentieth centuries. With the gold rush underway by 1849 and the invasion and colonization of half of Mexican territory in 1848, the United States began an aggressive campaign to recruit mostly Chinese and Mexican male laborers to work on the railroad tracks in the Midwest, in agricultural fields in California, and in the beet industry in the Midwest. Often agriculturalists would hire families to exploit women's and children's labor, which was usually underpaid or not paid at all (Vargas 1993; Gonzalez 2000).

For most of the nineteenth century the Mexico-U.S. border was an uneventful mercantile corridor for both Mexican and Euro-American merchants and laborers, who regularly crossed back and forth. In *Refusing the Favor: The Spanish-Mexican Women of Santa Fe 1820–1880*, historian Deena Gonzalez (1999) provides a glimpse into the everyday life of these women while they were assimilating into New Mexico's communities after the U.S. invasion of Mexico in 1848. Relations changed radically when the United States began to enforce the demarcation of national territories through the exclusion of targeted peoples. The last three decades of the nineteenth century witnessed growing xenophobic U.S. sentiments against Chinese nationals and serious consequences for not only Chinese women and men, but also Japanese and Mexican women. In 1875 the United States passed the Page Law in an effort to curtail the immigration of Asian women, who were considered to be of "ill repute." Chinese women's bodies became the vessels by which immigration officials judged the exclusion of those considered to be morally inferior. In the process of defining the boundaries of legal marriage, immigration officials constructed ideas of what an "acceptable" Asian woman should look

like, giving them power to scrutinize immigrant women's most intimate spaces (Gardner 2005, 31). On the other hand, some women were able to "circumvent race-based immigration exclusion measures through marriage to merchants, farmers, and native-born citizens" (Gardner 2005, 30). Immigrant women fought this racialized and sexist system of exclusion with diverse strategies of resistance.

In 1882 the United States enacted a stricter policy, the Chinese Exclusion Act, curtailing all immigration of Chinese nationals. Some exceptions were made for wealthy Chinese merchants and their wives. Patriarchal ideas about domesticity gave certain immigrant women access to the United States via their husbands. The passage of these two immigration laws provided a lens by which women of color were judged and more often than not were found to be of "ill repute," possible "burdens on the state," or simply "feebleminded" and unqualified to belong to the nation-state. Not only were Chinese nationals barred from entering the United States, they suffered yet another blow: Chinese nationals were deemed inassimilable and thus were prohibited from ever becoming U.S. citizens well into the first half of the twentieth century.[8] "At stake in the debates over the legal status of Chinese marriage customs, Mexican and Jewish religious ceremonies, and Japanese picture brides was the legal conflict between the right of a husband to the company of his wife and the right of a nation to prohibit the inclusion of those deemed morally or racially unfit" (Gardner 2005, 31). It was clear that the state defined and categorized certain immigrant women of color as inherently prone to lasciviousness and thus not qualified to belong to the nation-state. This very serious consequence stigmatized immigrant women as prostitutes and women with low moral values, trapping them in transnational dichotomies of being wives and/or prostitutes, as well as burdens on the state.

Mexico's proximity to and historical relationship with the United States have affected the way laws and anti-immigration measures have been applied to Mexican immigrants, particularly during the first half of the twentieth century. Curtailment of Mexican women's movement in the nineteenth century was part of a patriarchal social system that considered women of color to be morally inferior and prone to prostitution if not accompanied by either a father or a husband. Thus "[a] Mexican woman or girl crossing the border at the turn of the century, particularly if from the working class, ran the risk of such suspicions" (Leyva 2008, 72). Mexican immigrant women who crossed the border were under suspicion by immigration officials of having lax morals and lacking the possibility of making a living; moreover, these women could become pregnant and "destitute." The Mexico-U.S. border was constructed as a gendered, racialized, and violent space for Mexican women deciding to migrate north. Law was gendered; restrictive policies affected men and women

in different ways. "Single women, women who had left their family behind, or unmarried women who were visibly pregnant upon arrival were often labeled as LPC (likely to become a public charge)" (Gardner 2005, 91). The state formulated sexist and racist assumptions about women of color and pregnant women in particular, through rigorous questioning by customs officials that led to biased assumptions about their ability to support themselves and automatically labeled them as "burdens on the state." Furthermore, a dangerous link was made between class and poverty and the moral integrity of immigrant women, thus imagining them as unable to maintain a "normal" family and construing them as incompetent and unfit to have offspring born in the United States.

Legislative immigration processes have remained gendered, and immigration laws continue to reflect the state's perpetuation of systems that favor the dominant heteronormative majority. When Congress passed the Immigration Act of 1917, the United States formally prohibited the entrance of women and girls who were suspected to have "immoral purposes." That law, and other policies, gave enforcement agents at the border tremendous power to "select" potential immigrants and reject those deemed to be unacceptable. Yolanda Chávez Leyva has observed, "An increasingly codified and exclusionary immigration system, created in part to uphold women's morality, viewed girls [and women] outside the control of a nuclear family as possible threats to the nation" (2008, 72). Immigration legislation created categorizations of gender appropriateness, and within this racialized gendered system dictated dichotomies about who is acceptable/unacceptable, legal/illegal, assimilable/unassimilable, and "American"/"un-American," determining who may enter the country and eventually acquire U.S. citizenship. Immigration policies and practices in turn define the state's position and attitudes vis-à-vis other nation-states. Mexican immigrant women were historically constructed as immoral subjects, who would most likely become burdens on and contaminants of the U.S. social polity, thus posing a national threat.

In 1925 the U.S. Border Patrol was established, which became the enforcement body that implemented immigration policies and practices and thus managed and disciplined unwanted immigrants. Recruitment agents often chose officers (who became the state's representatives) who held racist and sexist assumptions about immigrants; "almost all were young, many had military experience, and not a few were associated with the Ku Klux Klan" (Ngai 2004, 68). The establishment of the Border Patrol was more of a theatrical political maneuver, since migration flow from Mexico at that point remained relatively fluid. Certain political theatrics—cat-and-mouse chases—had historical precedence,[9] such as exempting Mexican immigrant laborers from the 1917 Immigration Act requirement that immigrants take a literacy test for

admission. Exemptions demonstrated the overriding need for Mexican laborers. The situation for Mexican immigrants, however, radically changed with the National Origins Act of 1924 and the establishment of the National Quota System. Although it would grant some exemptions in times of economic need—like hiring Braceros during World War II—the system marked all immigrant bodies as either "acceptable" or "unacceptable" depending on their race, gender, marital status, and/or place of origin. While Mexican immigrants had been categorized as unacceptable before these racist policies came into effect, the tightening of restrictions created a new formula for discrimination.

The construction of acceptable aliens was linked to immigration from northern and western European countries that, based on the 1910 census, made up 83 percent of allowed migration into the United States. In sharp contrast, those constructed as unacceptable were from southern and eastern Europe, at 15 percent, leaving all other areas (Latin America, Asia, Africa) with only 2 percent (Hing 2004, 68–70: Ngai 2004, 25–30). These numbers reveal an unmasked and unapologetic racist and sexist immigration system of exclusion that covertly categorized people who were not white, as not only "Others" but "Unacceptable Others." It also ignored historical economic ties, such as the continual importation and exportation of goods and Mexican labor throughout the second half of the nineteenth and early twentieth centuries, as well as the political vicissitudes—including violations of the 1848 Treaty of Guadalupe Hidalgo and the subsequent colonization of large regions of Mexico—affecting the relationship between Mexico and the United States.

Imposed at the end of the 1920s, the National Quota System redefined the United States as an Anglo white-only nation intolerant of immigrants deemed to be inferior and therefore unacceptable. However, their labor—underpaid and more often than not exploited and abused—was still wanted. In 1925 a professor of economics and eugenics at Princeton University warned the secretary of labor of the dangers posed by Mexican immigrants in the United States: "No man is a worker alone, he is also a citizen and must further be viewed as the father of more citizens also. The years of his service as a wage earner are limited; not so the span of time in which those of his blood will play their parts in the country" (Foerster, quoted in Gardner 2005, 55). The nation feared the settlement of immigrants, who were seen as laborers but not recognized as members of future transnational communities. These unacceptable subjects posed threats as procreators of future citizens.

Immigration policies and practices delineated the contours of the nation's attitude toward immigration processes by excluding or selecting who should be granted the opportunity to become active sociopolitical subjects. Unfortunately Mexican immigrant women have historically been affected by the

development and implementation of restrictive U.S. immigration laws and tough enforcement measures. In 1930 the United States reacted to economic turmoil when deciding who among its populace deserved protection. During the Great Depression, hundreds of Mexican and Mexican American families were not only deprived of social services rightfully due them, but also were deported to Mexico irrespective of their nationalization status. That there were American citizens among those selected as undesirable, merely on the basis of physical appearance, makes a clear statement about who was considered to be an "authentic" and deserving citizen; that person was not of Mexican descent or of Japanese descent, as the creation of internment camps during World War II clearly attests. During the war Japanese nationals, Japanese Americans—naturalized and natives of the United States—and Japanese immigrants endured social, economic, and political marginalization. Citizens of Japanese descent were pressured to give up their citizenship and go back to a country that many had only heard of through their grandparents and other family members, like Mexican Americans who had never been to Mexico.

Public opinion and policy makers supported the racist and restrictive ideologies about who had (or did not have) rights of obtaining citizenship, disregarding birthright. California Representative William Traeger "suggested that the combined rights of citizenship by birth and those by blood menaced California's efforts to rid itself of Mexican nationals and their Mexican American citizen children during the mass deportation drives of the early 1930s" (Gardner 2005, 172). According to these critics, Mexican women and men reproduced unacceptable offspring who were "unworthy citizens," "ignorant," "subject to loss of control," and "very difficult to deal with" (Gardner 2005, 74). In 1934 Congress passed the Equal Nationality Act, allowing American mothers—as opposed to only fathers—to pass on the rights of citizenship to their offspring. "American mothers" meant women who were deemed to be loyal patriots and were clearly of European descent. Paranoia over the reproduction of unaccepted immigrants who would "breed difference" within the nation was embedded in the minds of Euro-Americans. Immigrant women's reproductive choices became of national interest at the same time that immigration policies and practices were designed and enforced to severely affect their mobility (Gardner 2005, 174).

Women as "Outlaw Others" and Ideas about National Security

The creation of deviant national identities, such as the construction of Mexican women as prostitutes, feebleminded, and potential burdens on the state— "Outlaw Others"—was a systematic process working within the confines of border culture. With restrictive immigration legislation against

Chinese and Japanese immigration and World War II demanding more and more domestic labor as men went to war, two phenomena developed: the entrance of thousands of Euro-American and African American women into the labor force and the importation of Mexican male labor. In 1942 the United States signed the bilateral labor agreement, the Bracero Program, with Mexico, in the hopes that agricultural needs would be met. The gendered program only hired men, primarily for agricultural labor, and some as maintenance crews for the railroad (Vargas 1993). The Bracero Program mobilized thousands of male workers from many states in Mexico, causing severe familial disruptions, often leaving female relatives in precarious socioeconomic situations. Although women did not migrate at the same rate as men, due to both immigration policies and practices and patriarchal assumptions, scholars have neglected to document those women who did migrate, often subject to border violence in the process. Women working in agricultural labor were often ignored because, as wives of male laborers, their work was "free" (Gardner 2005, 101). Families in the Midwest were hired for the beet industry, in which women and children were systematically exploited (Vargas 1993). Mexican male laborers who were Braceros could apply to stay permanently in the United States, while working in mostly agricultural jobs. Despite the fact that the United States continued to recruit Mexican labor two decades after the war, tough measures were simultaneously being adopted against Mexicans to pacify political interest groups and civil society's xenophobic paranoia.

The twentieth century brought about many changes in immigration policies and practices that would shape the way the United States aligned itself vis-à-vis Latin America and the rest of the world. Mexican immigrant women in the United States were flanked by middle-class social reformers who strongly defended progressive ideals about the sanctity of the Euro-American family and believed in social reformation through Americanization programs, many of which were run by religious organizations.[10] Women were expected to raise their families in a sanitized and scientific manner. The idea of women as the acceptable carriers of culture and producers of loyal citizens of the state became normative during the first decades of the twentieth century. Mexican immigrants needed to learn how to "Americanize" their children, not for full inclusion as individuals in the social fabric, but as future low-skilled laborers attending to the needs of Euro-Americans. Immigration law and policy enabled the reproduction of these patterns. For women the situation was even worse, since "[f]rom the beginning, immigration law exempted women's work in domestic service, agriculture, and eventually nursing from the provisions of the contract labor law" (Gardner 2005, 101). Eugenicists believed that Euro-American society should not be "polluted" by races deemed inferior, including Mexicans, African Americans, and Native Americans. Labor and reproduction

needed controls: "When immigration restrictionists [in the 1930s] lobbied for tighter control over the arrival of foreign labor, the issue of women and paid agricultural work emerged as a powerful rhetorical tool with which to raise the specters of racial mixing, economic competition, and poverty" (Gardner 2005, 101). Paranoia about the potential of women of color to reproduce was heightened, and their reproductive rights were scrutinized and violated. By the time the United States and Mexico signed the Bracero Program in 1942, fear of social contamination by women of color was rampant, as demonstrated by forced sterilization campaigns targeting African American and Latina women. Categorized as feebleminded and/or prostitutes, many Mexican women found themselves unable to move from one nation to another. The national quota system continued to restrict female immigration from Mexico, while at the same time the Bracero Program brought thousands of Mexican male laborers into the United States.

In the 1950s immigration legislation reforms, in tandem with Cold War xenophobic sentiments about communism, focused on exclusion. Mexican labor, however, continued to be imported under the Bracero Program. In 1952, against President Harry Truman's wishes, Congress passed the McCarran-Walter Act, reaffirming the national-origins quota system and setting the total annual immigration limit to one-sixth of 1 percent of the population of the continental United States in 1920. Truman considered the bill racist, but despite his many objections the bill was enacted (Ngai 2004, 239; Chacón and Davis 2006, 194–195). Exemptions from the quotas were extended to spouses and children of U.S. citizens, as well as to people born in the Western Hemisphere. The law also created a system of preferences within quotas for persons with needed occupations. Moreover, it allowed the state to take away the citizenship of those suspected of being subversives.

According to McCarran, the law was necessary to maintain "this Nation, the last hope of Western Civilization," reflecting the belief that "[i]f this oasis of the world shall be overrun, perverted, contaminated, or destroyed, then the last flickering light of humanity will be extinguished" (quoted in Ngai 2004, 237). The state positioned itself as the main arbiter of morality, loyalty to the state, and the right to claim citizenship. Ironically, the law represented how the state perceived itself globally, as a morally superior and humane nation.

In 1954 the country launched Operation Wetback, aimed at curtailing the "illegal influx of Mexicans" (*New York Times* 1953). The Cold War era was a time of political and moral hysteria, with national attention on foreign affairs and focused against communism. Domestically the state fixated on nativist patriotism and nationalism. People suspected of being or possibly becoming "social contaminants" were weeded out. The *New York Times* openly warned against a "Mexican 'wetback' invasion" of the United States (*New York Times* 1954).

More than one million Mexican workers were deported in 1954. In an act of hypocrisy, the Department of Labor rehired many deported Braceros, transporting them to the fields where they had been picked up, in a tactic called "Drying Out the Wetbacks" (Massey, Durand, and Malone 2002).

Politics and the moral makeup of a person became signifiers of patriotism and nationalism grounded in nativist sentiments. The repression and persecution of homosexuals, as well as the demonization and prosecution of Mexican immigrants during the 1950s, became emblematic of how laws mark bodies (generally of people at the margins) as unacceptable and how the state categorizes them as deviant. As "deviants" they were considered to be perfect candidates for recruitment by communists as spies against the United States. According to a U.S. Senate subcommittee in 1950, "h[o]mosexuals and other sex perverts are not proper persons to be employed in Government for two reasons: first, they are generally unsuitable, and second, they constitute security risks." The subcommittee concluded, "One homosexual can pollute a Government office" (U.S. Senate 1950). People suspected of being homosexuals were presumed to have no moral values and no work ethic. Lacking loyalty to the state, they were undeserving of humane treatment and considered to be "illegal" regardless of citizenship status, thus similar to Mexican undocumented workers. Xenophobic sentiments put pressure on border control. According to Julius Edelstein, the architect of the National Committee on Immigration and Citizenship, "theoretically, millions of undesirables might come in from Latin America including, I suppose Communists from Guatemala" (quoted in Ngai 2004, 247). Paranoia about the "wetback problem" was rampant by the mid-1950s. The state had created two domestic threats to its national security, in addition to communists: the homosexual and the wetback—an "Outlaw Other."

The persecution of the gay community and the creation of a Mexican immigrant "Outlaw" during this historical period have a disturbing similarity to U.S. reaction to ideas of illegality and Mexican labor in the second half of the twentieth century, aggravated by post-9/11 politics of containment and deterrence in the new millennium. Mexican immigrants and Mexican immigrant women in particular, similar to gay men and women before them, have become symbols of anti-Americanism and illegality, posing dangerous threats to the national security of the United States.

Domesticity, Motherhood, and the Acceptable "All-American Family"

The Hart-Celler Act of 1965, reflecting a more pseudo-liberal "open society" and the influence of social movements (the civil rights movement, the women's movement, and the Chicana/o movement) eliminated the national quota system and adopted a family reunification system.[11] Rather than setting specific

quotas for different countries, the new system focused on reuniting families—of U.S. citizens and permanent residents—through these immigration reforms. The transition from a national quota to a family reunification system was meant to demonstrate a turn from racist attitudes that excluded immigrants solely on the basis of their race to a more humane system focused on reuniting families. Which families were protected under these new immigration laws immediately revealed that Mexican women and their families were not included in the definition of "family."

The Bracero Program was terminated in 1964—having hired approximately five million Mexican laborers—due in part to condemnations of the systematic labor exploitation and dehumanization of Mexican workers (Massey, Durand, and Malone 2002). Thousands of Bracero laborers were left without jobs, facing the difficult choice of whether to go back to Mexico or stay as undocumented laborers. Some Braceros secured resident status with the aid of their employers and later brought their families to the United States.[12] New immigration policies helped Braceros who became permanent residents bring their families, yet these men were in the minority. The majority of male Mexican laborers hired through the Bracero Program were now de facto "illegal unwanted aliens," and most were deported. Under the new family reunification system 120,000 immigrant visas were allocated per year for the Western Hemisphere; in 1965 Mexico was allotted 20,000. This act completely disregarded the historical employment of Mexican workers—legal migration of approximately 200,000 Braceros per year and 35,000 other legal admissions—in the United States, and their families. The legislation created obstacles for many Mexican immigrants seeking to reunite with their families and inadvertently caused an increase in undocumented immigrants (Ngai 2004, 261).

The Immigration Act of 1965 and its enforcement exemplify how the United States categorizes "acceptable families" and "unacceptable families" and thus marks people as outsiders and potential threats to national security, as well as to the cultural and social integrity of the country. But most important, it also reveals a racist, sexist, and restrictive immigration system that curtailed the immigration of women and children who were deemed racially and socially "unacceptable," as well as a xenophobic sentiment against the formation of transnational communities. From 1965 to 1986 the Border Patrol increased from fifteen hundred officers to thirty-seven hundred, and the number of apprehensions also rose, from 55,000 to 1.7 million (Massey, Durand, and Malone 2002). In the 1970s and 1980s the reunification system came under attack because more Asian and Latino immigrants were applying to reunite their families (Hing 2006, 119).

In her analysis of immigration policy making and implementation, Sassen (1998, 18) states, "Public opinion and public political debate have become

part of the arena wherein immigration policy is shaped"; I argue that these restrictive policies reflect a systemic demonization of Mexican women and their children, who are perceived as threats to U.S. sovereignty and cultural integrity. The topic of immigration has been a priority in recent congressional and presidential elections. Anti-immigrant organizations like the Federation for American Immigration Reform (FAIR), a nonprofit organization, claim that overpopulation in the United States is a consequence of the "staggering rates created by mass immigration." FAIR calls for a moratorium on immigration—both legal and illegal—leading some to describe the United States as a "gated community." The organization claims that the negative impacts of migration include population increase, pressure on water and energy supplies, and urban sprawl, to name a few. Immigration to the United States, according to FAIR, is a serious threat not only to national security, but also to the survival of Euro-American society. FAIR also emphasizes the idea that "illegality" is transferable through reproduction; according to a FAIR representative, "U.S. citizen children must pay the price for their parents' criminal acts," thus criminalizing immigrants and further demonizing their transnational families (quoted in Gardner 2005, 135).

Depending on their immigration process, most Mexican immigrants who are filing for residency through family reunification visas are forced to stay in the United States during the waiting period. Thus, changes in immigration policies and practices continue to legitimize the marginalization and exploitation of what has been constructed as an invisible and disenfranchised workforce in the United States: undocumented Mexican immigrants. Despite the general idea that Mexican immigrants—who comprise the majority of documented and undocumented immigrants in the U.S.—are inassimilable and remain alien to the state, they are the largest group that naturalizes as citizens (Boehm 2012, 14). In 2012 Homeland Security reported that Mexicans accounted for 14 percent of naturalized citizens, at 94,783; the total number of naturalizations was 757,434 (Department of Homeland Security 2012). At the same time, there were many obstacles to applying for naturalization, such as long waiting periods for visa allocations, and these continue to cause the familial dislocations that are an inherent component of the immigration experience.

A transnational household—usually composed of members with different legal status—exemplifies how Mexican immigrants deal with inequalities and disparities in the immigration system, which instead of reuniting families, contributes to dislocating them. Transnational families have to withstand the tensions and vicissitudes embedded in unequal familial social structures, whereby some members have access to certain social resources and others are completely excluded from civil society. The family reunification system has

flaws that severely affect families who do not resemble a Norman Rockwell image of the "all-American family."

The 1980s were a watershed for immigration law in the United States. Following heated congressional debates—with Republicans strongly opposing the granting of amnesty and Democrats supporting some but not all the measures included in the package—the Immigration and Reform Control Act (IRCA) came into effect in 1986. IRCA gave "amnesty" to those who could prove residence and employment in the United States for a period of time, determined by the type of amnesty requested. Agricultural male workers were favored, given their limited residence time (Massey, Durand, and Malone 2002, 89–91; Hing 2010, 156–183). IRCA included the Immigration Marriage Fraud Amendment Act of 1986, another example of the gendered nature of immigration policies. The act penalized (with jail time and fines up to $250,000) those who were found to have married in order to become legal residents of the United States. Seemingly fair, this act placed women of color, married in good faith to U.S. citizens and permanent residents (especially white citizens), in very precarious situations that could potentially lead to deportation and the disruption of marriages. Immigration law, as an arbiter of love, placed immigrants entering a loving relationship in the position of having to prove their love to be real. While IRCA protected and granted permanent residency to many Mexican immigrants who applied, it also brought with it severe consequences for some female immigrant women married to citizens or residents.

Reproduction, Militarization, and the Creation of "Gated Communities"

During the 1990s and into the new millennium the United States underwent one of the most significant and radical changes in policy implementation and enforcement, through the intense militarization of the Mexico-U.S. border, with perilous and even deadly consequences for Mexican immigrants. The logic behind the militarization of the border and the implementation of numerous restrictive policies during the 1990s was prevention through deterrence. Measures adopted under the umbrella definition of that concept shifted the political geography of immigration in deadly directions: "These so-called prevention-through deterrence measures, initially implemented in the mid-to late-1990s, intentionally redirected hundreds-of-thousands of unauthorized migrants away from previously busy crossing points in California and Texas into Arizona's perilous and deadly landscape" (Rubio-Goldsmith et al. 2006, 41). For transnational families already separated by restrictive policies, composed of family members with different immigration statuses, these inhumane immigration policies and practices severely affected their kinship

and emotional ties by making it harder for them to reunite. Even worse was how their personal safety was put at risk when they were directed toward inhospitable landscapes: "When we crossed everything looked arid and dry; there was no water and it was nighttime. . . . We ran out of water[.] [W]e didn't know what to do[.] I was pregnant, 5 months."[13]

Operation Gatekeeper was part of a series of militarized strategies planned to curtail undocumented migration, forcing Mexican immigrants to cross the border through either the desert or the mountains. While the INS was aware that Mexican immigrants were being redirected to "death traps," it was convinced that these draconian measures would limit the number of undocumented migrants coming from Mexico. Operation Gatekeeper failed to curtail migration; numbers actually increased, and the number of Mexican immigrants deaths went up alarmingly: "[T]he tragedy of gatekeeper is the direct link of its prevention through deterrence strategy to a horrendous rise in the number of deaths of border crossers who were forced to attempt entry over terrain that even the INS knew presented 'mortal danger' because of extreme conditions and rugged terrain" (Hing 2010, 124). The border is divided into eight sectors, and immigrants' deaths increased after Operation Gatekeeper's regional offspring, Operation Safeguard in Nogales and Operation Hold the Line, extended west into New Mexico, and Operation Rio Grande into southeast Texas, thus implementing the "funnel effect." This measure closed the main immigration corridors previously utilized, redirecting Mexican immigrants toward inhospitable terrain. Data collected by medical examiners' offices reflect the fatal results of the funnel effect. They found that "women are 2.87 times more likely to die of exposure to the elements than men" (Rubio-Goldsmith et al. 2006, 44). The Pima County Medical Examiner's Office receives the largest number of unauthorized border crosser (UBC) bodies from all sectors; their statistics account for number of deaths as well as cause of death and gender (see table 11.1).

Not coincidentally, at the same time that immigration enforcement was at its most aggressive with the implementation of Operation Gatekeeper and similar measures, the state of California filed Proposition 187, the Save Our State (SOS) proposition, in 1994. This proposition echoed nineteenth-century nativist public hysteria over nonwhite immigrants:

> By flooding the state with 2 million illegal aliens to date, and increasing that figure each year of the following 10 years, Mexicans in California would number 15 million to 20 million by 2004. During those 10 years about 5 million to 8 million Californians would have emigrated to other states. If these trends continued, a Mexico-controlled California could vote to establish Spanish as the sole language of California, 10 million more English-speaking Californians could flee, and there could be a statewide vote to leave the Union and annex California to Mexico.[14]

Table 11.1
Frequencies of Cause of Death of UBC (unauthorized border-crossers) Bodies (male and female) Recovered, 1990–2005

Cause of Death	No. of Cases	Percent of Total
Exposure (Hypothermia, Drowning)	553	59.7
Undetermined (Due to Skeletal Remains or Advanced Decomposition)	197	21.2
Motor Vehicle Accidents (Including Pedestrians)	112	12
Homicide	33	3.6
Natural Causes	18	1.9
Pending Investigation	10	1.1
Other	4	0.4
Total	927	100

Source: Bi-national Migration Institute, "The 'Funnel Effect' & Recovered Bodies of Unauthorized Migrants Processed by the Pima County Office of the Medical Examiner, 1990–2005."

Clearly the reproductive choices of undocumented Mexican immigrant women were of major concern for Californians in the 1990s, who feared being taken over by inassimilable Mexicans—due in part to their legal status but also to their race. Their exclusivist and racist ideologies led supporters of the proposition to believe that the reproduction of cultural markers such as language could be one of the triggers through which California could eventually lose its cultural integrity and its membership in the U.S. polity.

Proposition 187 exemplified how public anti-immigrant sentiment was complicit with the state and together with it influenced policy making. This draconian measure was intended to stop undocumented Mexican immigrants from having access to basic social services such as public education and health, most of which serve the needs of women and children and thus sustain transnational communities. In spite of widespread support, the proposition was rightfully declared unconstitutional and was not implemented. Nevertheless, it provides a lens for analyzing state power, intervention, and influence on public opinion. It also demonstrates how the state's restrictive immigration policies in the context of Mexicanas' transnational sexualities—decisions about reproduction in this case—affect the most intimate decisions made by Mexican immigrant women like Gel:

I was pregnant with Galan, my oldest son, and Polo [her husband now, boyfriend at that time] was going to come [to Detroit]. So I told him, fine, leave, but I'm

pregnant. So he said, "No, we will leave together then." And that's why we decided to come here together, because I was pregnant and I could not stay in my house and he wanted to leave.[15]

Gender and Mexican immigrant women's transnational sexualities are paramount in understanding how diverse notions of "acceptable citizenship" are attached to sexuality (like decisions about family planning) within transnational circuits.

Gel's migratory experience in 1998 exemplifies the kinds of human costs/risks Mexican immigrant women have to undergo as restrictive immigration policies and practices become harsher. As long as they continue to focus on restriction and curtailment, policies will fail to provide inclusion and integrative legislation necessary to accommodate the new global movement of laborers. The curtailment of Mexican women's and children's entrance into the United States is not new; however, the militarization and implementation of dangerous immigration legislation are systematically forcing more and more Mexican immigrant women to make their reproductive choices based on racist, patriarchal, and constraining immigration legislation practices. According to the Binational Migration Institute at the University of Arizona, the recovered bodies at the Pima County Office of the Medical Examiner exponentially grew after the implementation of Operation Gatekeeper and similar measures that followed in the second half of the 1990s. The "funnel effect" forced undocumented immigrants to cross into the United States through very rugged and dangerous terrain due to the militarization of traditional immigrant corridors like the Nogales, Mexico-Nogales, Arizona and Tijuana-San Diego borders. More than 90 percent of all the unauthorized border-crosser deaths are handled by the Pima County Medical Examiner's Office. Statistics show the exponential growth in number of deaths before and after Operation Gatekeeper was implemented (see table 11.2).

Mexicanas' reproductive choices and gender are also important in understanding how notions of "acceptable citizenship" constantly shape and are shaped by the immigrant experience and how they are framed within Eurocentric constructions of the "acceptable family." Mexican families are disrupted through separation and deportation of Mexican parents, while citizen children remain in the custody of family members or the state. These social processes support ineffective and unfair legislative production, which in the past decades has given way to increasing xenophobic sentiments from Euro-American society. These immigration processes are gendered, affecting women and men differently and making their experiences and encounters with the state distinctive and unequal. The state invades Mexican immigrant women's private lives, resulting in the dangers they face physically and the

Table 11.2
Pre and Post "Funnel Effect" Deaths

	Pre-Funnel Effect (1990–1999)	Funnel Effect (2000–2005)
Total Number of Recovered Bodies*	125	802
Females	13.6%	22.6%*
Males	84.0%	77.2%
Unidentified	37.6%	24.9%
Mean Age	30 years old	30 years old
Deaths Due to Exposure to the Elements	39.2%	61.4%*
Undetermined Cause of Death	31.2%	19.6%
Deaths Due to Motor Vehicle Accidents	18.4%	11.1%*
Deaths Due to Homicide	5.6%	3.2%

*The "pre-funnel effect" figures above include all recovered bodies from fiscal year 1990–fiscal year 1999 (125). The "funnel effect" figures include all recovered bodies from fiscal year 2000–fiscal year 2005 (802). An asterisk indicates that the change in a particular category was found to be statistically significant beyond the 0.05 level (Rubio-Goldsmith et al. 2006, 41).

harassment they encounter when confronting social institutions in the United States. The state sadistically allowing Mexican undocumented workers to die of heatstroke, hypothermia, and/or dehydration in inhospitable places reveals the dark side of the U.S. approach to immigration policies; these actions are consistent with practices of a violent and racist past. Historically, the state has hired large numbers of Mexican workers while it continuously designs policies and practices to curtail their mobility.

CONCLUSIONS

The bodies of Mexican immigrant women experience the severity of consequences directly linked to restrictive immigration policies and practices. Immigration practices such as Operation Gatekeeper and deterrent administrative procedures make it very difficult to apply "legally" for residency, either as a first-time applicant or through another permanent resident. In 2003 I interviewed Gaby, the Mexican immigrant who migrated from San Ignacio in Jalisco to Detroit, Michigan, via Los Angeles. She had been waiting for approximately five years to get a visa number assigned so that she could apply for residency through her husband, who was a green card holder. While Gaby had to undergo violent repercussions from restrictive immigration policies

and practices when crossing the border, her husband and son, a green card holder and a citizen, were able to move from one nation-state to the other.

Gaby, the signifier of cheap labor, and lettuce, the signifier of capitalist abundance (coming from the "salad bowl of the world"), may be seen as integral variables for the global market economy to function. While the global commerce of lettuce is protected by policy and trade agreements such as NAFTA,[16] which support the infrastructure of the capitalist market economy, the human body is not. After NAFTA, Mexico's tariff of 10 percent on lettuce shipments disappeared, increasing lettuce exports. On the other hand, Gaby, a major asset as an unskilled worker in the global economy, is a participant in the trend toward reliance on "cheap labor." She is not protected by any immigration or labor policies, since labor is not discussed at trade agreement talks. Moreover, her body, construed as an immigrant "alien," is continuously under attack by a violent system of deterrence at the Mexico-U.S. border. After almost freezing while being transported in a refrigerated lettuce truck, Gaby had to fight off "hands" from male conationals, who molested her throughout the trafficking route. In contrast to NAFTA (signed in 1994), which encouraged the trade of global items such as information technology and consumer goods, Operation Gatekeeper[17] (signed only a few months later) was one of the harshest measures implemented to curtail the entrance of undocumented Mexican workers. Among the established entry points were many created by U.S. *enganchadores* (labor contractors) aggressively recruiting Mexican workers during the second half of the nineteenth century and into the first five decades of the twentieth. Aimed at closing the main arteries that gave access to immigration's long-established corridors, Operation Gatekeeper forced Mexican undocumented workers to cross through inhospitable geographical regions like the Tecate Mountains and the Sonoran and Chihuahuan Deserts and to do so under the most extreme circumstances. These have ranged from hiding in refrigerated trucks, in which the risk of dying from hypothermia is high, to venturing into the desert with no preparatory knowledge of survival in the wild.

Immigration policies and practices provide a lens by which we can analyze the construction of Mexican immigrant women's sexualities as perceived threats to national security. Portrayed as prostitutes or as possible producers of families and transnational communities, the mobility of Mexican immigrant women has been systematically curtailed. Collective ideas of "inassimilable subjects" and social constructions of "illegality" like the "Outlaw Other" open the door to understanding how the decision-making process in relation to reproductive rights for Mexicanas is criminalized, stigmatized, and disciplined through legislative production and enforced via the militarized border. However, Mexican immigrant women resist and contest these hostile practices within their means.

The current costs of undertaking the trip to el Norte are offset by the possibility of a better future and the opportunity to reunite with family members, although facing the risk of death. Immigrant men are socially demonized on the one hand as unacceptable immigrants, but they are also valued as labor. However, Mexican immigrant women—with or without authorization—are problematized, dehumanized, and criminalized through categorizations embedded in sexist dichotomies: mother/whore, maid/whore, or burden on the state/whore. Clearly the presence of Mexican immigrant women becomes a threat to national security simply by challenging the social fabric of the United States through the creation of transnational communities.

The gendered history of immigration reveals little progress in the last century and a half. Because of a historical ideology of exclusion of those deemed to be unacceptable, immigration policy making and implementation regarding Mexican immigrants have changed radically, from a more lax and flexible system of labor mobility in the late nineteenth century to a heavily militarized and even murderous process. Mexican immigrants' deaths after 1994 have increased significantly. More than four hundred Mexican immigrants die annually at the U.S.-Mexico border. Mexicanas' limited and stigmatized choices about family planning in Mexico and their migration to el Norte accordingly are influenced by two patriarchal sites: the Mexican state and the U.S. state. These geographies become enforcers of gender inequalities and heterosexist attitudes that are represented in immigration policies and practices on the border. For Mexicanas, joining in global deterritorialization and mobility are ways to confront the sexist and racist immigration policy and draconian practices that continue to marginalize their lives at federal, state, local, and very personal levels.

The United States faces major economic and political challenges in the twenty-first century, and immigration reform that is fair and integrative will be key to any strategy for operating in the global marketplace. Establishing a more humane immigration system that provides protections for its people and products will be integral to globalized processes, in which the challenges of new forms of labor follow transnational trends and consequently provoke and affect global diasporas. Immigration policies and practices in the twenty-first century should follow humane and reasonable processes by which the global movement of immigrant women is recognized, supervised, and protected in fair ways. In spite of the historical facts and failed attempts to manage and restrict immigration, "States may insist on treating immigration as the aggregate outcome of individual actions and as distinct and autonomous from other major geopolitical and transnational processes. But they cannot escape the consequences for those larger dynamics and of their own insistence on isolating the immigration policy question" (Sassen 1998, 13).

Global integration of laborers into the economic market with fair wages and possibilities for diverse visas should not be such a difficult variable to utilize. The historical record has shown that the way the global economy is currently structured has created more social, political, and economic dislocations around the globe than it has financial benefits. Imposing a fair global immigration system that integrates transnational markets and laborers seems at this point like a much better option to protect the human and civil rights of underrepresented nations, their peoples, and mobility patterns.

NOTES

1. "Y luego prenden el refrigerador para que la lechuga llegara fresca. Era un frío que yo en mi vida he pasado. Un frío come ese, pero frío. Llegamos y yo ya no sentía las orejas." Gaby, interview with author, San Ignacio Cerro Gordo, 2003. Translated by the author. All names are pseudonyms to protect the identity of the subjects.

2. Gordillo (2010a). In my work I examined the migratory patterns from the small western town San Ignacio Cerro Gordo in the state of Jalisco, Mexico. I met Gaby the first time I was in San Ignacio in 2001 and then interviewed her again in 2003 and later in 2004 in Detroit, Michigan.

3. I agree with Saskia Sassen (1998) that due to globalization there has been a process of deterritorialization through outsourcing and the construction of global centers/cities as headquarters in different parts of the globe such as New York and Hong Kong, thus diminishing state's sovereignty. Consequences of these capitalist structurings, she argues, can be seen on the one hand in the shifting from a manufacturing-oriented economy to a more service-oriented one, and on the other hand in globalized migrations of laborers from every part of the planet. For more on globalization, see Sassen (1998).

4. The United States made a bilateral labor agreement with Mexico, called the Bracero Program, which lasted from 1942 to 1964. The program hired hundreds of Mexican laborers to work in agricultural fields in California. In a hypocritical maneuver of social manipulation and supported by eugenics racism, at the same time that the United States brought large numbers of Mexican laborers into the United States, it created an antagonist to satiate social paranoia: the "wetback," who mitigated the demand for cheap labor.

5. The Mexico-U.S. border Free Zone, established by the Border Industrialization Program in the late 1970s, served as a magnet for female labor hired to work in the Maquiladoras—industrial factories owned by U.S. global corporations and exempted from taxes and national labor laws. For more on Maquiladoras and economic impacts on both sides of the border, see Kopinak (1995). See also Gordillo (2010b).

6. For more on globalization's economic structures and neoliberal packages of aid to developing countries, such as structural adjustment programs (focused primarily on cutting budgets related to social services like health and education for the poor) and their effects, see Sassen (1998).

7. Turini et al. (2011). In 2004 the United States, one of the leading lettuce exporters, earned $275.2 million from exports. In contrast, lettuce imports in 2004 coming from Mexico (53% of total imports) and Canada amounted to $37.3 million.

8. The Chinese Exclusion Act was repealed in 1943 to offset accusations of the United States being anti-Asian while engaged in a war with Japan. However, China received a limit of 105, making this immigration maneuver more of a racist formulation than a humanitarian, antiracist act. For more on Japanese and Chinese exclusion, see Ngai (2004, 202–224).

9. Approximately one million Mexican workers were deported in 1954 during Operation Wetback. Many of these "wetbacks" were deported, then rehired by the Labor Department as Braceros and consequently transported back to some of the fields they had just been taken from. This duplicitous immigration maneuver was called Drying Out the Wetbacks. See Chacón and Davis (2006, 144).

10. Vicky Ruiz documents how Mexican women had to navigate among Americanization programs, pejorative stigmas about their families, and U.S. institutions in *From Out of the Shadows* (1998).

11. For more information on the Immigration Act of 1965 and its quotas, see Ngai (2004, 258–264) and Hing (2004, 97–100).

12. Doña Tita was in her early seventies when I interviewed her in 2001 in San Ignacio Cerro Gordo. She was believed to be the first Bracero wife to be reunited with her husband in Detroit through a permanent residency. Not many women in San Ignacio were able to apply for their permanent residencies, even though their husbands had been Braceros, because their employers were not willing to assist them with the process.

13. Gel, interview with author, Detroit, Michigan, 2004. Gel was from San Ignacio Cerro Gordo and immigrated to Detroit in 2000.

14. Linda R. Hayes, Southern California media director for California Proposition 187, 1994, quoted in Nevins (2002, 61).

15. Gel, interview with author.

16. Mexico is a major recipient of lettuce exports, and after NAFTA, Mexico's imposed tariff of 10 percent ad valorem on lettuce shipments eventually disappeared, increasing lettuce exports.

17. According to Bill Ong Hing, since the establishment of what he calls "death traps" for Mexican immigrants, Operation Gatekeeper, and the other measures related to it, the number of deaths in rugged and inhospitable places has increased dramatically. By 1998, only a few years after its implementation, the number of deaths per year was 147, and by 2000 they had escalated to 499. The anti-immigrant hysteria has not ameliorated; in 2009 there were 450 reported deaths (Hing 2010, 124–125).

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12

A Matter of Life and Death: Human Rights at the Boundaries of Immigration Control

Joseph Nevins

INTRODUCTION

Between 1994 and 2012—a time of dramatically intensified policing of U.S. territorial boundaries by federal authorities—more than six thousand bodies of migrants were recovered in the U.S-Mexico borderlands. These deaths have received critical attention by academics, journalists, policy analysts, and human rights advocates and monitors alike (ACLU and CRLAF 2001; Bustamante 2001; Cornelius 2001; Esbach, Hagan, and Rodriguez 2001; Hing 2001, 2010; Jimenez 2009; Martínez et al. 2013; Meneses 2003–2004; Nevins 2008; Urrea 2004; Regan 2010; Rubio-Goldsmith et al. 2006; Reyes et al. 2002).

In part because of the criticisms and pressures embodied by such scrutiny, the governments of the United States and, to a lesser extent, of Mexico have responded in various ways. The U.S. government has instituted civil patrol flights to spot migrants in distress, increased search and rescue missions in hazardous areas, and installed numerous flashing beacon towers that migrants in need of rescue can activate to notify the Border Patrol of their location. Authorities have also posted warning signs at high-risk crossing points, handed out flyers in Mexican border towns, and placed advertisements on radio and television in Mexico advising would-be migrants of the

potential dangers they face. For its part, the Mexican government has undertaken a number of initiatives, including a campaign of education to warn migrants of the dangers they face and how to better prepare and protect themselves if they are going to cross, while establishing Grupos Beta, whose present-day mission is to protect migrants on the Mexican side of the divide with the United States (Holstege 2008; MacCormack 2012; Reuters 2002; Villalobos 2003: U.S. Customs and Border Protection 2003). Despite these efforts, there has not been a significant reduction in the death toll. In fact crossing the boundary—in terms of the number of fatalities in relation to the number of unauthorized crossings—seems to have become more deadly (Moreno 2012).

With rare exceptions, the reactions of various academics, policy analysts, and human rights advocates who have monitored, reported on, and analyzed the migrant deaths differ significantly from the responses of government officials—especially those in the United States. Nevertheless, collectively the reactions share a key foundational assumption: that the U.S. government has a right to control its territorial boundaries and thus to determine who can enter and reside in the country. As such, the various parties that put forth criticisms and issue blame for the deaths avoid indicating the principal reason why such deaths occur: the very presence of the international boundary as an enforced line of control. Instead, responses tend to decry the deaths while focusing on epiphenomenal factors that inform them.

This chapter does not seek to explain why these authors fail to discuss the principal reason such deaths occur—an endeavor that would require guesswork. Instead, I focus on how this failure reflects and helps to reproduce three interrelated "ways of seeing" (Berger 1980). The first has to do with a conceptualization of space that accepts national territorial sovereignty as unproblematic, as a given. The second concerns a conceptualization of violence that is insufficiently structural. And the third relates to a conservative interpretation of what constitutes human rights.

In analyzing these worldviews, I provide a critical examination of some of the principal writings on immigrant fatalities by academics and policy analysts. In raising these criticisms, my intent is not to castigate the various authors—who collectively have played a significant role in raising the profile of a very important (and tragic) issue: the growing death toll in the U.S.-Mexico and -Caribbean borderlands. But given that all the writings seem to be informed by a desire to bring about an end to such deaths, it is imperative to engage in a critical dialogue about the factors that give rise to the fatalities. I assert that by not calling for an end of boundary policing as it relates to immigration or by legitimating the regime of exclusion, the authors are resigning themselves to migrant deaths (and related forms of violence and

injustice), albeit in smaller numbers than are occurring currently if what they advocate in terms of remedial measures were put into place. Migrant deaths are the inevitable outcome of a situation in which there is a boundary and immigration policing regime embodied by intense, transboundary social relations; marked socioeconomic inequality between the United States and migrant-sending countries (in terms of migrant fatalities, those countries are principally Mexico, those of Central America, and the Dominican Republic); and boundary enforcement. Thus, as long as significant migratory pressures exist, coupled with boundary regulation, migrant deaths will continue to happen. In addition, there are human rights concerns related to boundary and immigration enforcement beyond the matter of migrant deaths. As such, these matters have important moral and political implications for academic and policy analysts concerned with the well-being of unauthorized immigrants. Before developing this line of analysis, however, I provide a brief historical and geographical overview of migrant deaths along the boundary.

ROOTS AND EVOLUTION OF MIGRANT DEATHS

Prior to the 1970s, unauthorized immigration and boundary control were not of high interest among Washington officialdom and the general U.S. public—apart from relatively brief spans of time. For a variety of reasons (see Nevins 2010), the perceived need to achieve control over the country's boundaries (especially that with Mexico) and to stymie unauthorized immigration has increased dramatically over the last few decades, so much so that it is now a basic staple of U.S. politics, and consistently so. What this shift reflects, among other things, is a normalization of boundary policing in the U.S. politico-geographical imagination.

Nonetheless, entering the United States from Mexico without authorization has been potentially fatal as long as there has been policing of unauthorized migration along the country's territorial perimeter. Although there are no studies of migration-related deaths in the U.S.-Mexico borderlands prior to the 1980s, anecdotal evidence suggests that migrant fatalities were not uncommon. As early as the late 1800s, for example, a number of unauthorized Chinese immigrants died in the desert while trying to circumvent boundary policing resulting from the Chinese Exclusion Act of 1882.[1] In the 1940s and 1950s, according to one estimate, an average of about one migrant per day died trying to traverse the Rio Grande (Hernández 2010, 32). During the 1980s and the early 1990s many deaths occurred on an annual basis—during the 1980s, for example, scores of migrants were killed by automobiles on highways in the San Diego area as they tried to flee across heavily trafficked thoroughfares (Gold 2008); the annual totals of recovered bodies reached a

high point in 1988 and gradually diminished through the early 1990s. But with the dramatic buildup of the boundary enforcement infrastructure initiated during the early years of the Clinton administration (Dunn 2009; Nevins 2010), the number of crossing-related fatalities has steadily grown, reaching historic highs, averaging more than 350 documented deaths per year between 1995 and 2006 and doubling in terms of annual average between 1999 and 2005 (Bailey et al. 1996; Cornelius 2005; Eschbach, Hagan, and Rodriguez 2001, 2003; U.S. GAO 2006; Marosi 2005; see also Annerino 1999 and Nevins 2008). At the same time, the risk of death for unauthorized migrants has increased markedly: although fewer migrants attempted to cross the U.S.-Mexico boundary clandestinely in the late 2000s and early 2010s than in previous years (as indicated by Border Patrol apprehension figures), the number of documented migrant fatalities remains high (Jimenez 2009; Martínez et al. 2013).

In both relative and absolute terms, the number of migrant deaths brought about by environmental factors, especially extreme heat, has also increased since the mid-1990s. Along the U.S.-Mexico boundary heat exposure today appears to be by far the most common cause of death. At the same time, greater numbers of fatalities are taking place in fairly remote areas as migrants cross in increasingly isolated zones to avoid detection by the ever-larger enforcement web throughout the border region. Because of that, and because agencies such as the Border Patrol have used extremely narrow criteria over the years for counting fatalities of unauthorized crossers, the true death toll is certainly higher than the numbers based on recovered bodies and official counts (Cornelius 2005; Eschbach, Hagan, and Rodriguez 2003; Keim et al. 2006; Rubio-Goldsmith et al. 2006; Sapkota et al. 2006; U.S. GAO 2006). From 1995 through 2012 more than six thousand bodies were recovered in the U.S.-Mexico borderlands, an average of almost one recovered body per day over the eighteen-year period. And there were at least hundreds of additional deaths in other "crossing" areas such as the Caribbean, where many would-be immigrants from the Dominican Republic have drowned and/or been eaten by sharks trying to enter Puerto Rico without authorization in order to settle there or to board a flight to the United States free of immigration controls (Brotherton and Barrios 2011; Nevins 2008, 2012).

By the Border Patrol's own criteria of success as set out in its 1994 Strategic Plan—one criterion was a reduction in migrant deaths—such an outcome suggests that its strategy is failing to a certain extent.[2] The Border Patrol and U.S. officials expected that the heightened enforcement would discourage a significant number of migrants from crossing by pushing them into remote areas where—after making a cost-benefit analysis—the migrants would rationally decide to forego the risks and return to Mexico, resulting

ultimately in fewer boundary-crossing-related fatalities. Given that this has not happened by and large, U.S. authorities are arguably responsible (at least partially) for the deaths for knowingly "forcing" people to take death-defying risks (Smith 1998).

Officials in the United States refuse, however, to acknowledge any role in creating the undesirable consequences related to enforcement. Instead they blame smugglers for leading people into high-risk areas and then abandoning them—an explanation that often resonates in the larger society. For example, following the discovery in 1998 of eight partially decomposed corpses of unauthorized Mexican migrants in the Imperial Desert (two of whom turned out to be smugglers), the *Los Angeles Times* characterized the *coyotes* or smugglers as people who "too often do not care whether their clients live or die" and editorialized in favor of stiffer penalties for smugglers, including life imprisonment and the death penalty.[3]

The Border Patrol and associated agencies actively promote this view by trying to position themselves as defenders of unauthorized migrants. And undoubtedly U.S. Border Patrol agents have saved large numbers of at-risk unauthorized migrants in the U.S.-Mexico borderlands over the last several years.[4] But these efforts to create a landscape of safety (and one free of unauthorized migrants) cannot be separated from the far greater efforts to produce a landscape that denies mobility to unauthorized migrants and in doing so creates the very context that threatens migrants as they move through the borderlands. As Isabel García, a lawyer and a human rights activist from the Tucson, Arizona–based Coalición de Derechos Humanos asserts, the lifesaving efforts of the Border Patrol and its auxiliaries are the equivalent of "throwing a child in the ocean and then throwing in floaties afterward" (quoted in Urrea 2004, 215).

This increase in the annual number of deaths corresponds to the implementation of a new enforcement strategy along the Southwest boundary. That strategy is officially one of "territorial denial" or "prevention through deterrence" that attempts to thwart migrants from entering the United States (as opposed to the old strategy of apprehending migrants after they cross) through the forward deployment of growing numbers of Border Patrol agents and increased use of surveillance technologies and support infrastructure.[5] Effectively, however, as argued by sociologist Timothy Dunn (2009, 96), the strategy is also one of displacement, as it has pushed migrant "traffic and related problems to less patrolled, more remote, less visible areas"—which by their very nature are more dangerous and thus more deadly for migrants. Thus, by knowingly "forcing" people to cross risky terrain, U.S. authorities contribute to the resulting fatalities. Indeed, this is the dominant manner in which boundary buildup critics frame the problem of migrant deaths, which the next section illustrates.

Framing the Fatalities

By establishing the enforcement infrastructure that makes it more difficult for migrants to cross in relatively urbanized areas, U.S. authorities have increased the likelihood that unauthorized migrants will attempt to cross in rural areas where the enforcement apparatus is less dense, areas that are also more life-threatening given the hazardous environmental conditions. As previously mentioned, Washington refuses to acknowledge any responsibility for the growing death toll, often blaming professional smugglers, or *coyotes,* for leading people into high-risk areas and then abandoning them (*Los Angeles Times* 1998), even though the significant growth in the use of *coyotes* has been a predictable, direct result of the enhanced boundary enforcement strategy (Andreas 2009; Cornelius 1998, 2001; Spener 2009; Reyes et al. 2002). As a matter of fact, the Border Patrol has used increased fees charged by smugglers (presumably a result of increased demand and hardship) as one of its indicators of success (U.S. Border Patrol 1994).

Washington's contention that it is the *coyotes* who are culpable seems at times to have resonated even with the Mexican government. For example, a joint press release with the U.S. government in response to the deaths of fourteen Mexican migrants in Arizona in May 2001 stated: "Both governments have begun an investigation to identify the smugglers responsible for this tragedy, and pledge close cooperation to find these criminals and bring them to justice. The governments . . . condemn the actions of smugglers who put the lives of would-be migrants at risk" (Governments of the United States and Mexico 2001). Echoing this perspective, the United Nations similarly focuses on smugglers in assigning blame for migrant deaths (UNHCR 2002).

It is not surprising that officials of national governments (or their collective expressions such as the United Nations) do not call into question—even indirectly—the right to regulate national territorial boundaries, given that such boundaries and their associated practices are inherent in the modern state. Those outside formal state structures, however, have the space to offer far-reaching critiques. And indeed, numerous academics and migrant and human right organizations take a very different approach: rather than focusing their critical attention on smugglers, they concentrate on the enhanced boundary enforcement strategy. These individuals and organizations have blamed the strategy for causing the deaths. Generally speaking, however, they also accept boundary and immigration enforcement as a legitimate state activity.

An article by Bill Ong Hing on the "dark side" of Operation Gatekeeper—an enhanced boundary policing strategy focused on southern California—argues that the deaths that have taken place in the Mexico-California border region since Gatekeeper's implementation (October 1, 1994) "are the direct

result of the philosophy of 'control through deterrence' embodied" in the operation. "By closing off traditional corridors of entrance used by undocumented migrants," he asserts, "Operation Gatekeeper has pushed migrants into far more treacherous areas" (Hing 2001, 3). Similarly, a complaint submitted by the American Civil Liberties Union of southern California and the California Rural Legal Assistance Foundation to the Inter-American Commission on Human Rights contends, "The facts show that Operation Gatekeeper was designed to place migrants in mortal danger in order to deter their entry into the United States. The facts also reveal that hundreds of migrants have died as a result of Operation Gatekeeper along the California-Mexico border" (ACLU and CRLAF 2001, 1). For these analysts, the solution to the growing migrant death toll is the discontinuation of the enhanced enforcement strategy—one they argue violates international law because it puts migrants in deadly peril—of which Gatekeeper is the most high-profile and lethal component.

What this means in a practical sense is often not clear, as most of the authors critical of the strategy of deterrence or displacement do not put forth an explicit outline of what they think a more humane boundary policing strategy—one consistent with international law—would look like. The lack of clarity is compounded by the fact that Gatekeeper and similar operations are not temporary endeavors. They are now institutionalized, the normal way of boundary enforcement. As such, ending Operation Gatekeeper-like practices could potentially mean—among other things—a reduction in the number of Border Patrol agents in the Southwest and a tearing down of most of the hundreds of miles of walls and fencing. This would, of course, make the boundary easier to cross for would-be unauthorized immigrants. But it is far from clear that the overall impact in terms of the number of unauthorized entries would be significant, as there is no conclusive proof that the boundary buildup in and of itself has significantly impacted entries.

Despite the massive growth in the enforcement apparatus, unauthorized migrants continue to enter the United States via its southern boundary.[6] Research undertaken in 2005 found that while it is much more difficult to cross now than in the early 1990s (about one-third get caught on any given trip), and that as a result *some* in Mexico stay at home rather than even try, it also established that 92–97 percent of Mexican migrants continue to try to cross until they succeed, and that there has been no significant impact on the propensity of would-be migrants to attempt the journey.[7] This is not to suggest that further intensification of enforcement could not have a significant impact on the number of unauthorized entrants. Indeed, in certain locales where enforcement personnel and infrastructure are concentrated, there has been a marked decline in unsanctioned crossings.[8]

Still, in addition to the strength and dynamism of forces driving migration between the United States and Mexico, Central America, and various Caribbean countries (Massey, Durand, and Malone 2002; Castles and Miller 2009), a number of powerful factors limit to a highly significant degree the ability of U.S. authorities to stymie unauthorized passage of people and goods across the boundary: for example, the resolve and resourcefulness of migrants and smugglers; the difficulty—perhaps impossibility (as indicated by the large number of cases of corruption among U.S. border authorities[9])—of reducing human beings to policing agents who fully follow the rules they are charged with upholding; and the depth and scale of the transboundary ties, manifested perhaps most (in)famously by the cross-border flow of illicit drugs, which serves as a source of much of the justification for the ongoing enforcement buildup (Nevins 2010).

For such reasons, Hing argues, "reverting to pre-Gatekeeper enforcement strategies would be no less effective, in terms of apprehensions and deterrence, but would result in far fewer deaths. The less dangerous routes to entry would be re-opened and the need for high-priced smugglers reduced" (Hing 2001, 37). How many fewer deaths would result were the enhanced boundary enforcement strategy to end, however, is a matter of some debate. In their study on migrant deaths, Karl Eschbach, Jacqueline Hagan, and Nestor Rodriguez argue that it is not boundary enforcement per se that causes deaths. Rather, it is the policies behind the enforcement "that ultimately determines the migrants' mode of entry" and thus the levels of risk that migrants face. In this regard, they seem to agree that the current strategy is an important factor in the deaths since late 1994. But it is too simple, they argue, to say that the current boundary enforcement strategy is responsible for migrant deaths, as such deaths precede the recent boundary buildup. In that regard, the authors contend that "migrant border deaths will continue to parallel the temporal and spatial contours of undocumented immigration." They will only cease to occur if there is "a completely controlled border or the emergence of home-country economies as or more prosperous than the United States." And discontinuing intensified boundary enforcement—the current regime—does not make sense, they say, as it "will only mean the return of migrant border deaths to earlier patterns, not the disappearance of death" (Eschbach, Hagan, and Rodriguez 2001, iii).

The University of Houston researchers are undoubtedly correct. Indeed, their study—and past experience—suggests that the number of immigrant deaths could still be quite high if the federal government were to revert to the pre-1994 boundary enforcement strategy. While Hing[10] (explicitly) and the ACLU/CRLAF (implicitly, by default) suggest a return to the pre-Clinton boundary enforcement regime and thus a situation that would still lead to a

large number of deaths, Eschbach, Hagan, and Rodriguez argued in their 2001 article for a focus on long-term solutions and, in the short and medium terms, a program that allows for greater numbers of legal immigrants:

> The long-term solution . . . lies in reducing the demand for undocumented entry . . . by reducing the sharp differences in the efficiencies of the economies of neighboring countries. In the meantime, the most promising policy solutions . . . are those that acknowledge the persisting demand in the United States for Mexican labor. Programs that expand channels of legal migration will be the most effective way to address the level of migrant mortality at the border, because they remove the migrants from the rivers, canals, ranches, and deserts, and put them back in the seats of the motor coach and airplane. (Eschbach, Hagan, and Rodriguez 2001, 64–65)

The authors present two long-term options: a completely controlled border—something they do not seem to think is a realistic possibility, but nevertheless one that they mention—and some sort of economic development program that facilitates a significant reduction in socioeconomic insecurity within migrant-sending countries and thus reduces the pressures for out-migration.

Bill Ong Hing's analysis has evolved, in some ways, to a similar point. In a 2010 book he champions a "[European Union]–style approach of serious investment" (in Mexico, by the United States and presumably also Canada) to "diminish incentives to migrate" (Hing 2010, 170). At the same time, his prescriptions now go far beyond those put forth by the University of Houston team in 2001. Hing's call for investing billions of dollars in Mexico is part of a larger appeal for a European Union–style labor and migration regime among Canada, Mexico, and the United States. Rather than a "pure open border," Hing champions an "ethical border"—one that would be part of something along the lines of "a common market in North America with the free movement of labor as well as goods, services, and capital" (2010, 170). This, he seems to suggest, would greatly diminish the number of migrant deaths—among other forms of violence experienced by migrants.

No doubt were Hing's plan to be realized, it would diminish migrant deaths and other hardships to a significant extent. Still, like Eschbach, Hagan, and Rodriguez, and many other writers and analysts who explicitly or implicitly endorse boundary and immigration policing, Hing still allows for a territorially based regime of exclusion. In the case of his would-be North American common market, though, the apparatus of control is spatially larger than those conventionally associated with the United States proper, with the U.S. boundaries envisioned as effectively encompassing Canada and Mexico. As such, migrants from Central America—many of whom have perished in the U.S.-Mexico borderlands—to say nothing of migrants from the

Caribbean and elsewhere—would still be policed at a level at least commensurate with that which now exists.

That these analysts still perceive boundary and immigration policing as legitimate—albeit in new forms—means that some potential solutions to the problem of migrant deaths are not even considered. In this regard, what the various authors do *not* say about migrant deaths is, in a number of ways, at least as important as what they say. Taken together, their discourse and silence are emblematic of particular worldviews, which draw upon and reinforce specific conceptions of space, human rights, and violence—matters to which I now turn.

NORMALIZATION OF NATIONAL SPACE

Effective immigration and boundary enforcement are practices of recent origin in human history, tied to the rise of the modern territorial state. Until the twentieth century states' controls over the movement of peoples—with few exceptions—were relatively weak (Dowty 1987; Harris 2002; Torpey 2000). The history of the U.S.-Mexico boundary and its associated enforcement practices reflect this. Immigration policing along the boundary only emerged in the 1880s, and the U.S. Border Patrol did not come into existence until 1924 (Hernández 2010; Nevins 2010).

Despite these recent origins, boundary and immigration regulation are not only widely accepted by the public at large, but also demanded by many as a way of maintaining and enhancing national territorial sovereignty. Thus, one of the most striking aspects of the current boundary enforcement regime is how accepted and uncontroversial it is within the United States—with rare exceptions. In large part, this reflects a widespread perception and desire that boundary control is a necessary state endeavor, one deserving of large amounts of resources.

The presence of such sentiment is of relatively recent origin; as discussed previously, boundary enforcement was of relatively little concern nationally until the 1970s. The hardening of sentiment since that time reflects a particular stage in the development of the United States as a nation-state, one in which, at least in terms of immigration, the U.S.-Mexico divide has increasingly shifted from a border, a zone of gradual transition, to a boundary, a stark line of demarcation—one that divides law, order, and prosperity from chaos, lawlessness, and poverty (Nevins 2010). Thus, for the vast majority of U.S. Americans—including Latinos (Vila 2000)—the wrongness of "illegal" immigration is beyond question, and there is therefore no reason to debate policies that aim to stop extralegal immigration (Nevins 2010).

Such opinion reflects an embracing of national territorial sovereignty and a rejection of those who challenge it by attempting to traverse national boundaries without authorization. This is because the "illegal alien" is someone who is officially out of place—in a space where she or he does not belong. The practice of territoriality—the effort to exert influence over people and/or other phenomena by asserting control over a defined geographic area—reinforces the designation of the unauthorized immigrant as "illegal." Territoriality helps to obfuscate and normalize social relations between controller and controlled and displace them to the territory, thus reifying territory and the power it embodies (Sack 1986). And just as the boundary and its associated practices and identities (such as "citizen," "alien," "legal," and "illegal") have become normal, so too have the migrant deaths, in that most people in the United States accept them as simply a fact of life, a perhaps sad but acceptable outcome of the perceived necessity to enforce "our" boundaries.

The authors discussed herein help to reproduce this worldview by explicitly or implicitly endorsing the putative right of the U.S. government to enforce its boundaries. While they decry the deaths and criticize the boundary buildup for contributing to them, they help to legitimate boundary enforcement overall. As Bill Ong Hing, for example, writes, "The issue . . . is not whether the United States has a right to control its border." But this is not an unconditional right, he stresses. "Rather, the issue is whether the United States has abused that right with a strategy designed to maximize the physical risks, thereby ensuring that hundreds of migrants would die." The Inter-American Commission on Human Rights, he explains, has said that all states have a right to control entry into their countries, but only though the employment of "*effective and reasonable*" steps. The author contends that Gatekeeper does not constitute a "reasonable" practice (Hing 2001, 37–38). Along the same lines, the ACLU and CRLAF complaint states that "the United States has a right to protect its borders and implement an effective border policy," but in trying to realize this putative right "it must do so in a manner that minimizes the threat to life" (ACLU and CRLAF 2001, 10). Thus, it seems that as long as the boundary enforcement regime is "reasonable"—which presumably means that it does not lead to an excessive number of migrant deaths—boundary and immigration enforcement is a legitimate state activity.

The University of Houston team does not explicitly state that the federal government has a right to police its boundaries and to determine who can enter its territory. But implicitly, they do endorse this right as, in laying out their prescriptions for minimizing migrant deaths associated with crossing the boundary, they do not even mention ending boundary control as it relates to immigration. Meanwhile, they do bring up a completely controlled boundary as an option, although they quickly dismiss it as unattainable

(Eschbach, Hagan, and Rodriguez 2001). But in putting forth such an option, while not offering the opposite, they reinforce the perception that boundary policing is a rightful practice of the state.

Boundary control—in addition to being a politico-legal matter—is a moral one, as Wayne Cornelius suggests in his article on migrant deaths. "Not just the efficacy," Cornelius writes, "but the morality of a strategy of immigration control that *deliberately* [my emphasis] places people in harm's way should be debated." But Cornelius comes to this conclusion after suggesting that boundary policing can only work as a tool of immigration control in the unlikely situation that there is sufficient "political will in Congress and the society as a whole to do what is necessary to strengthen enforcement of immigration laws in the workplace" (Cornelius 2001, 681). Thus, to the extent that he raises moral questions about the current strategy, Cornelius only does so as far as it contributes to migrant deaths. Regardless of intentions, the effect of such writing is to legitimate boundary and immigration control—as long as it does not seem to *deliberately* lead to migrant deaths, as the current strategy allegedly does. Presumably there are other boundary and immigration enforcement outcomes in terms of the well-being of unauthorized immigrants that Cornelius would also find morally unacceptable. But because he does not say anything about the morality of immigration control and boundary policing per se, he endorses them by default. Indeed, he implicitly legitimates them when discussing workplace regulation.

While human rights concerns seem to animate the writings of most of the various authors, it is striking how little they speak explicitly of human rights. And when they do, it is in a manner that restricts itself to a rather conservative reading of international human rights law. They thus say nothing about a right to freedom of movement, while they all—either explicitly or implicitly—endorse the right of the state to control its boundaries and to determine who can enter, and thus reside and work in, national territory. In this regard, they subordinate the human rights of migrants to a right claimed by the state, a matter that I now address.

A CONSERVATIVE CONCEPTION OF HUMAN RIGHTS

None of the international conventions on human rights explicitly state that human beings have a right to freedom of movement. It is perhaps for this reason that some of the authors discussed herein (Cornelius 2001; Eschbach, Hagan, and Rodriguez 2001; Reyes et al. 2002) do not utilize the concept of human rights in putting forth their critiques of the enhanced boundary policing strategy. Some of those who do employ the concept of human rights (Bustamante 2001; Hing 2001, 2010) do so by referencing the approach of

the ACLU/CRLAF. In their complaint to the Inter-American Commission on Human Rights, the two advocacy organizations draw on Article 1 of the American Declaration of the Rights and Duties of Man, which states that "[e]very human being has the right to life, liberty, and the security of the person." The ACLU/CRLAF argues that the U.S. government is in violation of this article because the current boundary enforcement strategy "is intentionally designed to place migrants in mortal danger" (2001, 10). Thus, it seems that a boundary control strategy consistent with human rights would not place migrants in potentially deadly situations. But given that migrant deaths precede the current strategy, it is hard to imagine a *serious* boundary policing strategy that would *not* result in mortal danger to migrants—or at least to those trying to beat the web of exclusion.

That said, states can and do regulate immigration through means other than by territorial boundary policing. A state could, for example, intensively police residential areas and places of work, thus greatly limiting the ability of unauthorized migrants to exist within national space. Such an approach would seem to flow from the statement of Jorge Bustamante that he is *not* suggesting "that a sovereign right of a country to determine who should enter and who should not is a source of violations of human rights" (2002, 344). In making such an assertion, Bustamante echoes a foundational assumption of the position put forth by the ACLU/CRLAF. Such an assumption, and the nature of the ACLU/CRLAF critique of the current boundary control strategy, are manifestations of a conservative notion of what constitutes human rights, or at the very least, of a failure to push the limits of mainstream conceptions of such.

There is clearly a profound contradiction between what is virtually an unlimited right of states to regulate immigration and the universality of human rights expressed by various international conventions and declarations (Curtotti 2002). In addition to Article 1 of the American Declaration of the Rights and Duties of Man, various articles of the Universal Declaration of Human Rights (UDHR) are relevant to the rights of migrants:

> *Article 1.* All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.
>
> *Article 3.* Everyone has the right to life, liberty and security of person.
>
> *Article 23.* (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
>
> (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

Article 25. (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family. . . .

Article 28. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

There are similar articles in a variety of international human rights covenants, but, again, none speaks explicitly about international freedom of movement. Article 13 (2) of the UDHR, however, does state: "Everyone has the right to leave any country, including his own, and to return to his country." While one can argue that this right implies the freedom to enter any country—as the right to leave a country is meaningless without a corresponding right to enter another—this is clearly not what the architects of the declaration intended. Be that as it may, Article 28 obligates us not only to focus on clearly defined rights, but also to concern ourselves with that which is necessary to achieve the rights enumerated in the UDHR. In this regard, freedom of movement—given the gross socioeconomic disparities between countries and the profound socioeconomic insecurity that plagues many national societies—is a right necessary to achieve some of the rights quoted above. How, for example, can one have a right to work, to free choice of employment, if one does not have mobility (in a legal sense)? (Harris 2002). And how meaningful is a right to an adequate standard of living if one does not have the right, through movement across space, to access the resources needed to realize such a standard? By not addressing the contradiction between the human rights it embodies and the putative right of states to regulate immigration, the international human rights regime reproduces social injustice.

This contradiction is reflected in a 2002 report on the human rights of migrants and the U.S.-Mexico border by a special rapporteur from the United Nations Commission on Human Rights. The report's author emphasizes the right of the United States to regulate its boundaries, while recognizing migrant deaths as a problem. She then suggests that the current boundary enforcement regime must do more to ensure respect for the right to life. But the measures she champions do not even include a weakening of the boundary enforcement apparatus, to say nothing of a liberalization of the immigration control regime. Instead, she merely advocates measures that have already proven to be largely ineffective: the dissemination of information to would-be migrants about the dangers of crossing, search and rescue missions; placement of water tanks in the desert, and efforts to combat smuggling rings (UNCHR 2002).

Amnesty International takes a position that is even more conservative than that of the United Nations. In a 1998 report, Amnesty states that it "does not take issue with the sovereign right of the United States to police its international

borders in order to determine whether individuals have the legal right to enter the country." But, the organization continues, Washington "must do so in a manner which complies with its international human rights obligations" (Amnesty International 1998, 1). In discussing those human rights obligations, however, Amnesty displays a narrow perspective on what constitutes human rights as they relate to migrant deaths. It does so by default: in its fifty-page report, the world's premier nongovernmental human rights organization does not discuss migrant deaths at all. It does, however, concern itself with physical injury to unauthorized migrants, but only when brought about by the direct actions of individual boundary enforcement authorities (i.e., beatings and shootings of migrants).

A 2012 report by Amnesty marks a significant improvement in this regard. It contains a brief chapter that focuses on migrant fatalities, which concludes as follows: "All countries have the right to protect their borders. But they also have an obligation to ensure the rights of migrants, including the right to life. In other words, they have a responsibility to ensure that immigration border policies do not have the direct or indirect effect of leading to the deaths of migrants." Given such a responsibility, the report goes on to say that "the USA must ensure that its migration policies and practices actively seek to protect, and promote the right to life, irrespective of migrants' status or mode of travel and arrival" (Amnesty International 2012, 24). What exactly a boundary policing regime that "actively seek[s] to protect and promote the right to life" would look like, Amnesty does not say. Because it does not, while invoking the countries' putative "right to protect their borders," Amnesty is not criticizing boundary policing per se, but rather the fact that the policing regime either does not apprehend all who make the attempt before they fall into harm's way, or that it is not sufficiently strong to dissuade people from even trying to cross without authorization.

Anthropologist Guillermo Alonso Meneses comes to a similar conclusion. While he finds evidence of human rights violations by U.S. authorities in the Southwest borderlands, especially in relation to migrant deaths, he ultimately remains largely agnostic on the matter because the necessary evidence "to charge U.S. authorities with systematic rights violations is not clear." He concludes by asserting that slow responses by the U.S. government—as opposed to "rapid and humane solutions"—to the rash of fatalities "would themselves be human rights violations" (Meneses 2003–2004, 281). Yet because he never discusses the content of the would-be "solutions" that he desires, he ends up by default endorsing a narrow set of options, such as those discussed previously, that flow from and reproduce various forms of violence.

Narrow Notion of Violence

Johan Galtung (1969) argues for an expanded conceptualization of violence, contending that we should concern ourselves first and foremost with outcomes, not means. In this regard, social practices (individual, collective, and institutionalized) that lead to the harming of humans constitute violence. Thus, Galtung includes in his definition of *violence* that which prevents us from achieving *realizable* social goals deemed by most to be desirable (i.e., a healthy diet, access to potable water, or adequate health care and housing for all). When an identifiable actor commits the violence, it is *direct* or *personal* in terms of its origins. When there is no actor present—or when an undesirable/unjust outcome is the outgrowth of a seemingly legitimate or acceptable sociogeographical arrangement and the associated institutionalized practices of organizations and institutions—the violence is *indirect* or *structural.* Although neither type of violence is inherently worse or more important than the other (we can only judge the significance of a particular type of violence, argues Galtung, in a specific time-space context), we tend to focus our outrage on direct or personal violence because it is visible as action and far less on structural violence. Because of the lack of obvious actors, it is often hidden, or it seems "natural"—a part of our normal surroundings. The lack of visible agency for the human suffering that results from structural violence usually means not only that it goes unnoticed, but also that it is not challenged (Galtung 1969; Nevins 2005, 2007).

Violence pervades the lives of immigrants who try to enter or have entered the United States without authorization. From the physical attacks many of those trying to enter from Mexico experience—either from so-called border bandits and unscrupulous smugglers, or from state authorities (on both sides of the boundary)—to the poverty that many face due to low wages and an inability to access many public services, large numbers of unauthorized migrants in the United States encounter violence (broadly defined) on a regular basis. In the case of such violence, not only do we not often see its causes, the violence itself is not visible *as violence.*

Migrant deaths brought about as a result of having to traverse dangerous terrain to overcome the boundary policing apparatus are the most tragic example of this hidden violence. While a number of the authors critiqued in this paper implicitly recognize the current boundary enforcement regime as an example of structural violence, this recognition is insufficiently structural, as it limits itself to a manifestation of boundary enforcement (in the form of a particular strategy or mode of policing), rather than boundary enforcement in and of itself. Migrant deaths since the mid-1990s are not merely illustrative of the violence of the current boundary enforcement regime, but of boundary

enforcement in general—that is, if we accept Galtung's contention that we must expand our notion of the concept so that it includes that which prevents the achieving of realizable social goals deemed by most to be desirable, and if we recognize human rights covenants and declarations as examples of such social goals. Thus, that which denies human rights, or more specifically, the means to realize these rights (in this case, freedom of movement and residence) is an example of violence. The principal perpetrators of the violence are the state actors who, under the rubric of the law, construct and enforce the territorial and politico-legal boundaries that unauthorized immigrants must overcome and in the process take great risks.

The intentions of these actors are not important—especially if we accept the premise that one is responsible for the likely or predictable consequences of one's actions. It is too simple to suggest that migrant deaths that take place in the context of trying to overcome boundary enforcement are accidents, or even surprises. While specific migrant deaths or the exact number of fatalities in the growing tally is not predictable, large numbers of deaths as a collectivity are foreseeable: they are destined to happen due to structures and actions of violence not seen as such. Hence, in thinking about violence, we should focus on outcomes and consequences—especially those that are predictable—rather than concerning ourselves with means (Galtung 1969). If we do this, we realize that a death caused by a bullet is no more morally reprehensible than one caused by practices and social structures such as those embodied by the U.S.-Mexico boundary policing regime.

As discussed previously, convention is to focus on violence of direct or personal nature and concentrate far less on institutionalized or structural forms. In many ways this is not surprising, as personal or direct violence *shows.* It disturbs the normal environment, whereas structural violence *is* the normal environment—at least in part. That said, structural violence can become visible in a highly dynamic society, one in which political forces are effectively challenging dominant ideas of what constitutes violence and nonviolence (Galtung 1969; Nevins 2005). Hence, academics, researchers, and migrant rights advocates concerned with migrant deaths must challenge boundary enforcement itself—especially if the goal in doing so is to embrace unauthorized migrants as human beings endowed with a full set of basic and universal rights.

CONCLUSION

The contemporary situation in the U.S.-Mexico border region is one in which the combination of the unauthorized movement (northward) of people across the international boundary and efforts to stop them has never been

greater. It is at this intersection that the growing number of migrant deaths is taking place. But as established previously, migrant deaths are not of recent origin. They precede the implementation of the current boundary policing regime and, as such, expose the fact that it is boundary enforcement in and of itself that puts unauthorized migrants in mortal danger. That migrant deaths have increased in the context of the current intensified policing regime only suggests that "thicker" enforcement creates greater risks for unauthorized crossers—a quantitative difference, albeit one of disgraceful proportions, not a qualitative one.

For such reasons, calls to end enhanced policing are not sufficient if the goal is to stop migrant deaths. What is implicit in such calls is that if boundary enforcement is to occur, it should not put migrants in mortal danger—at least not to the extent that it does currently. Hence, those who criticize the U.S. policing apparatus in the U.S.-Mexico borderlands for reasons of migrant fatalities implicitly allow as a potential solution a radical *increase* in resources dedicated to boundary enforcement—the idea being that one could make the enforcement web so effective that migrants could not cross the boundary without authorization and put themselves in harm's way trying to do so. Given the intense socioeconomic links—especially those associated with the burgeoning cross-boundary commercial ties—such an intensification of enforcement would be *politically* difficult (if not impossible) to realize, however. In any case, it is doubtful that the various authors examined herein would desire a radical intensification of boundary enforcement to levels much higher than those that currently exist. But because they explicitly and/or implicitly endorse the federal government's right to enforce its territorial boundaries and only specifically challenge certain manifestations of boundary enforcement, not the assumptions and practices underlying them, they do not preclude the possibility of a substantial increase in boundary enforcement. Similarly, they do not forestall intense policing in the interior as a substitute for boundary enforcement.

As such, the effect of the various writings and positions examined herein is to reinforce a narrow conceptualization of human rights and to justify the view that the right of the state to regulate immigration is greater than the human rights of noncitizens. Thus, various human rights—including the right to an adequate standard of living and the right to work—are effectively accorded second-class status. In arguing this, I acknowledge that a right to freedom of movement might collide with other rights—most importantly that of societies to secure public order and the general welfare.[11] But if we understand transboundary freedom of movement to be a basic human right as opposed to a privilege accorded by states, it forces us to arrive at solutions to problems associated with in-migration (for the receiving society) other than those that erect

obstacles to freedom of movement. Such solutions are possible if the politico-geographical vision and will exist.

It is widely recognized that limiting mobility—within countries—is both unjust and harmful to those denied. In the case of Rwanda in the early 1990s, for example, there were all sorts of obstacles to movement and residence within national territory—obstacles characterized as human rights violations by the U.S. State Department (Uvin 1998). According to the World Bank, Rwanda's "[r]estrictions on population movements . . . increased poverty by limiting options for the poor and . . . reduced the potential for economic growth." Hence, the Bank asserted that "any poverty-reducing growth strategy for Rwanda [would] need to start with removing restrictions to free labor movement" (World Bank 1994, v–viii and 41).

In the case of movement between nation-states, however, the harm-causing implications of limited mobility and residence across and within national boundaries for peoples of Third World origin are rarely noted[12]—demonstrating, once again, the ideological power of nation-statism. To the contrary, they are obscured and embedded in the globe's very political-economic fabric. The *Universal Declaration of Human Rights,* for example, while embracing "the inherent dignity and the equal and inalienable rights of all members of the human family" and affirming the right of exit from a country, does not enshrine a right of entry—except into one's own country. The effect is to deny many across the globe some of the most basic human rights.

In a world of pervasive poverty, growing inequality, and widespread instability and insecurity, the power to move across national boundaries has profound implications: which side of a boundary one is born on significantly determines the resources to which one has access, the amount of political power on the international stage one has, where one can go and under what conditions, and thus how one lives and dies. Thus, there is an inherent double standard—rights for some, fewer for others—a disparity that comes about via the accident of birth. This double standard is the essence of racism. And given the unjust nature of the global political economy, which embodies this unequal allocation of rights and which national governments enforce, this double standard is also the essence of the nation-state system as well, as it allows for differential treatment based on the assumption that some should have fewer rights because of where they are from. It is for such a reason that Hannah Arendt spoke of "the right to have rights" (Arendt 1951, Book 2). If having human rights is part of being a human being, denying people a "right to have rights" by disallowing them freedom of movement and residence—and thus a whole host of other rights—is to effectively deny their very humanity. That this denial is enshrined in the very legal fabric of individual countries and in that of the nation-state system as a whole makes it all the more difficult to see and challenge.

Some or all of the authors critiqued herein might very well have reasons why they do not want to challenge the global status quo that divides the world into nominally sovereign territorial states that have the right to determine who can enter and reside within their boundaries. But because none of them make efforts to explain and defend their explicit or implicit support for the state's right to regulate territorial boundaries and immigration, their positions are not evident. Such matters are too important to assume without justification. Those concerned with migrant deaths and the human rights of immigrants more generally must debate this matter. Profound issues of politics, ethics, and sociospatial justice—with literally life and death implications—are at stake (Carens 1999, 2000; Curtotti 2002; Miller and Hashmi 2001).

NOTES

This chapter is a revised version of Nevins, "Thinking Out of Bounds: A Critical Analysis of Academic and Human Rights Writings on Migrant Deaths in the U.S.-Mexico Border Region," *Migraciones Internacionales* 2(2, July-December 2003): 171–190, with permission of *Migraciones Internacionales.*

1. Lee (2003). Regarding deaths during the 1900s, see García (1980, 13). See also Annerino (1999).

2. As one of its "indicators of success" for San Diego and El Paso, the Border Patrol included the "reduction of serious accidents involving aliens on highways, trains, drowning, dehydration (main effort)." See U.S. Border Patrol (1994, 9).

3. *Los Angeles Times* (1998). For more information and analysis of this case, see Nevins (2008).

4. See, i.e., Thompson (2000) and Annerino (1999). But as Annerino points out, there is a fine line between a rescue and an apprehension. In this regard, statistics of "rescues" reported by the Border Patrol are probably somewhat inflated.

5. According to the national strategic vision of the U.S. Border Patrol (1994, 6):

> The Border Patrol will achieve the goals of its strategy by bringing a decisive number of enforcement resources to bear in each major entry corridor [such as El Paso and San Diego]. The Border Patrol will increase the number of agents on the line [the boundary] and make effective use of technology, raising the risk of apprehension high enough to be an effective deterrent. Because the deterrent effect of apprehensions does not become effective in stopping the flow until apprehensions approach 100 percent of those attempting entry, the strategic objective is to maximize the apprehension rate. Although a 100 percent apprehension rate is an unrealistic goal, we believe we can achieve a rate of apprehensions sufficiently high to raise the risk of apprehension to the point that many will consider it futile to continue to attempt illegal entry.

6. Regarding the insignificant impact enforcement has had on the flow of illicit drugs across the boundary, see Andreas (2009).

7. Cornelius (2006, 2007); Fuentes et al. (2007). For those trying to get to the United States from elsewhere, but via Mexico, it is certainly far tougher to reach their destination given the difficulties non-Mexican nationals have in entering and traversing Mexican territory. No doubt the percentage of such migrants who eventually succeed in reaching the United States is lower than that of Mexican migrants. See Aizenman (2006), Flynn (2002), and Thompson (2006).

8. See Marosi (2007), McKinley (2007), and Riley (2007). To the extent that heightened enforcement has been a "success," it comes at a cost from the perspective of U.S. authorities: the ongoing boundary buildup has the effect of increasing the length of unauthorized migrants' stays in the United States, while making it less likely that they will return to their country of origin, given the heightened costs and risks associated with crossing into the United States extralegally. See Massey, Durand, and Malone (2002), Reyes (1997), and Taylor, Martin, and Fix (1997).

It is of course also financially expensive. A 2013 report published by the Migration Policy Institute established that the federal government spent more than $200 billion (in 2012 dollars) on immigration and boundary policing between 1987 and 2012 (see Meissner et al. 2013).

9. See, i.e., Trevizo (2013); see also http://bordercorruption.apps.cironline.org/.

10. Hing's views have evolved since that time, approaching that of Eschbach, Hagan, and Rodriguez (2001) in various ways. See Hing 2010.

11. Article 29(2) of the *Universal Declaration of Human Rights* states, "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

12. Noteworthy exceptions include Sharma (2006) and Ticktin (2011).

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Francisco's research is informed by the transnational activism of GABRIELA, an alliance of progressive Filipino women's organizations in the Philippines and in other countries internationally and MIGRANTE International, an international alliance of Filipino migrant workers. These networks of diasporic and transnational solidarity between Filipino migrant communities in the U.S. and the national democratic movement in the Philippines have shaped

her critical perspective on neoliberalism. To this end, Francisco has engaged in participatory action research and feminist methods in all of her research projects where Filipino and Filipina migrants' experiences are centered. Currently she is collaborating with Robyn Rodriguez on a PAR project with Filipino caregivers and domestic workers to research an understudied industry of caregiving to the elderly. More importantly, this research project allows for the development of leadership and organizing capacity in the Filipino community in the Bay Area through a newly formed organization, Migrante Northern California.

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In 2013 Gordillo codirected and coproduced *Antonia: A Chicana Story,* a full-length documentary examining national migrations from Texas to the Pacific Northwest of people from Mexican descent embodied in the experience of historian and activist Antonia Castañeda. She is currently working on a comparative analysis of immigration policies and implementation between the Mexico-U.S. border and the Melilla-Morocco border in North Africa.

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the technical and interpersonal skills and competencies that Mexican migrants with low levels of education acquire and transfer across the U.S.-Mexico migratory circuit and the implications of these transfers for social mobility and local economic development.

BETH LYON is professor of law, founding director of Villanova Law School's Farmworker Legal Aid Clinic, and founding codirector of the Community Interpreter Internship Program. Professor Lyon received her BA from the University of North Carolina, Chapel Hill; her MS from Georgetown University School of Foreign Service; and her JD from Georgetown University Law Center. At Georgetown Law she was the managing editor of *Law and Policy in International Business* (since renamed *Georgetown Journal of International Law*) and a Ford Foundation Fellow, working in Lima, Peru, for the Comisión Andina de Juristas. Prior to joining the Villanova faculty, Professor Lyon was a staff attorney for Human Rights First, a consultant at the D.C. Coalition Against Domestic Violence and the Centre on Housing Rights and Evictions, and the recipient of a three-year teaching fellowship at the International Human Rights Clinic at Washington College of Law, American University. Professor Lyon is a national authority on the laws and policies affecting immigrant workers. She has written extensively on domestic and international immigrant and farmworker rights.

Professor Lyon recently served on the Advisory Group of the American Bar Association Language Access Standards Project. She chairs the Human Rights Committee of the Society of American Law Teachers Board of Directors and is the praxis coordinator for the Steering Committee of the Board of Directors of Latina & Latino Critical Theory, Inc. She is also vice president of the Board of Directors of Friends of Farmworkers, a nonprofit legal services agency that serves immigrant workers in Pennsylvania, and president of the Board of Directors for the Global Workers Justice Alliance, a nonprofit agency that trains and assists advocates whose clients have returned to their countries. Professor Lyon is current chair of the Pennsylvania Bar Association Civil and Equal Rights Committee.

DOUGLAS S. MASSEY is the Henry G. Bryant Professor of Sociology and Public Affairs at Princeton University, where he also serves as director of the Office of Population Research. Since 1982 he has codirected the Mexican Migration Project with Jorge Durand of the University of Guadalajara. Together they have coauthored numerous books and papers on Mexico-U.S. migration, including *Return to Aztlan: The Social Process of International Migration from Western Mexico* (1987); *Miracles on the Border: Retablos of Mexican Migrants to the United States* (1995); *Beyond Smoke and Mirrors: Mexican Immigration in an Age of*

Economic Integration (2002); and *Crossing the Border: Research from the Mexican Migration Project* (2004). Massey is past president of the Population Association of America and the American Sociological Association and current president of the American Academy of Political and Social Science. He has been elected to membership in the American Academy of Arts and Sciences, the American Philosophical Society, and the National Academy of Sciences, and is a fellow of the American Association for the Advancement of Science.

CECILIA MENJÍVAR is Cowden Distinguished Professor in the T. Denny Sanford School of Social and Family Dynamics at Arizona State University. Her research has focused on the effects of immigration laws at the federal, state, and local levels on various aspects of immigrants' lives, focusing in particular on family dynamics, the workplace, and schools, with attention to family separations, educational aspirations, religious participation, identity and belonging, and work and experiences in the labor force.

Menjívar's publications include the award-winning books *Fragmented Ties: Salvadoran Immigrant Networks in America* (University of California Press, 2000) and *Enduring Violence: Latina Women's Everyday Lives in Guatemala* (University of California Press, 2011), and the edited collections *Through the Eyes of Women: Gender, Social Networks, Family and Structural Change in Latin America and the Caribbean* (De Sitter Publications, 2003); *When States Kill: Latin America, the U.S. and Technologies of Terror* (with Nestor Rodriguez) (University of Texas Press, 2005); *Latinos/as in the United States: Changing the Face of America* (Springer, 2008); the special issue "Transnational Parenthood" of *Journal of Ethnic and Migration Studies* (2012); and *Constructing Immigrant "Illegality": Critiques, Experiences, and Responses* (with Daniel Kanstroom) (Cambridge University Press, 2014). In addition, her work has appeared in *Social Problems, Gender & Society, American Journal of Sociology, Social Justice, International Migration Review, Journal of Ethnic and Migration Studies, Ethnic and Racial Studies, and Sociology of Religion,* among others.

JOSEPH NEVINS is an associate professor of geography at Vassar College in Poughkeepsie, New York. His research interests include socioterritorial boundaries and mobility, violence and inequality, and political ecology. Among his books are *A Not-So-Distant Horror: Mass Violence in East Timor* (Cornell University Press, 2005); *Dying to Live: A Story of U.S. Immigration in an Age of Global Apartheid* (City Lights Books, 2008); and *Operation Gatekeeper and Beyond: The War on "Illegals" and the Remaking of the U.S.-Mexico Boundary* (Routledge, 2010). He is a contributing editor of the *Border Wars* blog on the Web site of the North American Congress on Latin America (NACLA); he is also a corresponding editor for the *NACLA Report on the Americas.*

MAE M. NGAI, professor of history and Lung Family Professor of Asian American Studies, is a U.S. legal and political historian interested in questions of immigration, citizenship, and nationalism. Ngai is author of the award-winning *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton University Press, 2004) and *The Lucky Ones: One Family and the Extraordinary Invention of Chinese America* (Houghton Mifflin Harcourt, 2010), and editor of *Major Problems in American Immigration History,* 2nd ed. (Cengage, 2011). Professor Ngai has held fellowships from the Radcliffe Institute for Advanced Study, John Simon Guggenheim Memorial Foundation and Institute for Advanced Study, the Cullman Center for Scholars and Writers at the New York Public Library, and the Woodrow Wilson Center for International Scholars. She has written on immigration history and policy for the *Washington Post, New York Times, Los Angeles Times, Nation,* and *Boston Review.* Before becoming a historian Ngai was a labor union organizer and educator in New York City, working for District 65UAW and the Consortium for Worker Education.

NESTOR P. RODRIGUEZ is professor of sociology at the University of Texas at Austin. His research concerns the topics of international migration, race and ethnic relations, urban development, and coercive bureaucracies. His recent publications include a coauthored forthcoming book (*Guatemalan-U.S. Migration: Transforming Regions*) on Guatemalan migration to the United States, as well as an article in the journal *Latino Studies* on relations between African Americans and new Latino immigrants in the South.

ROBYN MAGALIT RODRIGUEZ received her PhD in sociology from the University of California, Berkeley. Her first faculty position was at Rutgers University in New Jersey. Rodriguez is now associate professor of Asian American studies at the University of California, Davis. Rodriguez's research is fundamentally about the ways in which globalization and neoliberalism have reconfigured states and citizenship. Both in the Philippines and the United States, her scholarship is driven by concerns about how the state and citizenship are shifting under these conditions, and Rodriguez asks what these policies mean for those who are defined as "foreign" or "other." She also pays attention to migrant labor's political transnationalisms, focusing on the ways in which migrant workers fight back or resist. She has been tracking the transnational Philippine migrant labor movement for over a decade and continues to do so in San Francisco. Her book *Migrants for Export: How the Philippines Brokers Labor to the World* (University of Minnesota Press, 2010) earned an honorable mention by the Association for Asian American Studies. Rodriguez's second book is a textbook coauthored with Pawan Dhingra, *Asian America:*

Sociological and Interdisciplinary Perspectives (Polity Press, 2014). She is currently completing her third book, *In Lady Liberty's Shadow: Race and Immigration in Post-9/11 New Jersey.*

Rodriguez's background in Asian American studies informs her work as a scholar. Asian American studies emerged out of student movements that were fundamentally rethinking access to education and raising questions about the politics of knowledge production: Who is able to produce knowledge? For what purpose? Many of the demands for departments like Asian American studies were demands for education and scholarship that were relevant to communities that have been long left out of the university. She is very much inspired by that tradition. She uses the skills she has developed as a researcher to contribute to communities. For example, she is working on a participatory action research project for Filipino caregivers, along with her former graduate student, Valerie Francisco, in the Bay Area. These caregivers face exploitation and abuse because they often work outside of institutions, in home settings. She was asked to be part of a process of helping to equip them with the tools to do some basic research about themselves. The research prompted the migrant workers to self-organize, and in December 2012 they formed Migrante Northern California.

ROBERTO SURO holds a joint appointment as a professor in the Annenberg School for Communication and Journalism and the Sol Price School of Policy, Planning and Development at the University of Southern California. He is also director of the Tomás Rivera Policy Institute, an interdisciplinary university research center exploring the challenges and opportunities of demographic diversity in the twenty-first-century global city. Suro's latest book is *Writing Immigration: Scholars and Journalists in Dialogue* (University of California Press, 2011), coedited with Marcelo Suarez-Orozco and Vivian Louie. He is a nonresident senior fellow of the Brookings Institution, where his most recent publication is "Immigration and Poverty in America's Suburbs" (2011) with Audrey Singer and Jill H. Wilson.

Prior to joining the USC faculty in August 2007, he was director of the Pew Hispanic Center, a research organization in Washington, D.C., that he founded in 2001.

Suro's journalistic career began in 1974 at the City News Bureau of Chicago as a police reporter, and after tours at the *Chicago Sun Times* and the *Chicago Tribune* he joined *Time* magazine, where he worked as a correspondent in the Chicago, Washington, Beirut, and Rome bureaus. In 1985 he started at the *New York Times* with postings as bureau chief in Rome and Houston. After a year as an Alicia Patterson Fellow, Suro was hired at the *Washington Post* as a staff writer on the national desk, eventually covering a

variety of beats, including the Justice Department and the Pentagon, and serving as deputy national editor.

Suro is author of *Strangers Among Us: Latino Lives in a Changing America* (Vintage, 1999); *Watching America's Door: The Immigration Backlash and the New Policy Debate* (Twentieth Century Fund, 1996); and *Remembering the American Dream: Hispanic Immigration and National Policy* (Twentieth Century Fund, 1994), as well as more than three dozen book chapters, reports, and other publications related to Latinos and immigration.

CHRISTINE WHEATLEY is a PhD candidate in the Department of Sociology at the University of Texas at Austin. Her research concerns state-migrant relations, immigration law, citizenship, race and ethnicity, and new forms of return migration. Her current project investigates the U.S. state's use of detention and deportation as instruments of immigration control and the social effects of deportation on Mexican national deportees. Her recent publications include an article in the December 2011 issue of *The Latin Americanist* on the social and economic reincorporation of Mexican deportees in Jalisco, Mexico.

KAREN A. WOODROW-LAFIELD, research professor at the University of Maryland College Park and faculty associate in the Maryland Population Research Center, is a sociologist and demographer interested in international migration, citizenship and immigrant integration, and immigration policy. Professor Woodrow-Lafield has published articles on unauthorized migration, census surveys and coverage, emigration, naturalization and citizenship, and marital transitions in *Demography*, *International Migration Review*, *Population Research and Policy Review*, *Journal of the American Statistical Association*, and other journals. As a member of the Quantification Team for the Mexico-U.S. Binational Study, she coauthored the Binational Study on Migration between Mexico and the United States. As an expert member of the 2011 Technical Panel on Assumptions and Methods, she evaluated immigration assumptions and methods for population projections in the Report to the Social Security Advisory Board. In addition to collaborative reports and articles, she has also published more than three dozen chapters, reports, and proceedings papers. She was a tenured associate professor in sociology at Mississippi State University and visiting faculty fellow and directed border studies in the lnstitute for Latino Studies at the University of Notre Dame. Prior to her academic appointments, she worded as senior research analyst at the U.S. Commission on Immigration Reform and immigration demographer at the U.S. Census Bureau.

Hidden Lives and Human Rights in the United States

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Hidden Lives and Human Rights in the United States

Understanding the Controversies and Tragedies of Undocumented Immigration

Volume 2: Human Rights, Gender/Sexualities, Health, and Education

Lois Ann Lorentzen, Editor

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Introduction

Lois Ann Lorentzen

> Few of their children in the country learn English. . . . The signs in our streets have inscriptions in both languages. . . . Unless their importation could be turned they will soon so outnumber us that all the advantages we have will not be able to preserve our language, and even our government will become precarious.
>
> —Benjamin Franklin, 1753 (cited in Nevins 2008, 111)

As I write this introduction, Congress debates immigration reform. A series on undocumented immigrants[1] seems timely. Yet the national debate is not new, but merely the latest version of a deep societal ambivalence toward immigrants. Although on the one hand the United States prides itself on being a "nation of immigrants," on the other the "illegal alien" has loomed large in immigration laws and public opinion throughout U.S. history (Ngai 2004). Benjamin Franklin's remarks about German immigrants sound surprisingly "modern." Few today would question whether or not people of German ancestry are fully "American." Yet some, similar to Franklin centuries ago, question whether the foreign born, especially the undocumented, should be full members of the country, fearful of what a "new American nation" might look like (Resnick 2013).

Thirteen percent (40.4 million people) of the U.S. population in 2011 was foreign born (Batalova and Lee 2012). Four percent (roughly 11.2 million) of the country is unauthorized. The unauthorized make up nearly 5.5 percent of

the U.S. workforce (Pew Hispanic Center 2013). Two-thirds have lived in the United States for over a decade; 46 percent are parents of minor children (Taylor et al. 2011). Contrary to the stereotype of a migrant as a single male, the unauthorized are "families with children" (Passel, quoted in Resnick 2013). Whereas 21 percent of nonmigrant households are couples with children, 47 percent of undocumented households are (Resnick 2013).

The undocumented are for the most part working people with children who have lived in the United States for a decade or longer. Yet public debates on immigration reform emphasize national security, border control, amnesty, English competency, economic impact, and the need to punish "law breakers." Missing is a discussion of basic rights denied to people, based on their legal status, who *live here.* Unauthorized immigrants are here; they are neighbors, workers, and parents, part of the fabric of our life together.

I recently returned from the Nogales, Arizona/Nogales, Mexico border, where I interviewed migrants who had been deported from the United States. Many had spent time in detention centers, one of four adults were parents of U.S. citizen children, and most had lived in the United States for many years. They told heartbreaking stories of dangerous desert crossings, sexual abuse in detention centers, lack of legal assistance, verbal and physical abuse by authorities, and great sadness at being separated from loved ones. As we left a shelter run by Catholic priests and nuns on the Mexican side of the border, a young woman, her husband, and their six-month-old baby were about to cross the desert in 104-degree heat to join family members in the United States. The price many migrants pay to reside in the United States is often high, and I worried about this young family's ability to survive the dangerous journey ahead of them.

Many don't survive. Earlier this year I listened to Raquel Rubio-Goldsmith's chilling account of the unidentified remains of migrants in south-central Arizona. Between 1990 and 2012, 2,238 bodies were found in this corner of the United States, a period coinciding with increased border security: fences and walls as well as more Border Patrol. The actual number of deaths is "certainly higher than the numbers based on actually recovered bodies and official counts" (Nevins 2008, 22). The Pima County Office of the Medical Examiner in Tucson, which "handles more unidentified remains per capita than any other medical examiner's office in the United States," has been unable to identify a third of the bodies recovered (Mello 2013; Binational Migration Institute 2013). Heat exposure from traveling through the desert is the most likely cause of death. Joseph Nevins and Luis Alberto Urrea graphically describe the deaths, and compassionately tell the life stories of people who have died crossing the desert (Nevins 2008; Urrea 2004). Many of those who have died were crossing for the second or third time, attempting to rejoin

families after deportation. Deportation as a strategy for immigration control is rarely "voluntary," but involves involuntary, painful family separations and the willingness to again attempt dangerous desert crossings.

Few seem to think that deportation of all unauthorized immigrants is either desirable or feasible. Yet deportation of migrants has increased during the Obama administration. A record 400,000 people were deported in 2012, a not insignificant portion of the estimated 11.2 to 11.5 million unauthorized immigrants in the United States. Tanya Golash-Boza (2013) makes the remarkable claim that "by 2014 President Obama will have deported over 2 million people—more in six years than all people deported before 1997." Some 23 percent of "criminal deportees" were deported after traffic violations, and 20 percent for immigration crimes such as illegal entry or reentry. Similar to what I discovered through my informal interviews in Nogales, Mexico, the study found that from July 2010 to December 30, 2012, one-quarter of all deportations were of parents with U.S. citizen children living in the United States (Golash-Boza 2013).

No matter what type of immigration reform one favors (or doesn't), the question of how people are treated must be asked. Separation of young children from their parents and death in the desert don't fit a national image of welcome, fair treatment, equal protection, and human rights.

WHOSE RIGHTS?

> Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. (Universal Declaration of Human Rights, Article 2)

The United Nations General Assembly passed the Universal Declaration of Human Rights in 1948. The declaration defined a wide range of rights, including *civil rights* (protection from discrimination and freedom of expression, speech, religion, assembly, the press, movement), *political rights* (right to a fair trial, due process, assembly, vote, petition, self-defense, and freedom of association), and *social and economic rights* (i.e., the right to equal pay, the right to work, the right to education, food, housing, medical care). Article 2, quoted above, affirmed the idea that governments were not justified in excluding groups of people from rights, based on (among other things) national or social origin or status of a country to which a person belongs. Yet for

the undocumented, "both the law and popular opinion deem them somehow different from the rest of us, and not eligible for the rights and privileges that 90 percent of the population enjoys (Chomsky 2007, xiii). The coupling of rights with citizenship challenges the alleged universality of human rights.

The first justification for denying rights is noncitizenship. The unauthorized are in a paradoxical (impossible?) situation. As Cymene Howe writes, "undocumented migrants cannot claim full citizenships in the country to which they migrate because they are effectively betwixt and between—that is, in a liminal condition of nation state membership" (2009, 45). Yet for the unauthorized, it is virtually impossible to obtain U.S. citizenship, which would afford them rights, because normal "migration channels for undocumented migrants are largely foreclosed due to migrants' illegal status" (45). Full rights "belong" to citizens; undocumented migrants are not citizens, yet paths for citizenship are (for the most part) closed because they are unauthorized.

The liminal condition described by Howe becomes further complicated when "unauthorized" becomes framed as "illegal." Residing in the United States without authorization or "documents" is a civil rather than a criminal violation. "Mere undocumented presence in the United States alone, however, in the absence of a previous removal order and unauthorized reentry, is not a crime under federal law" (ACLU 2010).[2] Yet public discourse frames the unauthorized as "criminal." The inaccurate use of terms like *illegal immigrants* or *aliens* "effectively criminalize[s] individuals for entering or residing in a country without the sanction of the national government" (Nevins 2008, 13).

Unauthorized immigrants, then, are not allowed to claim full rights because a) they are not citizens, and b) they are criminals, deemed to be justifiably outside the protection of the law (although *citizen* criminals can still claim protection). Mae Ngai provides a historical account of how immigrants became "illegal aliens," thus justifying their exclusion from the United States.[3] Changing laws and policies have transformed residents, and even citizens, into "illegals." Chinese who were recruited in the 1860s to work in California agriculture became undesirable and were then denied entry and status through the Chinese Exclusion Act of 1882. Japanese American citizens *became* Japanese by edict of the U.S. government during World War II (although German American citizens did not *become* Germans). Mexican workers were recruited in 1942 under the Bracero Program and upon its repeal in 1964 became illegal from one day to the next (although they continued to labor). A new subject was created "whose inclusion in the nation was a social reality but a legal impossibility—a subject without rights and excluded from citizenship" (Princeton University Press n.d.). As Aviva Chomsky writes, "To those included in the circle of rights, the exclusion of others has always seemed justified, so much so as to be virtually beyond the bounds of discussion" (2007, xii).

RIGHTS DENIED

What are human rights violations experienced by the undocumented in the United States? I have already mentioned death, forcible separation from family members, sexual violence/abuse in detention centers, and lack of legal protection. Undocumented migrants, especially those in transit, are vulnerable to human trafficking. An estimated 14,500 to 17,500 people are trafficked into the United States every year (Polaris Project n.d.). Unauthorized people are especially vulnerable once in the United States because they lack legal status and protection. The undocumented face a wide range of human rights issues that may affect many aspects of their lives:

Family life. Numerous treaties signed by the United States express the international human right to family unity. The United Nations Human Rights Committee contends that states should restrain from deporting individuals if doing so would destroy family unity. "They may not be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence" (UN Office of the High Commissioner for Refugees 1986). Yet many families live with the constant fear that they will be separated from their loved ones. Four and a half million children live in "mixed-status" families, generally with citizen children and at least one undocumented parent. Mixed-status families risk "losing" one or both parents to deportation. A woman I met in Nogales, Mexico, had lived in the United States for twenty years when she was deported after being stopped for a missing taillight. She left behind four citizen children. In her case, a parent was still in the home to care for their children. Others are not so fortunate. The Applied Research Council found that children have ended up in the foster care system, although they *have parents*; a conservative estimate was "that there are at least 5100 children currently living in foster care whose parents have been either detained or deported" (ARC 2011, 4). The report concluded, "Whether children enter foster care as a direct result of their parents' detention or deportation, or they were already in the child welfare system, immigration enforcement systems erect often-insurmountable barriers to family unity" (4).

Workplace violations. Unauthorized laborers disproportionately experience labor and workplace condition violations, including wage exploitation and nonpayment, unsafe working conditions, greater risk of on-the-job injuries that go unreported and uncompensated, unhealthy work conditions due to pesticides and toxic chemicals, child labor, and fear of organizing. Farmworkers easily work ten-hour days, often in temperatures of 90 degrees and above. Nannies, house cleaners, and caregivers, called the "invisible workforce," are especially vulnerable to abuse and exploitation, given that their work happens in private rather than public spaces. Unauthorized migrants also make significantly less money than working U.S. citizens. The median household income for undocumented families (2007 figures) is $36,000, compared to $50,000 for U.S.-born residents (Passel and Cohn 2009). A 2004 study reported that while one in three working citizens received less than twice the minimum wage,

two of every three undocumented workers did (Passel, Capps, and Fix 2004). For some the situation is even worse. The average wage for a farmworker is $11,000 per year; many may work a piece-rate pay system. Domestic work is characterized by low pay and no (or few) benefits, and the undocumented make 18 percent less than U.S.-born domestic workers (Burnham and Theodore 2012).

Legal protection. As noted previously, during deportation proceedings immigrants are often denied due process of law and/or access to counsel. They also may face arbitrary detention and crowded and unsanitary detention facilities (Human Rights Watch 2010). Immigrants, whether authorized or not, have the right to freedom from arbitrary detention. In 2011, 429,000 immigrants were held in detention centers (ACLU n.d.). The average length of stay is thirty-seven days (Immigrant Justice 2011), although I have met many immigrants who spent up to a year in centers. Most will not have access to a lawyer, interpretation services, phone calls to their families, and other taken-for-granted rights of citizens. A recent study of deportees at the U.S.-Mexico border found that fewer than one in five had contacted their consulate because they were unaware they had the right or were denied access even after making a request (Danielson 2013).

The preceding are but a few of the numerous human rights concerns of the unauthorized. Given the complexity and breadth of the human rights issues faced by undocumented immigrants, scholars, policy makers, and activists from a wide variety of disciplines must be engaged. The three volumes of *Hidden Lives and Human Rights in the United States: Understanding the Controversies and Tragedies of Undocumented Immigration* offer contributions from the top immigration scholars in the United States in disciplines including anthropology, communications, demography, economics, education, gender and race studies, geography, history, journalism, law, political science, psychology, public policy, social work, sociology, and religious studies.

Volume 1, *History, Theories, and Legislation,* locates unauthorized immigration in the context of U.S. history, including legislative history and demographic trends. It explores laws, policies, reforms, media narratives, and public opinion concerning national security, voting, amnesty, gender, and border control at community, state, national, and international levels. At a macrolevel, contributors explore the impact of globalization on immigration to the United States, international migration regimes, and theories of immigration. At a more personal level, the dangerous journeys faced by many migrants, the impact of state laws on the daily lives of undocumented immigrants in Arizona, and difficult family planning decisions faced by Mexican immigrant women as they are sexualized, similar to immigrant women before them, are described. The volume clearly shows that macro/structural decisions affect the daily lives of millions. The theories, laws, and perceptions of who "belongs" have real-world consequences.

Volume 2, *Human Rights, Gender/Sexualities, Health, and Education,* places human rights violations faced by unauthorized immigrants in the context of a "criminalization" framework that justifies (implicitly or explicitly) deportation, detention, border violence, human trafficking, and family separation. The contributors show that being undocumented is literally bad for one's physical and mental health. They take us inside the worlds of young people as they try to adapt to life as undocumented, the daily lives of families who are divided by borders, the challenges the undocumented face as they try to become part of communities, and of college students trying to succeed academically. The challenges faced by the undocumented are made even worse for some groups, such as multiply marginalized LGBTQ immigrants.

Volume 3, *Economics, Politics, and Morality,* explores the economic impact of immigrants both in the United States and in their countries of origin, including the labor the unauthorized perform. As noted previously, undocumented immigrants make up roughly 4 percent of the U.S. population, but nearly 5.5 percent of its workforce, concentrated in the lowest wage jobs. The unauthorized are disproportionately represented in certain occupations, such as farm work (25%), grounds keeping and maintenance (19%), construction (17%), food service (12%), and production (10%) (Passel and Cohn 2009). One-third of all domestic workers (elder care, child care, house cleaning) are undocumented (Burnham and Theodore 2012). Day laborers congregate on street corners to be hired for short-term and dangerous work. The contributors to this volume show the human face behind these numbers, the unjust working conditions, and paths forward. The role of civil society, migrant hometown associations, religious groups, the sanctuary movement, and advocacy groups in humanizing the immigration regime are explored in this volume, as well as the values and morality that underlie current immigration legislation and policy.

The three volumes that comprise *Hidden Lives* share the perspective that the immigration "crisis" is a crisis of human rights and how we live together. The contributors weave stories of real people with their analyses. The "undocumented" include people who have lived in the United States for many years, have citizen children, work here, and are deeply tied to communities.

I have been honored to collaborate with the contributors to *Hidden Lives.* They are excellent scholars and on the forefront of policy making and action on the behalf of the unauthorized. They are a smart, engaged, compassionate group; their collective wisdom, scholarship, and experience are profound.

When I decided to edit *Hidden Lives,* a few colleagues questioned using the word "hidden." Certainly undocumented migrants are more "visible" than ever. They are visible in the popular imagination as the illegal border crossers; the targets of numerous state laws; and the subjects of congressional

debates, electoral politics, popular media, and vigilante groups. The preceding may be seen as *involuntary visibility.* Yet the huge demonstrations of 2006 in reaction to HR 4437 (Sensenbrenner Bill) that rocked the nation represent a massive *voluntary* grabbing of visibility.[4] Jorge Antonio Vargas, a Pulitzer Prize–winning journalist, famously "came out" as undocumented and was featured in a *Time* magazine cover story (Vargas 2011, 2012). The DREAMers[5] also self-consciously make themselves visible, when some might argue it is in their self-interest to remain hidden.

However, this series is about *human rights* and undocumented immigrants. What is still hidden to most people (although certainly not to the unauthorized) is a litany of human rights abuses, fear, and vulnerability. Hidden are the detention centers, the countless deaths while crossing the border, the separation of parents from their children, the lack of basic protection while on the job, the absence of due process during legal proceedings; in short, the basic rights taken for granted by citizens. The contributors to these volumes shine light on hidden areas of the daily lives of undocumented immigrants. They demonstrate a wide range of human rights issues, while showing "the human face of unauthorized immigration" (Marquardt et al. 2011).

NOTES

1. There are debates about terms. Most see *illegal immigrant* as pejorative, and *illegal alien* even more so. The Associated Press banned the use of both terms in 2013. Some scholars, policy makers, and activists prefer the term *unauthorized* rather than *undocumented* immigrant. They observe, correctly, that many immigrants do indeed possess "documents," so it is not technically correct to call them undocumented. Given that the term *undocumented immigrant* is more widely used and recognizable, these volumes (although not all contributors) refer to undocumented immigrants.

2. The distinctions between civil and criminal are often conflated in public debate and popular perception. Illegal entry and reentry after a prior removal order are considered crimes. Living "unauthorized" in the United States, however, is a civil violation (ACLU 2010). A 2006 study by the Pew Hispanic Center estimated that "[a]s much as 45% of the total unauthorized migrant population entered the country with visas that allowed them to visit or reside in the United States for a limited amount of time."

3. She points out that the category of "illegal" didn't exist before the 1920s, because there weren't laws to break (Ngai 2004).

4. The Border Protection, Anti-Terrorism and Illegal Immigration Control Act of 2005 (HR 4437), also known as the Sensenbrenner Bill due to its sponsorship by Wisconsin Republican representative Jim Sensenbrenner, passed the House but was defeated in the Senate. The bill, among other things, would have made it a felony to assist undocumented immigrants. The near passage of the bill inspired massive

protests in 2006, including a protest march of up to 500,000 people and a nationwide day of protest on April 10, 2006.

5. DREAMers is a term used to describe people who would qualify for a path to citizenship under the proposed (and once defeated) legislation The Development, Relief, and Education for Alien Minors (DREAM) Act.

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The Criminalization of Undocumented Migrants

Victor C. Romero

INTRODUCTION: THE BORDER CROSSER AS CRIMINAL ALIEN

Several years before Arizona's recent anti-immigration law made it a crime simply to be found in the state without proper immigration documents, Pennsylvania promulgated the STOP initiative. With the commonwealth still reeling from the 9/11 attacks in which United Airlines Flight 93 crashed into a field in western Pennsylvania, the Stop Terrorism on Patrol (STOP) campaign authorized state troopers conducting routine traffic stops to request immigration documents from persons whom they suspected of being here illegally.

In a September 2004 interview for a Pittsburgh newspaper, I was skeptical of state efforts to enforce federal immigration law, given that migrants of color would be the most likely targets of such profiling; instead of terrorists, untrained (though well-intentioned) officers were probably going to catch Latino migrant workers who took jobs U.S. workers would not want (Ward 2004). Although it is not a border state, Pennsylvania's significant agricultural economy has long relied on migrant workers, both documented and undocumented, as there are not enough Americans willing to help bring in the harvest.

While I received one respectful e-mail from a reader who disagreed with my analysis, a few others were not as restrained in their responses:

Dear Sir,

Illegal immigrants are in this country illegally, regardless of whether they have jobs that "nobody else wants." Would you excuse a rapist on the grounds that he has a job "nobody else wants"?

I applaud the efforts of the [Pennsylvania] police to enforce the law, regardless of who breaks it. This has nothing to do with racism or racial profiling. It has to do with lawbreaking . . . which you, as a law professor, ought to be concerned about.

* * *

I read of you being upset that the feds have started enforcing laws by at least giving some small effort to rounding up illegals. Just one question for you . . . if, because one is mexican [sic] (and really no other reason), you thereby have a right to break which law(s) you want to break, i.e., being here ILLEGALLY, then can I, as a middle-class actual citizen pick and choose which laws I want to obey? I am thinking I would like to disobey the "breaking into a bank and stealing other people's money" law. Since it would help me financially to break into a bank and steal other people's money, using your logic, I should be able to—right? . . .

Having taught and written on race and immigration for several years, I knew my views would be difficult to capture in a few newspaper quotes and would not be very popular, but I was little prepared for the strident and disturbing rhetoric employed by a few of my correspondents (including one who tracked down my phone number, leaving me an angry voicemail). Minus the vitriol, their argument goes something like this:

As a sovereign nation, the United States has the right to protect its borders. Mexicans and others have violated those borders by sneaking in illegally rather than by waiting their turn like everyone else. These illegals are criminals. They have stolen jobs from hard-working citizens, undercutting wages in the process. It is therefore entirely reasonable for us to use all public resources at our disposal, whether federal, state, or local, to send them back to where they came from. Even assuming they're taking jobs no one wants, that's irrelevant; their illegal status means they have no legal right to work here. This is not racial profiling; it's furthering respect for the rule of law. To call this profiling insults the hard work of law enforcement officers who put themselves in harm's way to keep this country safe day in and day out.

That experience in September 2004 was an eye-opener for me. It marked the first time I personally noticed a palpable shift in our discourse about immigration policy, in which, instead of calmly debating the issues, people

began to attack each other personally, conflating and confusing the position with the person. In a country where a robust right of free speech has long been a hallmark of democracy, similar rhetorical fights are being waged over unbridled capitalism and the welfare state, abortion and gender equality, race and affirmative action, and the rights of sexual minorities. Concerns about immigration are no exception.

As one who studies both U.S. immigration and constitutional law, I wonder about the prevalence of the "undocumented migrant as criminal" stereotype. On the one hand, the U.S. Constitution recognizes distinctions between citizens and others; on the other, it also purports to grant due process and equal protection under the law to all *persons,* regardless of citizenship.[1] To resolve this tension, the best reading of the U.S. Constitution, in my view, would be to try to eliminate any invidious, irrational stereotypes that detract from a humane and coherent national immigration policy.

This chapter explores three questions: First, how did the neutral act of walking from one spot in the southern desert to another acquire moral meaning, leading to the toxic "Mexican as illegal criminal alien" stereotype? Second, as the federal check on the political branches' immigration power, how has the U.S. Supreme Court influenced, minimized, or perpetuated the stereotype? And third, might there be an effective counter-narrative to this current one?

This chapter attempts to address these three issues by briefly surveying the history, law, criminology, and psychology behind U.S. immigration policy. While it is true that early on in our country's history the states enacted the first restrictive immigration policies, the criminalization of the undocumented migrant in its current anti-Latino form grew out of the federal government's decision to actively patrol our borders as a national immigration policy. By creating a uniform policy for distinguishing between legal and illegal entry, Congress transformed the simple act of crossing the border into one fraught with moral meaning, through the passage of laws criminalizing unauthorized border crossings. Over time an elaborate federal immigration law bureaucracy arose to address border and interior enforcement, supported by racial and ideological laws upheld by the Supreme Court as constitutional. Finally, apart from the formal *civil* immigration laws that governed the movement of noncitizens, general *criminal* laws like Arizona's were also employed to support this effort.

This increasing criminalization of immigration law has had unfortunate consequences, however. As the criminal bases for deportation have broadened over time, it has become more difficult to make the case that undocumented persons should be treated differently from more serious criminals. For many average citizens, unauthorized border crossers are now simply "criminal

aliens," despite undisputed data showing that immigrants are less likely than native-born citizens to commit crime (Rumbaut and Ewing 2007; Butcher and Piehl 1997).

The term "crimmigration" succinctly captures this convergence of immigration and criminal law. Over time immigration law and criminal law mechanisms have merged to form a powerful legal, political, and social boundary between U.S. citizens and others. From criminal law, immigration law has imported the idea that punishment should attend every transgression by a migrant, even if his only intent is to better his life, as in the migrant's desperate act of crossing the Sonora Desert. And from immigration law, criminal law has imported the idea that, unlike U.S. citizens, immigrants can be punished through banishment, even for minor infractions that occurred many years ago.

Because few would disagree with the idea that civil society should be protected from dangerous persons, the "criminal alien" becomes an easy scapegoat for supporting laws and enforcement regimes that claim to protect law-abiding U.S. citizens from unruly foreign marauders. As we will discover, however, this well-intentioned sentiment has too often taken on a racial tinge, leading to the exclusion of migrants of color, especially those from beyond our southern border. Race and foreignness become proxies for dangerousness and criminality, and broad swaths of the immigrant population become suspect.

A BRIEF HISTORY OF ILLEGAL IMMIGRATION IN THE UNITED STATES

Let us consider the first question posed: How did the neutral act of walking from one spot in the southern desert to another acquire moral meaning, leading to the toxic "Mexican as illegal criminal alien" stereotype?

During the waning years of the Bush administration, the Republican president and the Democratic Congress attempted different legislative solutions to help comprehensively repair our broken immigration system. Central to negotiations was the question of how to resolve the status of the estimated eight to twelve million undocumented persons already in the United States and to prevent future visa overstays or unauthorized border crossings. Marches reminiscent of the 1960s civil rights movement occurred in cities across the nation, with thousands forcefully claiming their right to remain in a country they helped shape through their industry in the fields, *maquiladoras,* construction sites, and urban *esquinitas.*

Thus the most vexing question arising out of the current immigration debate is: How should the government regulate the flow of migrants across

our borders? Related, though subsidiary, questions include the following: How do we determine where our borders begin and end? What consequences—civil or criminal—should attend a border breach? When, if ever, might there be exceptions to these consequences? Our answers to these difficult questions may depend on which group we tend to identify with—the U.S. citizens the law aims to privilege or the newcomers the law simultaneously purports to welcome. Current restrictionist legislators who favor more stringent border security coupled with equally strict interior enforcement might think twice about their positions if they took a moment to hypothesize an America in which their forebears were similarly marginalized.

This section briefly mines America's history from before its founding through the present day, arguing that the law setting forth where our national borders are and how strictly we patrol them has always been subject to the vagaries of politics, economics, and perception. Illegal (im)migration has long been part of our migration history, engaged in not just by Latin American border crossers or Asian overstayers, but also by prominent colonists, giving the lie to the claim that upholding border laws has always been sacrosanct.

In many school districts today the usual summary of American history no longer bypasses the uncomfortable truths of conquest and westward expansion by European settlers to the detriment of Native Americans, Mexicans, Chinese laborers, and African slaves. However, not often is this story described as a parable of illegal immigration. We begin, then, with a recounting of the prominent role illegal immigration played in America's prehistory.

Private Borders, National Borders, and the Role of Law

Boundaries and borders have long been a fixture of Western communal existence. Prior to the advent of modern mapping, private borders in the American frontier were often marked by "boundary stones," a practice probably imported to this country by English surveyors (Brown, Robillard, and Wilson 1995, 3). Though they occasionally coincided with a natural, physical border like a river, these boundaries were significantly a legal creation to demarcate private property ownership. As a leading treatise explains, "A boundary exists because the law permits it to exist, yet one cannot feel it, touch it, or see it; it is not in any way manifested by a dimension. Yet once it becomes created, it has legal authority. One neighbor cannot cross over a neighbor's boundary without being in trespass, and possibly being responsible for damages" (Brown, Robillard, and Wilson 1995, 10). Whether under the common law of property, tort, or crimes, American law has long protected against trespass, both to preserve the economic interests of the landowner and to keep the peace between disputants. Interestingly, the law also allowed

trespassers rights over or to the land whose borders they breached if the landholder expressed apparent consent, whether explicitly or by abandonment (Wolf 2005).

Like the setting of borders between private individuals, one might think of immigration law as a government's attempt to order boundaries between nations and their citizens on a much larger, public scale. As with most law, immigration policy must set forth specific rules, the consequences that attach to their transgression, and any exceptions that might excuse such a breach.

The Malleable Border in U.S. History

The complexity of ordering the rules, consequences, and exceptions in formulating U.S. immigration and border policy has long been influenced by economics, politics, and perception. Laws (or exceptions excusing their breach) have long favored the powerful, and border laws have not been immune from this. While contemporary debates about border security appear to be fixed on our southern border with Mexico, before the founding border disputes within the pre–United States were internal: between colonists and colonies, between the Indian nations and the colonies, between the English and French colonial masters, and so forth. Instead of the current concern over the northern movement of peoples from the south, much of the early history of America involved the westward expansion of the country, coinciding with the revolution against England (see Abernethy 1959).

Privilege and Power during the 1700s: Our "Illegal" Founding Fathers

Perhaps unsurprisingly, England set colonial boundaries throughout its American holdings; perhaps even less surprisingly, the colonies and colonial leaders would challenge both the English and each other over where borders were set.[2] Following the French and Indian War of the mid-eighteenth century, several of our most prominent founders were engaged in what might be termed today as "illegal immigration"—they would disregard borders set forth by governmental authorities, sometimes through subterfuge and legal machinations, and sometimes through force. To be clear, this discussion is not intended to diminish the Founders or their contributions; indeed, many others engaged in these unauthorized border-crossing ventures as well. Rather, the point is to remind us that the economic factors that motivate many faceless unfortunates to travel to the United States today are the same factors that prompted their more famous ancestors to cross into forbidden or disputed territories in colonial America.

Let's consider the case of George Washington, our first president and by all accounts a first-rate military commander and leader of men.[3] Having served the Crown with distinction during Britain's Ohio country skirmishes against the French in the 1750s, Washington returned to Mount Vernon to take his place among Virginia's civilian gentry, marrying the widow Martha Dandridge Custis in 1759. Though lacking formal schooling, Washington was an ambitious man, realizing early on that amassing a sizeable estate would best secure his family's future. Because of his early travels as a young surveyor and then as a military man, Washington had his eye on what many other colonial elites desired at the time: acquiring lands west of his Virginia home (Ellis 2004, 53–58). Unlike other modern speculators, Washington did not acquire land for future resale, but instead intended it to remain in the family.[4] Unfortunately Washington's overweening ambition led him to cross legal and ethical boundaries in his quest for ever more western property.

In 1763 King George III set the boundaries of British colonial rule along the Appalachians, from modern-day Maine to Georgia, reserving all land west of that area to Native American tribes. Washington had little regard for the proclamation, viewing it as "a temporary expedient to quiet the Minds of the Indians; it must fall of course in a few years especially when those Indians are consenting to our Occupying the Lands" (Abernethy 1959, 69). Despite his use of the word "consent," Washington thought it was only a matter of time before white settlers took over the western Indian lands by force or threat of force, a natural outgrowth of the English victory in the French and Indian War. Washington attached no moral significance to this "manifest destiny," viewing America's westward expansion as inevitable; as such, Washington believed the proclamation was either naïve for discounting this inevitability or underhanded if London had planned to reserve the western lands to the British, leaving the colonists the eastern seaboard alone (Ellis 2004, 55). Washington's letter to his agent, William Crawford, supports this interpretation:

> Any person therefore who neglects the present opportunity of hunting out good Lands and in some measure marking and distinguishing them for their own (in order to keep others from settling them) will never regain it, if therefore you will be at the trouble of seeking out the Lands I will take upon me the part of securing them as soon as there is a possibility of doing it. . . . By this time, it may be easy for you to discover, that my Plan is to secure a good deal of Land. (Abernethy 1959, 69)

Later on in the letter, Washington cautions Crawford not to disclose the former's view of the king's proclamation, advising instead that the latter proceed "snugly under the pretence of hunting other Game . . . and leave the rest to time and my own Assiduity to accomplish" (69).

At first blush the letter might charitably be viewed as poor support for the idea that Washington was planning to engage in an illegal border crossing. After all, expressing disagreement with a law does not violate it, nor does informally surveying the land perfect title in it. Yet Washington's insistence that Crawford mark the land to prevent others from claiming it, when the proclamation forbade western settlement, is unsettling. As historian Joseph Ellis summarized the conflict over the Ohio country's legal status: "Washington believed it was open to settlement; the British government believed it was closed; and the Indians believed it was theirs" (2004, 55).

Washington's next move was to explore possible loopholes in the proclamation. In 1754 then Virginia governor Dinwiddie had issued an order allotting 200,000 acres of bounty land to those who enlisted in the French and Indian War; the 1763 proclamation, though specifically forbidding western settlement, simultaneously announced a grant of 5,000 acres each to all veterans who served until the end of the war. Washington was clearly ineligible for the 5,000 acres because he did not serve until the war's end, resigning his commission in 1758. So he organized a committee to claim the Dinwiddie bounty, selecting a peninsula along the Ohio and Great Kanawha Rivers, eventually claiming 20,147 of the 200,000 acres for himself, with the enlisted men receiving only 400 acres each (Jones 1986, 34–35).

The legality of this action was questionable in two ways. First, the language of the Dinwiddie proclamation strongly suggested that it be limited to enlisted men only, and Washington was an officer—a colonel who had received 5,000 acres and had purchased the rest from those uninterested in redeeming their shares. Moreover, Virginia law forbade anyone to reserve the richest, most fertile portions of the land to himself, which is what Washington did. Second, the 1763 proclamation arguably voided all his western land claims within the Ohio country; between the British proclamation of 1763 and the Virginia Dinwiddie bounty of 1754, the British proclamation would have held sway. And yet Washington did not view his acquisitions as either illegal or unethical, but rather as a fair share for his initiative in organizing the Ohio country expedition. Indeed, Washington questioned the enforceability of the 1763 proclamation in light of the reality of the colonists' westward expansion. The truth is that his actions were no different from those of other Virginia planters; Washington was simply more determined and diligent than his contemporaries. Washington's response to the proclamation "was to regard the British policies as superfluous and to act on the assumption that, in the end, no one could stop him" (Ellis 2004, 57).

My point here is not to impugn George Washington's integrity or dishonor his memory, but simply to point out the historical malleability of borders. Washington was undoubtedly a great man, but his avaricious land grab in

defiance of then-existing rules was less than noble. He crossed borders in pursuit of personal enrichment and in defiance of British (and indeed Virginia) law. Still, this transgression usually elicits little discussion in light of the overwhelming evidence of Washington's enormous contributions to the nation's founding.

In contrast, much of the current discourse about undocumented migration focuses on the *illegality of the migrant's act*—the unauthorized border crossing or overstay—rather than on the subsequent contributions of the individual. This vignette from Washington's life reminds us that legal borders and the laws that recognize them are not permanent boundaries that follow fixed, natural, physical limits, but are instead man-made creations of governments that should be subject to reflection and reassessment.

One last point before I move on: just as I don't mean to revisit Washington's legacy, neither do I condone or vilify his lawbreaking. Rather, I aim to show the fluidity and malleability of borders by revealing historical border transgressions by one of our founding fathers, of which the average informed reader is usually unaware. Society's collective "amnesia" when it comes to our heroes is not unique—for example, that Washington had African slaves is common knowledge—but in thinking about what constitutes an illegal border crossing, one has to remember that society's perception of an illegal act might often be viewed in a context that goes beyond evaluating legal niceties, instead placing the act within the framework of the transgressor's larger historical role.

As such, most Americans (and I suspect most readers) will have little trouble relegating these vignettes to the historical dustbin; they are interesting tidbits about Washington, but they do not diminish the stature of this great man. And that would be a fair assessment: a man's legacy should not be measured by a single illegal act, but should be viewed in the context of his entire life. The theme of "redemption" similarly informs my thinking: Like our illegal founder, illegal border crossers today should not be irredeemably vilified because of their one desperate act, but rather their transgressions should be weighed against the full scope of their lives.

The View from Below: "Illegal" People in the New Republic

While seeking to expand its borders westward, the burgeoning nation also increasingly sought through state and federal immigration restrictions to shield its shores against foreign incursion.[5] For George Washington and his ilk, the expulsion of the British and the acquisition of new land during the mid- to late 1700s were a breath of fresh air, the beginnings of a great nation liberated from the shackles of oppressive European masters. However, from

the perspective of many others, this glorious expansion brought exploitation and exclusion in its wake during the 1800s, leading to the displacement of Native Americans and Mexicans from their homelands, the growth of African slavery, the exclusion of Chinese workers, and the alienation of a succession of European immigrants.

The English elites that comprised the political and economic upper class in eighteenth- and nineteenth-century America adopted the same outlook toward the non-English—whether Native Americans, Africans, Chinese laborers, Mexicans, German and Irish Catholics, or eastern and southern Europeans—that their British forebears had: cultural superiority that entitled them to place their needs above others'. Immigrants themselves, who in their Declaration of Independence from England asserted the equality of all men and their universal rights to life, liberty, and the pursuit of happiness, the Anglo-Protestant elite nonetheless ignored Native American land claims; exploited African, Chinese, and Mexican labor; and limited immigration to those who they believed were most like them.

Although not an excuse, American racism was by no means unique, but can be traced back to its continental roots. During the age of discovery, European colonizers justified their expeditions abroad as a means of civilizing native "savages" and, for the Spanish particularly, of saving their souls through Catholic conversion.[6] It is no wonder that the American aristocracy of the 1700s and 1800s inherited the same worldview. Thus, notwithstanding the appeals to equality espoused in the Declaration of Independence, the upshot of this perspective was that borders—whether legal or social—were erected by the Anglo-Protestant majority to the detriment of the racial and ethnic minorities, whose rights were constrained and circumscribed accordingly. We begin this brief review of border history from the have-nots' perspective with a look at the country's efforts to expand westward before turning to its later concern over limiting immigration from the Near (Europe) and Far (Asia) East, in an effort to socially engineer the new nation's demographics in favor of Anglo-Protestant elites.

Westward Expansion: Displacement and Discrimination

Despite its newfound political independence from Britain, the fledgling United States struggled to wean itself economically from its former master, find a suitable balance between federal power and state sovereignty (often over the issue of slavery), and negotiate a fair-minded approach toward the Indian nations, most of whom had fought on the English side during the Revolutionary War. Echoing the border-crossing ventures of Washington, the federal government pursued westward expansion as the domestic version of

its European forebears' colonizing efforts abroad. With the 1803 Louisiana Purchase from France, Thomas Jefferson's administration doubled the size of the United States, significantly expanding arable land available for the growing number of European immigrants seeking to move out of the largely settled Atlantic colonies, as well as offering a place to resettle Indian nations still remaining in the east.

While such expansion seemed a convenient way to build economic strength and simultaneously improve federal-state and federal-tribal relations, the view from below was less sanguine. With agricultural growth came the proliferation of cotton plantations and the further entrenchment of African slavery in the South. Not long thereafter, the U.S. Supreme Court affirmed this heinous practice, explicitly endorsed by the Constitution,[7] when it held in 1857 that slaves "had no rights which the white man was bound to respect,"[8] contributing to the fomenting that eventually erupted in the Civil War from 1861 to 1865. And so it was that Dred Scott, an African man who claimed freedom by virtue of the Missouri Compromise, which prohibited slavery in the Louisiana territory, was adjudged to be little more than property, completely subject to the will of his white master (*Dred Scott v. Sandford* 1857).

Native Americans fared little better. While the new Constitution established federal treaty power with the Indians (Article II), and Jefferson's hope was for voluntary resettlement through assimilation and negotiation,[9] pressure on the federal government from an increasing number of European immigrant settlers led to forcible removal and displacement when the tribes ceased to voluntarily sell and relocate. Ironically, even when the Indians chose to sell their land to private individuals according to native traditions, such title was not recognizable in U.S. courts, per the Supreme Court's ruling in *Johnson v. McIntosh* (1823). As historian Francis Paul Prucha put it, "The goal of American statesmen was the orderly advance of the frontier. . . . But if the goal was an *orderly* advance, it was nevertheless *advance* of the frontier, and in the process of reconciling the two elements, conflict and injustice were often the result" (1970, 3).

Aside from the hapless Indians and Africans, Mexicans and the Chinese also suffered collateral damage from the nation's westward movement. Just as Americans had successfully won independence from Britain in 1776, Mexico revolted against Spain to claim statehood in 1821, occupying a territory twice as large as it is today, including all or part of present-day Arizona, California, Colorado, Kansas, Nevada, New Mexico, Oklahoma, Texas, Utah, and Wyoming (Bender 2010, 17). Suffering internal struggles of its own following its long war for independence, Mexico could not, however, prevent the arrival of Anglo settlers in the Texas territories as American expansion continued west. In the ensuing Mexican-American War from 1846 to 1848, Mexico's

armed forces proved no match for the technologically and numerically superior U.S. army, eventually leading to the annexation of millions of acres of Mexican land.

Although the Treaty of Guadalupe Hidalgo purported to preserve Mexican landowners' rights in the annexed land, the U.S. government's burdensome and expensive ownership confirmation process rendered proof based on Mexican laws insufficient in the eyes of American adjudicators (Bender 2010, 18–27). When Nemecio Dominguez attempted to evict Anglo squatters from his ranch, he presented a valid Mexican title, which the California Supreme Court approved. In *Botiller v. Dominguez,* however, the U.S. Supreme Court disagreed, refusing to credit Dominguez's title for his failure to abide by Congress's claims process: "We are unable to see any injustice . . . in the means by which the United States undertook to separate lands in which it held the proprietary interest from those which belonged, either equitably or by a strict legal title, to private persons" (1889, 238, 250). Like the Indian titles at issue in *Johnson v. McIntosh* (1823), Mexican grants were presumptively invalid unless specifically recognized and approved by the United States.

In addition, some Mexican landowners were dispossessed of their lands through fraud (by exploiting the Mexicans' unfamiliarity with the English language and contracts) or force (by squatting on ranch land owned by Mexicans, then harassing and constructively evicting them) (Bender 2010, 22). Such underhanded tactics were particularly prevalent during the gold rush in California, which attracted 100,000 into the state in 1849 alone. Like the Native Americans, the Mexican Americans could not prevent the Anglo-Protestants from breaching their borders. By the early 1900s and continuing today, "Mexican Americans, through legal defeat, fraud, or financial exhaustion, had been all but wiped out as a landholding class in the southwestern United States. Their transformation from masters into servants had been completed, and set the stage for a new chapter in U.S.-Mexico relations: the exploitation of low-wage, migratory Mexican and Mexican-American labor" (Cameron 1998, 83, 97–98, cited in Bender 2010, 26).

Unlike the enslaved Africans and the vanquished Indians and Mexicans, the Chinese voluntarily immigrated to seek their fortunes following the California gold rush. While some fled political persecution, most came to work, whether in the gold mines, on the transcontinental railroad lines, or in the laundries of San Francisco. Admired for their industry, the Chinese were initially welcomed by the United States, as formalized in the Burlingame Treaty of 1868, in which the U.S. government and China promised to ensure fair treatment to visitors from the other nation. Although only 0.2 percent of the U.S. population in 1880, the 105,465 resident Chinese

proved a ready scapegoat for California Anglos worried about the economic depression of the 1870s (Chin 2005, 8). Mounting pressure on Congress led to abrogation of the Burlingame Treaty, followed by the passage of the Chinese Exclusion Act of 1882, barring resident Chinese from naturalization and prohibiting any future immigration from China (8).

In one particularly curious episode, the Supreme Court ruled that the Chinese Exclusion Act barred Chae Chan Ping, a longtime U.S. resident, from reentry upon his return from China, even though he had secured an official certificate of return prior to his departure.[10] The Court's xenophobic rhetoric is notable, acknowledging the sovereign responsibility to protect against "aggression and encroachment" from "vast hordes" of people "crowding in upon us"; accordingly, deference to Congress's view that "foreigners of a different race in this country, who will not assimilate with us, [are] dangerous to its peace and security" is not to be overturned even during peacetime (*Chae Chan Ping v. U.S.* 1889, 606). While antipathy clearly focused on the Chinese, some in Congress saw the immigrants as part of a larger racial problem: Senator John P. Jones from Nevada commented on the Exclusion Act: "What encouragement do we find in the history of our dealings with the negro race or in our dealings with the Indian race to induce us to permit another race-struggle in our midst?" (Chin 2000, 9).

Both physical and virtual borders played a role in early America's westward expansion, establishing an economic hierarchy along racial lines. Whether one views this history as the product of unbridled racism or economic opportunism (or both), it is clear that the great western march of the 1700s and 1800s, though a boon to white settlers, was not to be shared in by the Chinese laborers, the African slaves, the Native Americans, or the Mexican Americans. By and large, the Anglo-Protestant oligarchy invoked borders when convenient (to keep out the "unassimilable" Chinese) and ignored them when they were not (to annex the lands of Indians and Mexicans), sometimes even confining populations to noncitizenship (the Chinese) or worse, reducing them to nonpersonhood (the Africans). In shaping the internal boundaries of these new United States, the goal was to expand the land available to white settlers, but that ultimately diminished what was available to nonwhites. Beyond the physical boundaries, legal rules advantageous to the majority also served as borders, perpetuating the second-class status of Mexican Americans and Native Americans dispossessed of their land, Chinese residents precluded from immigration and citizenship, and Africans subjected to bondage.

As this chapter is primarily about immigration—and not about internal borders—let us look more closely at early American immigration policy, as we have begun to do by exploring the exclusion of the Chinese. The following

discussion focuses primarily on how the new nation handled the growing European immigrant population that thronged Ellis Island during the 1800s.

Eastward Exclusion: Defining the "Other" through Immigration Policy

In the early years of the republic, there was no federal immigration policy regulating the movement of noncitizens across international borders, although this does not mean there were no laws regulating migration. As was true in other policy areas, the states rather than the federal government were dominant, and they developed their own criteria for managing postcolonial migration, which applied both to noncitizens and out-of-state residents. Indeed, aside from the unfortunate language preserving the importation rights of slave owners and the relevant, but distinct, congressional powers over citizenship and commerce, no provision of the Constitution specifically granted the federal government control over immigration.[11] Consequently, the nascent national government deferred to the states on migration policy, perhaps because then, as now, states and localities directly felt the impact of an immigrant influx in which many Europeans traveled a specific path from one village in the Old World to another in the New. So, while German immigrants may well have spoken of traveling to America, ultimately their destination was likely "Germantown" in Pennsylvania, just as many Chinese sought their fortune on the "Gold Mountain" of California.[12]

As was true with how Californians initially received the Chinese, states did not bar or discriminate against newcomers, whether interstate or foreign travelers, as long as they were not viewed as criminal, infirm, destitute, or racially or ideologically undesirable (Neuman 1996, 20). Laws barring convicts have long been a staple of immigration restriction; Georgia, for instance, passed a statute in 1787 that called for the removal of all foreign or out-of-state felons, whose return was then punishable by death (21). Similarly, the sick and the poor were unwelcome, the first barred by quarantine laws and the second by antipauper provisions. It is worth noting that quarantine laws applied even to in-state residents, whereas "poor laws" were meant to exclude nonresidents, whether citizens or not.

These poor laws were inherited from the British notion that communities were to take care of the poor who had settled there, so states were only permitted to exclude the destitute who sought entry, not impoverished residents. The high incidence of pauperism among immigrants did not go unnoticed: "Many Americans viewed their country as a place where the honest, industrious, and able-bodied poor could improve their economic standing, free from the overcrowding and rigid social structure that blocked advancement in Europe. Failure to become self-supporting was seen as evidence of personal

defects. Many feared that European states were sending their lazy and intemperate subjects, as well as the mentally and physically disabled, to burden America" (Neumann 1996, 24).

That one's poverty or disability was viewed as one's fault rather than an accident of birth made it easier to justify exclusionary laws; laziness or poor judgment leading to poverty or disability was the individual's responsibility, not the state's. Sometimes, however, clear accidents of birth alone—like race or ethnicity—were enough to trigger exclusion in the face of some larger perceived social good, as illustrated by the ill-treatment of racial minorities in the wake of America's westward expansion. For example, laws favoring whites were part of state immigration codes, particularly regarding the restricted movement of slaves and free blacks.[13] While many post–Revolutionary War ideological bars took the form of excluding British loyalists, southern states also used ideology as a proxy for race by passing "quarantine" laws to prevent free blacks from "contaminating" slaves with their ideas, while others excluded slaves who had been near the scene of a conspiracy or insurrection (Neuman 1996, 41).

But racial minorities were not the only groups subject to discriminatory state immigration laws; Catholics and non-English whites were likewise suspect. States comprised of predominantly Anglo-Protestants passed laws barring German and Irish Catholic immigrants, hoping to stem the tide of these economic and political refugees, who arrived in large numbers between 1820 and 1880. Although he later acknowledged the Germans' contributions to American economic, social, and intellectual life, Benjamin Franklin had once warned about their influx into his native land in 1751: "Why should Pennsylvania . . . become a Colony of aliens, who will shortly be so numerous as to Germanize us, instead of our Anglifying them, and will never adopt our language or customs, any more than they can acquire our complexion?" (cited in Savelle 1948, 247). There was some pressure to pass federal anti-Catholic legislation, but the national German and Irish lobby proved too formidable; the Chinese, of course, did not enjoy similar political power, resulting in the passage of the Chinese Exclusion Act in 1882 (Romero 2009, 8–9).

Because it deferred to states' regulation of migration flows, the federal government imposed no quantitative or qualitative restrictions on immigration during roughly the first century of the United States' existence. Instead, the first federal laws regarding noncitizens focused on naturalization and encouraged immigration, as the Facilitating Act of 1864 did to spur the importation of contract labor. The need for a coherent alternative to the state-law immigration patchwork prompted the Supreme Court to intervene, holding state immigration laws unconstitutional in *The Passenger Cases* (1849, 48 U.S. 283) and *Henderson v. Mayor of New York* (1875, 92 U.S. 259). With the Court's blessing, Congress passed its first general[14] restrictions on immigration law in

1882, including a 50 cent head tax and exclusionary laws based on criminal and economic grounds, mirroring state concerns over felons and paupers.

Along with these general provisions, the year 1882 marked the beginning of explicitly race-based restrictions on immigration, beginning with the Chinese Exclusion Act, the first in a series of laws passed between 1882 and 1904 to ban Chinese laborers. Similar laws were passed to bar each of the three other major Asian immigrant groups—the Japanese, Asian Indians, and Filipinos—culminating in the 1924 Immigration Act, which precluded "aliens ineligible to citizenship" from immigrating, effectively excluding all Asians (Chan 1991, vii–viii).

The 1924 act also sought to curtail the large number of eastern and southern European migrants who began entering the United States in 1890. Through the National Origins Quota formula, the act pegged future immigration at up to 2 percent of the number of foreign-born persons from a particular country already in the United States as of the 1890 census. Though race-neutral in language, the formula favored northwestern Europeans by using the 1890 census as its referent, which was prior to the large influx of southern and eastern European migrants who were considered racially inferior by many. A U.S. House of Representatives report from this period affirms this purpose: "[T]he quota system is used in an effort to preserve, as nearly as possible, the racial status quo in the United States. It is hoped to guarantee, as best we can at this late date, racial homogeneity" (Johnson 2004, 23, citing Hutchinson 1981, 484–485).

Race as a Social Construct and the "Mexican as Illegal Alien" Stereotype

Of course this desired "racial homogeneity"—like race itself—was a fictional social construction. Even before the 1924 act, America was not racially homogeneous, even among so-called whites. Although Anglo-Saxon culture and politics enjoyed historical prominence, non-English whites, though initially vilified—like the Germans and Irish—eventually became part of the dominant racial group. "White" came to include northwestern Europeans, then southern and eastern Europeans. Beyond the white majority, interracial relationships, both voluntary and involuntary, were long part of the American social fabric, so much so that states passed laws outlawing miscegenation.[15]

Further evidence of the quirkiness of these racial classifications lay in the seemingly arbitrary geographic distinctions the laws drew, treating certain Europeans and Asians less favorably than Mexicans and other so-called Western Hemisphere residents (Ngai 2004, 50). The 1924 act establishing the permanent national origins quota system favored the English over other Europeans, barred East and South Asians from entry and citizenship, and exempted Western Hemisphere nations, including Mexico, from these quotas

(Immigration Act of 1924, Pub. L. 68–139, 43 Stat. 153). If these immigration policies generally favored whites over nonwhites, why was there an exemption for presumably darker-skinned Mexicans and Latin Americans? The reason is political: Euro-Americans likely did not consider Mexicans their equals, but neither did they believe it feasible to impose quotas upon their southern neighbors without also restricting Canadian migration. Add to this the need for Mexican agricultural labor in the Southwest, and we have a clearer picture of why Latin America was exempt from the national origins restrictions of the 1924 act (Ngai 2004, 50–51).

This is not to say that Mexicans did not suffer discrimination even then. Euro-Americans' perceived "manifest destiny" led to the annexation of Mexican land in Texas and California—sometimes by conquest, sometimes by intermarriage between wealthy Anglos and Mexicans—resulting in the assimilation and homogenization of the Mexican elite. From 1900 to 1920 the westward migration of midwestern Anglo farmers and the northward movement of rural laborers fleeing the Mexican Revolution of 1910–1920 led to the class and racial dichotomy currently existing in the agricultural Southwest today, with white property owners employing unskilled, landless Mexican laborers (Ngai 2004, 51–52).

Further, the U.S.-Mexico border during the first two decades of the twentieth century was not the militarized zone we know today. "Before the 1920s the Immigration Service paid little attention to the nation's land borders because the overwhelming majority of immigrants entering the United States landed at Ellis Island and other seaports" (Ngai 2004, 64).[16] Rather than patrolling the southern border, immigration inspectors assumed that market demands for Mexican labor would regulate migration; the government also described the southern states as the Mexicans' "natural habitat," begrudgingly acknowledging their claims to their former homeland to justify its lax enforcement policies. Indeed, Mexicans were not even required to apply for admission at ports of entry until 1919 (Ngai 2004, 64).

But with the advent of the national origins quota system and the barred Asiatic zone in the 1920s, deportation became the preferred remedy for immigration violations, eventually leading to the criminalization of border crossings. In the 1924 act Congress eliminated the statute of limitations on deportation, providing for the removal of any person who arrived without inspection or without a valid visa after July 1, 1924 (Ngai 2004, 60; Immigration Act of 1924, Pub. L. 68–130, 43 Stat.153). In 1929 Congress added a criminal sanction to the civil deportation remedy, making it a crime for anyone to cross the border without inspection—a misdemeanor charge for first-time offenders, but a felony conviction for recidivists (Act of March 4, 1929, 45 Stat. 1551).

Despite Mexicans' then exemption from the quota rules, the emphasis on numerical restriction, civil deportation, and criminal enforcement eventually led to the association of illegal immigration with Mexican immigration. Due to the advent of these more stringent laws, many Europeans began hiring smugglers to help them enter the United States from across both the Canadian and Mexican borders. By the late 1920s, however, ineligible Europeans from countries like Italy and Poland found a legal alternative. They began exploiting Canadian residency as an alternate means to immigrate; by residing in Canada for five years, these Europeans were allowed to legally immigrate into the United States. In addition, along the southern border, Anglo ranch owners often complained about the rough treatment they received from Border Patrol agents. These twin developments eventually led to better, more courteous treatment of Anglos and Europeans by immigration agents, while Mexicans and other Latinos suffered the indignities of a more stringent border policy and racialized politics, fueled in part by the growing class divide between white owners and Mexican laborers in the south (Ngai 2004, 64–70).

So even though Mexicans at the time were not subject to quotas like the Europeans or banned from naturalization and immigration like the Asians, they became associated with illegal migration.[17] As historian Mae Ngai explains:

> [A]s numerical restrictions assumed primacy in immigration policy, its enforcement aspects—inspection procedures, deportation, the Border Patrol, criminal prosecution, and irregular categories of immigration—created many thousands of illegal Mexican immigrants. The undocumented laborer who crossed the border to work in the burgeoning industry of commercial agriculture thus emerged as the prototypical illegal alien. (2004, 71)

From 1930 to 1965 Congress vacillated between deportation and legalization as it attempted to craft policies that would meet the needs of U.S. agriculture, provide sufficient protection for exploited Mexican workers, and give coherence to the deportation system it had created.[18] Perhaps the symbiotic relationship between U.S. employers and Mexican farmworkers may best be illustrated by the recorded numbers at the end of the Bracero Program, a migrant labor initiative begun in the 1950s. Up to 1964, the number of workers almost equaled the number of deportees, at close to five million each (Kanstroom 2000, 224).

This history teaches that the boundaries of belonging are never fixed, but are subject to transgression, adjustment, and revision, depending on the vagaries of politics, economics, and perception, not unlike how the physical

frontiers of the United States were simultaneously pushed westward while they were contained eastward through restrictive immigration policy.

The Birth of the Modern "Crimmigration" Crisis through Enhanced Federal Enforcement

This section examines the modern period of immigration law, from the liberalization of migration during the civil rights era in the 1960s to the retrenchment of the 1990s and beyond, which marks the beginning of the modern "crimmigration" crisis.

Congress: Migrants Caught in the Wars on Terror and Drugs

Recall that under the 1924 National Origins Quota System, foreigners were only allowed to immigrate in proportion to their countrymen already living in the United States, which disproportionately favored northern and western Europeans. Just as the African American populace was the intended beneficiary of the Civil Rights Act of 1964, Asian family migration received a tremendous boost with the lifting of the quota system in 1965. Similar immigration-friendly policies followed, notably the Refugee Act of 1980 and the Reagan administration–backed amnesty law of 1986, primarily benefiting undocumented Mexicans.

However, mounting disputes over undocumented migration from the Southern Hemisphere, coupled with concerns over terrorism and welfare, prompted the enactment of several restrictionist federal laws in 1996, as well as a spate of local laws designed to discourage undocumented migration, most notably California's Proposition 187, which limited public benefits to lawful migrants. Scholars trace the modern "crimmigration" crisis to these 1996 federal laws, which among other things increased the number of crime-related inadmissibility and deportability grounds, narrowed the scope of discretionary relief and judicial review, expanded law enforcement's powers, and curtailed procedural protections for those accused of immigration violations (Legomsky and Rodriguez 2009, 550).

Today the crisis continues unabated, with terrorism and crime of particular concern after the terrorist attacks of 2001, and states and localities being frustrated at the national government's perceived inability to adequately police our southern border, leading to the passage of anti-immigration ordinances in Arizona and Alabama, among others.

Accepting this "crimmigration" narrative, then, compels us to err on the side of exclusion rather than inclusion, as our experiences with the restrictionist federal laws of 1996, the post-9/11 roundup of suspected foreign

terrorists, and the spate of recent state and local anti-immigration laws attest. Whether motivated by the specter of cheap Latino labor displacing U.S. workers or the possibility of Middle Eastern terrorists finding illicit passage, both national and local politicians worried about our borders have benefited from this crimmigration convergence.

Federal lawmakers have successfully lobbied for everything from more stringent employment verification, to the militarization of the southern border, to enhanced airport security technology. Their state and local counterparts have lamented lax national enforcement, prompting their constituents to overwhelmingly approve initiatives to criminalize undocumented presence within the state, commit uninitiated state police officers to help the federal government deport migrants, and prohibit landlords from providing shelter to the undocumented. Even public school education, guaranteed by the Constitution to all regardless of immigration status (*Plyler v. Doe* 1982), has been the subject of sustained criticism, sometimes even direct attack, such as through California's infamous Proposition 187, which unconstitutionally aimed to exclude all undocumented persons from accessing state public benefits, including education.

Also contributing to the marginalization of the Mexican border crosser has been the war on drugs. Although the antidrug initiative was not an immigration policy, to the extent that it prioritized international drug smuggling as a federal criminal concern, Congress has chosen to pay increasingly closer attention to the U.S.-Mexico border. By the 1950s and 1960s Mexico was supplying approximately 75 percent of the marijuana in the U.S. market and 10 to 15 percent of the heroin (Andreas 2000, 40). This reality arguably enhanced the perception in some circles that Mexicans were invariably ignorant, indolent, and criminal.[19] Of course not only were most Mexican migrants not drug runners, neither were they illegal border crossers—many were either regular commuters or seasonal workers, legally employed in the United States but permanently residing in Mexico.[20]

Despite the long-standing interdependence of U.S. employers and foreign farmworkers, the creation in the 1920s of the "illegal immigrant" through numerical restrictions, enhanced border patrol, and enforcement via deportation and criminal punishment helped fuel the public's association of undocumented migration with Mexican migration. Moreover, the growing U.S. concern over the war on drugs and Mexico's notoriety as a prominent source of contraband may have further contributed to a concern over border patrol and the perception of the Mexican migrant as criminal, despite studies demonstrating the higher incidence of criminality among the native-born versus the immigrant populations (Rumbaut and Ewing 2007; Butcher and Piehl 1997). It is no wonder then that border crossing is popularly viewed today as a criminal activity requiring punishment and deterrence.

A final contributor to this misperception has been the militarization of the border. Owing to concerns over the smuggling of drugs and humans as well as individual border crossings, the federal government has fortified the U.S.-Mexico border substantially over the years. Despite efforts to pass comprehensive immigration reform in 2006 and 2007, President George W. Bush and the 109th Congress might instead be remembered for the notorious Secure Fence Act of 2006,[21] which famously authorized the creation of seven hundred miles of new border fence, although it was unclear that any funds for the project were forthcoming. Though it was praised by restrictionists for decreasing the number of border crossings into San Diego, California, from 1999 to 2004, critics assert that the militarized border has not only deterred seasonal migrants from returning home, but has also forced those coming from Mexico to cross at more dangerous points through the Sonoran Desert into southern Arizona, leading to a record number of deaths in recent years.[22] Instead of the continued fortification, migration scholar Douglas Massey argues for increased investment in Mexico, better ports and transportation, and a robust guest worker program (Hendricks 2007). Congress appears undeterred; during federal budget negotiations over war spending in the summer of 2010, the House pressed for an additional $700 million for border security (Barrett and Walsh 2010).

The Presidency: "Enforcement Now, Enforcement Forever"

As have other political initiatives, U.S. immigration enforcement has waxed and waned over the years, depending on the executive's concerns over foreign policy, national security, and the domestic economy, among other things. As the federal lawmaking body, Congress has been largely responsible for setting the executive's agenda, yet presidents and their appointed officers have also been greatly influential in setting the tone for enforcement. To illustrate, I examine immigration leadership under two Democratic presidents who are often compared—Franklin Delano Roosevelt (FDR) and Barack Obama—to get a sense of the negotiation between Congress and the president over the execution of enacted immigration policy (Kennedy 2009, 26).

Following Congress's growing concern over immigration regulation in the 1920s and the advent of deportation and criminal sanction as the preferred enforcement mechanisms, the immigration leadership in FDR's administration served as an important check against overzealous enforcement. Secretary of Labor Frances Perkins took seriously criticisms leveled at the Immigration and Naturalization Service (INS), noting that "much of the odium which has attached to the Service has been due to the policies and methods followed in connection with deportations and removals" (Ngai 2004, 83). Perkins appointed

the Ellis Island Committee to study INS practices; the committee's March 1934 report favored the need for administrative discretion not to deport in cases of extreme hardship, for example, when families might be separated (Ngai 2004, 83). Perkins found a willing ally in the new head of the INS, Daniel MacCormack, who vigorously lobbied for Congress to pass legislation granting such administrative discretion, expressing the view that "illegal entry in itself is not a criterion on character" (Ngai 2004, 84). Indeed, he testified that "the mother who braces the hardship and danger frequently involved in an illegal entry for purpose of rejoining her children cannot be held by that sole act to be a person of bad character"(84). Because economic recovery following the Great Depression pushed immigration reform to the back burner, Perkins and MacCormack creatively used existing provisions of the law to suspend deportations and legalize undocumented persons in cases of extreme hardship (84).

In some ways President Obama's Department of Homeland Security (DHS) has taken a cue from Perkins and MacCormack. For example, in 2009 then DHS Secretary Janet Napolitano decided not to deport foreign nationals who, after the untimely death of their U.S. citizen spouses, could not adjust to permanent resident status because they had been married for less than two years.[23] Realizing the unfairness this created, Congress eliminated this "widow's penalty" later that year (Semple 2009). Similarly, Attorney General Eric Holder vacated the Board of Immigration Appeals' decision in *Matter of Compean,* restoring the right of deportees to claim ineffective assistance of counsel on motions to reopen proceedings.[24] And in the summer of 2012 the Obama administration created a program to defer the deportations of certain undocumented youths (U.S. Citizenship and Immigration Services 2012).

In other ways, however, much of the Obama administration's immigration strategy smacks of the mantra, "Enforcement Now, Enforcement Forever." Despite the DHS's insistence that it will prioritize the prosecution of criminal noncitizens first, a study by Syracuse University's Transaction Records Access Clearinghouse reveals that in the 2009 fiscal year the top two immigration crimes charged were entry and reentry without inspection, the modern version of the 1929 laws that first criminalized unauthorized border crossings (TRAC n.d.). Apparently President Obama is simply continuing the policy of his predecessors; criminal charges for entries without inspection have been in the top three among immigration charges brought over the last twenty years (TRAC n.d.). Despite this long-standing preference for charging undocumented entries via the criminal law, a 2009 Pew Hispanic Center report reveals that although it has stabilized in recent years, the undocumented population increased rapidly from 1990 to 2006 (Passel and Cohn 2009). All this has only further entrenched the stereotype of the Latino man as undocumented migrant.[25]

In his July 2010 speech calling for immigration reform, enforcement and the rule of law were again the pillars of Obama's platform.[26] Rejecting popular calls for either blanket amnesty or aggressive deportation of all eleven million undocumented persons currently living in the United States, Obama presented a middle way that, while outlining a pathway to citizenship for the undocumented, emphasized securing the southern border, holding unscrupulous businesses accountable for illegal hiring, and requiring that penalties be assessed and civic responsibilities be imposed upon those wanting to legalize their status (White House, Office of the Press Secretary 2010). Although it is possible that Obama could only sell amnesty to Congress and the public by emphasizing law enforcement, it remains to be seen whether bringing undocumented workers out of the shadows so that they eventually become full citizens becomes the cornerstone of a more just immigration policy, or is just a front for stricter border and interior enforcement.[27]

The Alien as Other: Pseudoscience in the Service of Exclusion

Like antimiscegenation statutes, exclusionary immigration laws were based on pseudoscientific theories that affirmed a racial hierarchy, with whites at the top and blacks at the bottom. Like the poor and infirm, racial and ethnic minorities were deemed of an inferior stock and therefore more likely to commit crime, carry disease, and espouse antidemocratic values. While human beings may be hardwired to prefer their own, building a nation committed to equality and inclusion requires carefully distinguishing between stereotype and reality. And though it is true that broad cultural differences exist between, say, Asians and Westerners, it is also true that immigration policies admit individuals, not groups. So, in examining early U.S. immigration policy, it is useful to consider some of the underlying social science that may have influenced political and popular discourse over who should be worthy of admission into the new republic.

Let us take the case of criminals. Most people would probably agree that dangerous criminals would be good candidates for exclusion, because they pose a concrete harm to society. The easiest example is the foreign-born mass murderer who enters the country with the intent to kill U.S. citizens; no one would argue that this person should be welcomed into our polity. But what of the person who does not have a criminal record, and appears not to have engaged in any act remotely close to antisocial? In the film *Minority Report,* an elite police unit relied on clairvoyants to identify would-be criminals and apprehend them before they committed their crimes; the rub was that the clairvoyants also pegged the main hero—an upright, outstanding member of the "precrime" squad—as a future murderer.[28] Though similarly fraught,

social scientists have long grappled with the idea of trying to identify the would-be criminal. Historically, such research was grounded on stereotype and conjecture in an effort to identify the "criminal type."[29]

Although medieval commoners attributed crime to the Devil (Mitford 1995, 21), in the late nineteenth century Cesare Lombroso, an Italian criminologist, insisted that criminals were born and could be identified by distinct physical and mental characteristics (Mitford 1995, 21),[30] such as "long, large, protruding ears, abundant hair, thin beard, prominent frontal sinuses, protruding chin, large cheekbones" (21). At around the same time French scientist Louis Agassiz, who was tapped to establish a new school of medical study at Harvard, believed that persons of African descent were less intelligent than Caucasians because they had smaller skulls. Agassiz's conclusions built on the work of Philadelphia physician Samuel Morton, who advocated skull measurement as a basis of divining intelligence. Morton's research gave scientific credence to what were apparently Agassiz's prejudices against people of color.[31] These early efforts to link physical traits with intelligence and behavior were not universally accepted, however. Skeptical of Lombroso's work, English physician Charles Goring studied the physical characteristics of three thousand prisoners by measuring their noses, ears, eyebrows, and chins. Goring compared these results with the measurements of English university students and failed to find any evidence of a physical criminal type (Mitford 1995, 22).

More recently, investigative journalist Jessica Mitford argued that obtaining a more realistic view of the criminal type requires examining the composition of the prison population (1995, 23). She explained that "[t]oday the prisons are filled with the young, the poor white, the black, the Chicano, the Puerto Rican" (23–24).[32] Mitford opined that the reason certain groups are disproportionately represented in prisons and jails is that the only crimes available to the poor are those that are easily detected, such as theft, robbery, and purse snatching (25–26). White collar crimes such as embezzlement and corporate fraud are more difficult to prove, and, except in the most egregious cases (think of Bernie Madoff or Michael Milkin), might be resolved through fines and settlements without jail time. Put differently, the ethnic and socioeconomic composition of prisons may be less a clue to the prisoners' inherent criminality than a window into society's enforcement priorities, which favor the privileged, who may be just as criminally culpable under generally more forgiving laws.

Mitford also pointed to Professor Theodore Sarbin's suggestion that the police are conditioned to treat certain classes of people—the poor, people of color, undocumented migrants—as more potentially dangerous than others.[33] Sarbin's theory appears to be borne out empirically: In New York City alone,

84 percent of the more than 600,000 investigatory stops by the NYPD in 2010 were of blacks or Latinos; the opaque phrase "furtive movements" was the reason given for the stop in half these cases (Pearl 2011). Mitford concluded, "Thus it seems safe to assert that there is indeed a criminal type—but he is not a biological, anatomical, phrenological, or anthropological type; rather, he is a social creation, etched by the dominant class and ethnic prejudices of a given society" (Mitford 1995, 28).

Exclusion—whether through immigration law or criminal law—becomes the means by which we decide what our society looks like. The danger is in confusing legitimate grounds for exclusion with illegitimate ones. Racial and ethnic stereotyping should have no place in either our immigration or criminal law, although as we have just seen, they served as an important foundation for thinking in both policy realms, leading to the persistence of the myth in recent books by folks such as Peter Brimelow (1995) that America's rich cultural diversity should not be seen as a source of strength, but as a signal of its diminished world stature.

THE ROLE OF A COMPLICIT SUPREME COURT IN PERPETUATING THE CRIMINALIZATION OF UNDOCUMENTED MIGRANTS

Despite the recent notoriety of anti-immigration initiatives in Arizona and Alabama, state and local private and public entities have not been the only ones that have accepted the popular notion that undocumented persons are de facto dangerous criminals; indeed, the federal government has long struggled with separating fact from fiction in formulating a just immigration policy, from time to time erring on the side of treating civil immigration law more like criminal law.

Perhaps most curious is the role the U.S. Supreme Court has played in generally supporting alienage discrimination, not providing much of a check on a political machinery that allows for the unequal treatment of noncitizens simply because they are noncitizens. In our post–*Brown v. Board of Education* world, many Americans think of the Court as a protector of individual rights; however, the Supreme Court has been largely complicit in deferring to the executive and the legislative federal branches, often abdicating its duty to safeguard the individual rights of all persons, even those who are not citizens.

The Plenary Power Doctrine

As the final arbiter of the Constitution's meaning,[34] the U.S. Supreme Court has long held that immigration policy resides in the national government, with

Congress primarily responsible for defining that policy and the president responsible for enforcing it. The Court has deliberately taken a back seat, declaring that laws regarding the exclusion and expulsion of noncitizens from the United States are the political branches' prerogative, and that the judiciary therefore has no business substituting its judgment for theirs (*Marbury v. Madison* 1803).

In two landmark cases from the late 1800s, the Supreme Court firmly entrenched in Congress's hands the power to exclude and expel noncitizens. In *Chae Chan Ping v. United States* (130 U.S. 581, 1889) the plaintiff was a Chinese laborer who had lived in the United States for many years and wished to return to China temporarily. Prior to his departure, he secured a certificate of return from U.S. authorities, which he was instructed to present at port when he got back. During his time abroad Congress passed the Chinese Exclusion Act of 1882, forbidding any further entry of Chinese nationals on the ground that there were too many of them in the United States after the completion of their work on the westward expansion of the railway system. Upon the plaintiff's return to the United States, he presented his previously issued certificate of return. Rather than accept this as valid, authorities confiscated and revoked it, citing the intervening Chinese Exclusion Act as representing the government's new policy.

Despite the absence of a war between China and the United States or of evidence to suggest that the plaintiff was anything other than an upstanding citizen, the Court upheld the Chinese Exclusion Act, deferring to the political branches' power to retroactively apply the act to this returning resident. Indeed, the Court affirmed Congress's conclusion that all Chinese, including returning U.S. residents, were an unassimilable security threat:

> If, therefore, the government of the United States, through its legislative department, considers the presence of foreigners of a different race in this country, who will not assimilate with us, to be dangerous to its peace and security, their exclusion is not to be stayed because at the time there are no actual hostilities with the nation of which the foreigners are subjects. (*Chae Chan Ping v. U.S.,* 606)

Such a determination was "conclusive upon the judiciary" (606).

A short four years later, the Court extended Congress's plenary power to include the deportation as well as the exclusion of noncitizens. In *Fong Yue Ting v. United States* (149 U.S. 698, 1893), another provision of the Chinese Exclusion Act was called into question. To avoid deportation, Chinese residents were required to prove that they had lived in the United States for at least one year. The one catch was that a "credible white witness" had to be produced to vouch for a Chinese resident. Congress believed that it would be

easy for the Chinese to find compatriots who would lie for them; in their view, the Chinese were easily corruptible. If this were true, Congress could have remedied this simply by asking for a "credible witness" only, regardless of race and national origin. Plaintiff Fong was able to produce only a Chinese witness and was therefore found to be deportable.

Faced once again with articulating the scope of congressional power over immigration issues, the Court viewed exclusion and deportation as two sides of the same coin:

> The right of a nation to expel or deport foreigners who have not been naturalized, or taken any steps towards becoming citizens of the country, rests upon the same grounds [as exclusion], and is as absolute and unqualified as the right to prohibit and prevent their entrance into the country (*Fong Yue Ting v. U.S.,* 707).

Aside from the white witness requirement, another racial aspect to this case is that even though the Court faulted the plaintiffs for not choosing to naturalize, as stated previously, under applicable law at the time the Chinese were not permitted to become U.S. citizens.

Taken together, *Chae Chan Ping* and *Fong Yue Ting* formed the basis of what is now called the "plenary power" doctrine—the idea that Congress has virtually absolute power to determine immigration policy, including whom to exclude and expel, even if those decisions might be based on questionable criteria like race and national origin, rather than assessing individual dangerousness.[35]

Although certainly understandable in terms of maintaining a principled separation of powers among the three branches, and justifiably practical given that Congress is the lawmaking body charged with developing a working immigration policy, the plenary power doctrine has been used to shield prejudicial policies from judicial scrutiny, threatening individual liberty in the process. The following discussion examines a historical example from the 1950s and a more contemporary one from the post-9/11 era.

In *Shaughnessy v. Mezei* (345 U.S. 206, 1953), a twenty-five-year U.S. resident of European descent decided to visit his ailing mother for nineteen months in Romania. Upon his return to the United States he was indefinitely detained on Ellis Island, because he was adjudged a security risk due to his time behind the Iron Curtain. Mezei filed suit, claiming that he was denied a meaningful hearing to address these allegations. The Supreme Court upheld the detention, rejecting Mezei's due process claim. Despite his prior twenty-five-year residence in the United States, Mezei was viewed in the same light as a new immigrant entering the country for the first time. Citing another Cold War precedent, the Court noted, "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned" (212).[36]

This abdication of judicial authority to review Mezei's potentially indefinite detention on Ellis Island was criticized bitterly by the dissent. Justice Jackson skeptically questioned the government's assertion that Mezei was free to leave:

> Government counsel ingeniously argued that Ellis Island is his "refuge" whence he is free to take leave in any direction except west. That might mean freedom, if only he were an amphibian! Realistically, this man is incarcerated by a combination of forces which keeps him as effectually as a prison, the dominant and proximate of these forces being the United States immigration authority. (*Mezei,* 220, Jackson J. dissenting)

Although the Court has periodically asserted due process as a constitutional ground for overriding some immigration decisions,[37] this general deference to Congress and the president in the fashioning of immigration policy continues today, especially in cases where, as in *Mezei,* the government asserts a national security threat posed by a noncitizen. A more recent example appears in *Iqbal v. Ashcroft* (129 S. Ct. 1937, 2009).

In *Iqbal,* the Supreme Court upheld the dismissal of a constitutional law claim made by a Pakistani national against the federal government. Javaid Iqbal, a Pakistani Muslim man detained as part of John Ashcroft's post-9/11 antiterrorism sweep, claimed that Ashcroft and FBI Director Robert Muller discriminated against Arabs and Muslims during the roundup because they knew a disproportionately high number of those detained would be from these groups. As in *Mezei,* no evidence had been produced to prove he was a terrorist; indeed, unlike many suspected terrorists who were typically incarcerated indefinitely in Guantanamo, Iqbal was simply deported home.

The Court dismissed the claims against Ashcroft and Muller, holding that it was not enough for them to know that Arabs and Muslims would be disproportionately represented among the terrorism suspects; Iqbal needed to prove that the defendants purposefully intended to target Arabs and Muslims because of their race, national origin, and religion. Rather than invidious discrimination, the Court reasoned that Ashcroft and Muller's intent was to detain all noncitizens who might be terror suspects, and that Iqbal was included in the sweep not because of his race, national origin, or religion, but because he was a "suspected terrorist." Yet nothing in Iqbal's background suggests that he was a terrorist; that the government chose to deport him rather than detain and try him suggests that they knew he was not a terrorist. Indeed, the only characteristics linking him to the 9/11 suspects were his race, national origin, and religion. Just as Mezei was rendered immediately suspect because of his travels in communist territory, so was Iqbal deemed a security threat simply because he fit a profile. Reluctant to hinder the government's war on

terror, the Court was willing to dismiss instead the civil liberties claims of an individual whose legal status was marginalized and compromised by his foreign nationality (*Iqbal,* 129 S. Ct at 1954).

Aside from this broad deference to Congress in immigration matters, the Court has also condoned the use of race as a factor in aiding presidential and agency enforcement of the law. As discussed in the next section, preserving racial profiling as a law enforcement tool has arguably made it more palatable for courts to pass the buck, leaving the balancing of rights and responsibilities in individual cases to the very authorities charged with enforcement.

Fourth Amendment Jurisprudence on "Alien" Profiling

In *United States v. Brignoni-Ponce* (422 U.S. 873, 1975), federal border patrol agents stopped a vehicle traveling near the U.S.-Mexico border based solely on the fact that its occupants appeared to be of Mexican descent and were therefore possibly illegal border crossers. Upon stopping the vehicle, agents discovered that their suspicions were correct, and Brignoni-Ponce, the driver, was subsequently charged with smuggling undocumented persons into the United States. Brignoni-Ponce challenged the conviction, claiming that it was illegal for the officers to stop his car solely on the grounds that he and his companions appeared to be Mexican. Reviewing relevant Fourth Amendment precedent protecting individuals against illegal police searches and stops, the Supreme Court agreed, but not without approving racial profiling in the immigration context. While recognizing that border patrol officers could use a suspect's Latino appearance as one factor in deciding whether to briefly inquire about one's immigration status, relying on race alone was impermissible:

> [Apparent Mexican ancestry] alone would justify neither a reasonable belief that they were aliens, nor a reasonable belief that the car concealed other aliens who were illegally in the country. Large numbers of native born and naturalized citizens have the physical characteristics identified with Mexican ancestry, and even in the border area, a relatively small proportion of them are aliens. (*United States v. Brignoni-Ponce*)

With Pandora's box now open, *Brignoni-Ponce* paved the way for widespread use of racial profiling in the immigration context, notwithstanding the Court's admonition that it should play but a minor role in determining reasonable suspicion.[38] First, *Brignoni-Ponce* legitimized the idea that there exists a Mexican phenotype, when in truth Mexicans, like many other nationalities, are extremely diverse in their racial makeup (Johnson 2010, 1025). In addition, a study of immigration enforcement in the years following *Brignoni-Ponce* revealed that in practice the Court's articulation of a broad range of

non-race-based factors encouraged immigration officers to supply reasons justifying a stop *after* they had begun to interview a suspect (Harwood 1984, 505, 531). As such, even when lower courts have criticized law enforcement for its inappropriate use of race as a factor, they have sometimes upheld traffic stops because of the proper use of other *Brignoni-Ponce* criteria. In *United States v. Montero-Camargo* (208 F.3d 1122, 9th Cir. 2000) (en banc), for example, the Ninth Circuit criticized the border patrol's reliance on "the Hispanic appearance of the vehicle['s] occupants" because the search was conducted in an area heavily populated by lawful Latino residents, although the court ultimately concluded that other race-neutral factors justified the stop.[39]

AN ALTERNATIVE: "AMERICA THE INCLUSIVE"—RECLAIMING "IMMIGRATION NATION"

Notwithstanding our history and current politics, might there be a viable counter-narrative to the prevailing view? Because our Constitution distinguishes between the citizen and the noncitizen, alienage becomes an easy demarcation line, one to which public policy makers will default. Social psychology supports this idea, which might be termed "discrimination by default."[40] Our human nature causes us to prefer that which is familiar, and to the extent noncitizens are easily identifiable as outsiders under the law, that designation then acquires more than just a legal meaning; over time, it becomes associated with other undesirable traits such as criminality, inscrutability, unassimilability, and so on, notwithstanding a lack of data to support these assumptions. Furthermore, should alienage be associated with other outsider characteristics such as minority race or religion, these characteristics become proxies for noncitizenship, lending credence to fears about racial profiling of Latinos that inevitably attend anti-immigration statutes such as Arizona's "trespass" law.

Moreover, part of the debate over how one perceives undocumented persons might be explained by whether immigrants themselves are viewed in the aggregate or as individuals.[41] If one sees immigrants as part of an invasion of a great number of foreigners whose values differ from Americans', then it becomes easy to favor the rule of law as a paramount principle justifying exclusion. If, however, one sees through our immigration laws to the individuals and families making their way to America in order to provide better opportunities for themselves, one might be more willing to view the border crossing as a minor transgression, if at all, not unlike how most Americans today have conveniently forgotten George Washington's illegal border crossing activities before the founding. Put another way, when we view immigrants as "illegal aliens," we're more likely to lump them with thieves; when we see

them as pioneers struggling to better their lives, we're no more worried about them than we would be about a jaywalker in Manhattan.

What, then, is the way forward? Fortunately the U.S. Constitution, while it clearly preserves our sovereignty by differentiating citizens from others, also requires that all "persons"—not just citizens—be afforded due process and equal treatment under the law. The challenge is for all three federal branches to promote an immigration policy that seeks to balance the importance of maintaining a sovereign nation that values its citizenry against the desire to ensure fair treatment of those guests who reside therein.

The alternative, then, to the current "crimmigration" narrative is to reaffirm inclusion, not exclusion, as a core principle of post–Civil War America. Perhaps best embodied in the path-breaking school desegregation decision of *Brown v. Board of Education* (347 U.S. 483, 1954), this "integrationist" alternative asserts that America is a land of opportunity for everyone who shares its core values, and therefore the border should not be an obstacle to those who are willing to work hard to succeed and contribute to our society. Such a principle suggests a policy more welcoming of foreign nationals, only excluding those who are true threats to the nation. Embracing integration makes immigration easier for the vast majority of migrants who aspire to make the United States their home while simultaneously focusing scarce enforcement resources on the few true undesirables—criminals and terrorists—who clearly present threats to the nation.[42] As applied to undocumented migrants, *Brown*'s commitment to equality was extended to children without papers, when the Supreme Court held in *Plyler v. Doe* that Texas must afford such a vulnerable population the opportunity to attend primary and secondary public schools regardless of their status. In sum, *Brown* and *Plyler* reflect a commitment to what I have termed "integrative egalitarianism," the idea that "governmental programs designed to overcome arbitrary inequalities stemming from accidents of birth are a worthwhile investment in society's future" (Romero 2011, 275, 276–277).

At the federal level, examples include pending comprehensive immigration reform bills that seek a pathway to citizenship for many of the productive, upstanding, undocumented migrants who want to become part of and contribute to the American dream; other highlights include this otherwise conservative Supreme Court's decisions to recognize a minimum quantum of rights all persons enjoy, including the right not to be indefinitely detained[43] and the right to effective assistance of counsel.[44] Among states and localities, some, like New Haven, Connecticut, and Los Angeles, California, have embraced the idea of providing sanctuary to the undocumented, issuing local ID cards to all its residents so that they become members invested in their community. Similarly, New Mexico and Washington continue to issue state

driver's licenses to all residents, including undocumented migrants, reckoning that ensuring safety on the roads requires a universal approach.[45] In addition, several states have extended in-state tuition benefits to undocumented high school graduates, permitting them to pursue their dreams of higher education (Olivas 2012).

Following the Civil War, our Constitution was amended to provide due process and equal protection for all persons, not just citizens. Liberated from their segregationist shackles by the Supreme Court in the *Brown* decision, these twin guarantees of the Fourteenth Amendment appeal to the better angels of our nature, reminding us of a basic human truth—the equal dignity of all persons—that must be safeguarded in an increasingly complex and interconnected world. There is no reason why immigration policy should be exempt from the ideal of integrative egalitarianism.

NOTES

This chapter consolidates ideas first explored in two prior law review articles, "Decriminalizing Border Crossings," *Fordham Urban Law Journal* 38 (2010): 273, and "Our Illegal Founders," *Harvard Latino Law Review* 16 (2013): 147–167. I wish to thank my wonderful wife, Corie, for her incisive comments on an earlier draft of this chapter, to Ben Babcock and Sarah Hyser for excellent research assistance, and to my Deans, Phil McConnaughay and Jim Houck, for their support of this and all my work.

1. See U.S. Const. amend. XIV, which uses the narrower term "citizen" as well as the broader one, *person*: "All *persons* born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any *person* of life, liberty, or property, without due process of law; nor deny to any *person* within its jurisdiction the equal protection of the laws" (emphasis added).

2. This subsection's heading is a play on a *New York Times* article that alerted me to this history, Hogeland (2006), which described George Washington's illegal westward land grab.

3. For a thoroughgoing discussion of Washington's formative period and his land acquisition exploits, see Jones (1986) and Ellis (2004).

4. Interestingly, Washington never obtained the riches he desired; the War of Independence and his own participation in nation building interrupted his aspirations to land baronage (see Jones 1986, 35–36).

5. This section benefited greatly from the materials in Perea et al. (2007).

6. See generally Williams (1990), describing Spanish, English, and early American principles justifying the subjugation of indigenous peoples and their lands.

7. The original Constitution banned congressional restrictions on the slave trade prior to 1808 (Art. I, § 9, cl. 1) and allowed slaves to be counted as three-fifths of a person

for apportionment purposes (Art. I, § 2, cl. 3). See also Bell (1993, 188): "Without the compromises on slavery in the Constitution of 1787, there would be no America."

8. *Dred Scott v. Sandford,* 60 U.S. (19 How.) 393, 407 (1857). Although it is certainly true that slavery existed in Africa, and some European immigrants were subjected to indentured servitude, the evidence also suggests that African slavery appeared closer to European feudalism, and white indentured servants in America were generally not subjected to the degradation and humiliation visited upon the Africans. See, i.e., Zinn (2005), describing American slavery, with comparisons to domestic African slavery and American white indentured servants' experiences.

9. See James D. Richardson 1899, 352. "In leading them thus to agriculture, to manufactures, and civilization; in bringing together their and our sentiments, and in preparing them ultimately to participate in the benefits of our Government, I trust and believe we are acting for their greatest good." Cited in Perea et al. (2007, 191).

10. *Chae Chan Ping v. U.S.,* 130 U.S. 581, 606 (1889): "If, therefore, the government of the United States, through its legislative department, considers the presence of foreigners of a different race in this country, who will not assimilate with us, to be dangerous to its peace and security, their exclusion is not to be stayed because at the time there are no actual hostilities with the nation of which the foreigners are subjects."

11. The word "immigration" does not appear in the Constitution. "Migration" appears in connection with the slave trade only (Art. I, § 9, cl. 1), while the powers of Congress over naturalization (Art. I, § 8, cl. 4) and commerce (Art. I, § 8, cl. 3) do not mention either "immigration" or "migration."

12. See, i.e., Daniels (2002, 19):

> Whereas one generalizes about migration from Europe, from England, and from Italy going to the New World, to the American colonies, and to the cities of the northeastern United States, the fact of the matter is that migration often follows more precise patterns, often from a particular region, city, or village in the sending country to specific regions, cities, or even specific city blocks in the receiving nation. Sometimes, as in the case of the first considerable German migration to the New World in 1683, the pattern is set because a whole group of villagers with a pastor comes at once, in this instance from Krefeld to what became Germantown, Pennsylvania. This pattern was followed during the colonial period by thousands of other German immigrants who settled much of southeast Pennsylvania, becoming what their neighbors called the Pennsylvania "Dutch," apparently from the word *Deutsche.*

13. Of course after the Civil War, and notwithstanding the civil rights amendments to the Constitution, states routinely passed laws requiring racial segregation, with courts given the unenviable task of classifying various minority groups as "white" or "nonwhite." See generally López (1996, App. A), which lists relevant court cases.

14. The Immigration Act of 1875 was not a general exclusion law, but rather barred the importation of Asian laborers without their consent, as well as the importation of women as prostitutes. "An act supplementary to the acts in relation to immigration" (Ch. 141, 18 Stat 477).

15. Indeed, it was not until 1967 that the U.S. Supreme Court struck down state antimiscegenation laws as unconstitutional under the Fourteenth Amendment, in *Loving v. Virginia,* 388 U.S. 1 (1967). For a recent collection of essays examining the contemporary significance of *Loving,* see Maillard and Cuison Villazor (2012).

16. See Andreas (2000, 32): "Whereas formal, legal entry was a complicated process, crossing the border illegally was relatively simple and largely overlooked."

17. "It was ironic that Mexicans became so associated with illegal immigration because, unlike Europeans, they were not subject to numerical quotas and, unlike Asiatics, they were not excluded as racially ineligible to citizenship" (Ngai 2004, 71).

18. Kanstroom (2000, 214–224) describes the deportation of Mexicans from 1930 to 1965.

19. "Anti-Mexican rhetoric invariably focused on allegations of ignorance, filth, indolence, and criminality" (Ngai 2004, 53).

20. Ngai (2004, 70–71) describes the irregular, though legal, patterns of migration some Mexicans engaged in, including commuting and seasonal migrant work.

21. Pub. L. No. 109–367, 120 Stat. 2638.

22. "[The federal government's] tougher enforcement measures have pushed smugglers and illegal immigrants to take their chances on isolated trails through the deserts and mountains of southern Arizona, where they must sometimes walk for three or four days before reaching a road" (Romero 2009, 90–91, describing pros and cons of increased border security). See also McKinley (2010, A14).

23. See U.S. Department of Homeland Security (2009). Similarly, Shoba Sivaprasad Wadhia has argued strongly for greater and more prudent exercise of prosecutorial discretion among immigration attorneys (2010, 243). See also Lydgate (2010, 1):

> The current administration is committed to combating the drug and weapon trafficking and human smuggling at the root of violence along the U.S.-Mexico border. But a Bush-era immigration enforcement program called Operation Streamline threatens to undermine that effort. Operation Streamline requires the federal criminal prosecution and imprisonment of all unlawful border crossers. The program, which mainly targets migrant workers with no criminal history, has caused skyrocketing caseloads in many federal district courts along the border.

24. In re Compean, 25 I. & N. Dec. 1 (A.G. 2009) (vacating prior decision, thereby restoring BIA and IJ authority to review motions to reopen based on claims of ineffective assistance of counsel).

25. See, i.e., Chavez (2008), who argues that fear-mongering anti-immigrant rhetoric targeted at Latinos has permeated both media and popular works of late. See generally Roman (2008, 41), who decries the nativism and xenophobia evident in the current rhetoric surrounding Latino immigration.

26. White House, Office of the Press Secretary (2010). Even among conservatives, the question of comprehensive immigration reform is a tricky one ("Conservatives for Comprehensive Immigration Reform" 2010). Arguing against amnesty, Edwin Meese III, the attorney general who signed on to Reagan's 1986 amnesty,

asserts: "The fair and sound policy is to give those who are here illegally the opportunity to correct their status by returning to their country of origin and getting in line with everyone else. This, along with serious enforcement and control of the illegal inflow at the border—a combination of incentives and disincentives—will significantly reduce over time our population of illegal immigrants" (Meese 2006).

27. Skepticism is justified. The *New York Times* recently reported that the Obama administration has silently begun conducting audits of businesses, forcing them to fire all undocumented workers. See Preston (2010).

28. Dick, Frank, and Cohen (2002).

29. The following discussion is a slightly updated version of material that also appeared in my earlier work, Romero (2005, 26).

30. Lombroso also determined that criminals were a "subspecies" (Mitford 1995, 21).

31. See Menand (2001, 97–116). The most recent (infamous) incarnation of the race-intelligence link occurred during the 1990s, the publication of *The Bell Curve.* See Herrnstein and Murray (1994).

32. Mitford further noted that in the past, the criminal type that filled the nation's prisons included poor Native Americans as well as Irish and Italian immigrants (1995, 24).

33. Mitford examined a 1970 study by a sociology class at the University of California at Los Angeles. A dozen students with perfect driving records were selected for the experiment. The students were told to drive as they normally did, but with phosphorescent bumper stickers reading "Black Panther Party" attached to their cars (1995, 24). Mitford explained that in the first seventeen days of the study, the students accumulated thirty driving citations, such as failure to signal and improper lane changes (1995, 24). The author noted that "[t]wo students had to withdraw from the experiment after two days because their licenses were suspended; and the project soon had to be abandoned because the $1,000 appropriation for the experiment had been used up in paying bails and fines of the participants" (1995, 26).

34. See, i.e., *Marbury v. Madison,* 5 U.S. (1 Cranch) 137, 177 (1803) (stating that it is the Court's prerogative to "say what the law is").

35. Gabriel Chin argues that the plenary power doctrine's racist history was simply a reflection of racism in domestic law at the time (see Chin 2000; Johnson 2000; Legomsky 2000). Taking a less optimistic view, Kevin Johnson has argued that U.S. immigration law reflects the citizenry's true feelings toward domestic minorities by enshrining discrimination based on race, gender, class, and sexual orientation in immigration law, which by virtue of the plenary power doctrine allows for discrimination against noncitizens on a wide variety of grounds not accepted within domestic law (see Johnson 2004).

36. *Shaughnessy v. Mezei,* 345 U.S. 206, 212 (1953) (citing *Knauff v. Shaughnessy,* 338 U.S. 537, 544 [1950]).

37. See, i.e., *Landon v. Plasencia,* 459 U.S. 21 (1982) (holding that due process hearing is required for excluded lawful permanent resident who made only a brief trip to Mexico).

38. See Johnson (2010), who criticizes *Brignoni-Ponce* and its progeny for legitimizing racial profiling in law enforcement; see also Chin and Johnson (2010), who argue that *Brignoni-Ponce*'s approval of racial profiling contributed to the recent Arizona law's apparent popularity. For more on the tension between the Fourth Amendment's privacy expectations and federal immigration enforcement, see Aldana (2008, 1081) and Kalhan (2008, 1137).

39. *United States v. Montero-Camargo,* 1128. See also *United States v. Manzo-Jurado,* 457 F.3d 928, 936 n.6 (9th Cir. 2006) (finding Montero-Camargo inapplicable because the U.S.-Canada border area was not heavily populated by Latinos).

40. See, i.e., Wang (2006), who notes that discrimination is more the process of default actions that perpetuate the status quo racial order.

41. Legomsky (2009, 65) argues that one's perception of proper immigration policy depends in part on whether one views migrants as individuals needing help or as a mass of undifferentiated, undocumented persons who are inherently lawbreakers.

42. This idea is developed brilliantly in Johnson (2007).

43. See, i.e., *Zadvydas v. Davis,* 533 U.S. 678 (2001); *Clark v. Martinez,* 543 U.S. 371 (2005).

44. Cf. *Padilla v. Kentucky,* 130 S. Ct. 1473 (2010) (holding that criminal defense attorneys must advise noncitizens of the possible immigration consequences of a guilty plea).

45. For New Mexico's driver's license requirements, see http://www.mvd.newmexico.gov/Drivers/Licensing/Pages/How-to-get-a-New-Mexico-Driver-License.aspx; for Washington's, see http://www.dol.wa.gov/driverslicense/gettingalicense.html.

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2

"Doesn't Love a Wall": U.S. Deportation and Detention

Daniel Kanstroom
Marija S. Ozolins

Something there is that doesn't love a wall . . .
Before I built a wall I'd ask to know
What I was walling in or walling out,
And to whom I was like to give offence.

—Frost (1976)

For more than twenty years immigration enforcement in the United States has been a major growth enterprise. In myriad ways it is the dominant reality of the immigration experience for many millions of noncitizens. Its harsh aspects can be measured and understood through various methods, including narrative, statistical, normative, and jurisprudential. No matter how we view the matter, though, it is clear that the United States—despite (and perhaps in part *because of*) its aspirations to be identified as a nation of immigrants—has for some two decades been engaged in a social experiment with deportation that is unprecedented, harsh, and radical by virtually any historical or comparative measure.[1] Although deportation of noncitizens is at least as old as the modern nation-state, we have never before seen an immigration enforcement system of the size, ferocity, and scope that thrives, ironically, in one of history's most open and immigrant-friendly societies (Kanstroom 2007).[2]

Deportation and immigration detention in the United States have each developed into expansive, costly, harsh, and rigid enterprises.[3] The numbers are huge. If we count deportation events functionally (i.e., the number of times a person has been compelled to leave U.S. soil by government agents) over the last twenty years, the total number is around 25 million. Formal deportations (following hearings) are approximately 400,000 per year, but there are also many different, less formal mechanisms at play in the modern deportation regime. Contrary to popular opinion, the system does not only aim at the undocumented. Although we do not know the exact number of long-term legal residents who have been deported, the best estimates are many hundreds of thousands.[4] Detention numbers are similar. Over 400,000 individuals were detained for immigration enforcement in fiscal year 2011 (Immigration and Customs Enforcement 2012b). They are held in some 350 facilities throughout the United States and territories, with an additional 19,169 people in supervised "alternative to detention" programs.[5]

One might well call this a "delirium," following an earlier styling by Louis Post, formerly U.S. commissioner of immigration. In 1920 Post wrote a powerful book about what he called the "Deportations Delirium" of 1920, which had involved actions by the young J. Edgar Hoover against anarchists such as Emma Goldman (Post 1923). Although precise comparisons are impossible due to various differences in legal systems and background norms, consider this basic fact: in 1920 the total number of deportations was 14,577, and immigrant admissions totaled 430,000. The ratio of deportees to immigrants was thus about 3:100. From 1996 to 2011, however, the United States admitted about 14.5 million legal permanent residents. However, total removals and returns exceeded 20.7 million, for a deportee-immigrant ratio of 144:100, a nearly *fiftyfold increase* from 1920 (Department of Homeland Security 2011).

What has our deportation experiment wrought? Undoubtedly the U.S. government has removed many people who have violated border laws and committed crimes. But deportation has also forcibly separated hundreds of thousands of families—an especially harsh fate for the U.S. citizen children, spouses, or elderly parents left behind. In 2009 Human Rights Watch estimated that more than one million family members had been forcibly separated by deportation (2009b). Some thirty-three million native-born citizens have at least one foreign-born parent in the United States.[6] There are more than three million U.S. citizen children whose parents are undocumented (U.S. Census Bureau 2010). Tens of thousands of these children have already seen their families be split or have experienced their own de facto deportation to countries that are as foreign to them as they would be to any other American children. The harm to a U.S. citizen child in these circumstances was aptly

described in one study as "palpable and long-lasting" (Kremer et al. 2009). These are real moral and social costs that must be weighed in the balance.

"Well, that's tough," some say. "But they broke the law. Period" (King quoted in Llorente 2011). This argument, like deportation itself, has deep roots in this country (Kanstroom 2007, 2012). America was once well described by Alexis de Tocqueville as "a Nation of people who aspire to live according to the rule of law" (Tocqueville 1835/1945, 278). But the law is not so simple, and its complexity suggests that a question mark rather than a period should follow the assertion that "they broke the law." Laws have certainly been broken. The question is: What should we do about it? As Robert Cover noted thirty years ago, we inhabit a *nomos,* a normative universe in which we "create and maintain a world of right and wrong, of lawful and unlawful, of valid and void" (1983, 4). Some may identify the normative world with a narrow conception of the "rule of law," what Cover termed "the professional paraphernalia of social control." But the formal institutions of the law and "conventions of social order" are only a small part of the normative universe, and legal institutions or prescriptions cannot exist apart from the narratives that give them meaning (4). Consider in this regard two narratives of deportation and detention.

Nearly a decade ago, Daniel consulted on the Boston deportation case of Edna Borges.[7] Edna, then twenty-three years old, had lived in the United States as a lawful permanent resident for more than two decades. Her entire family lived in the United States, including its most recent addition, her baby daughter Juliana, born in late July 2003. As a teenager, Edna unfortunately had gotten into some trouble and was arrested for shoplifting and possession of pepper spray. As these are among the most minor offenses in the criminal justice system, Edna pled guilty and was in effect placed on probation. But immigration authorities ordered Edna to check in with them on a regular basis, about every three months. This was an intimidating and inconvenient experience for her, but she complied with these conditions without major incident until her August 2003 appointment (Kanstroom 2007).

Eight days after baby Juliana was born, Edna showed up at the Boston Office of the Bureau of Immigration and Customs Enforcement (ICE)[8] for her routine appointment. Without warning, she was arrested and sent to a jail in Dartmouth, Massachusetts. She was not permitted contact with Juliana, who had been breast-feeding and was now refusing to drink formula. Edna was told that her next scheduled hearing date before an immigration judge was more than *one year* in the future and that, as a "criminal alien," she would not be released and had no right to bail. As a flurry of publicity began to surround her case, a spokeswoman for the Department of Homeland Security offered a sad refrain: "We have no discretion. . . . It's that conviction

that does it."[9] She was technically correct. But one surely must be struck by how our "nation of immigrants" has come to such easy acceptance of the mandatory detention and deportation of a lawful permanent resident young mother for shoplifting years earlier (Kanstroom 2007).

These sorts of deportations and detentions have continued apace for years. Marco Merino-Fernandez, a client of our Post Deportation Human Rights Project (PDHRP) at Boston College (2013), is now thirty-six years old. He was brought from Chile to the United States legally, when he was five months old. Unfortunately, like many legal permanent residents, Marco never became a U.S. citizen. He speaks English fluently and got his GED in Florida. Returning from a vacation abroad in 2006, Marco presented his green card to immigration agents, who discovered that more than a decade earlier Marco had been convicted of two misdemeanors for possession of small amounts of marijuana and LSD. Immigration and Customs Enforcement (ICE) detained Marco for months. After a brief hearing, an immigration judge ruled that he was "an aggravated felon" and ordered him deported to Chile. Marco had not been to Chile since infancy, and only a few relatives remained there. After arriving in Chile in 2007, Marco learned that his mother had died in Florida; he wasn't able to return for her funeral. He is still trying to return to his family in the United States. For years the U.S. government argued that no agency or court adjudicators have jurisdiction to consider motions to reopen cases like Marco's, which are often based on claims of ineffective assistance of counsel in both criminal and deportation proceedings. The rule of law, the government has argued, effectively ends at the border after deportation has been accomplished, even if the deportation was incorrectly carried out (Kanstroom 2012).

Deportation in the United States has two basic forms, which reflect somewhat different, if interrelated, goals. *Extended border control* seeks to remove those noncitizens who have evaded the rules that govern legal entry into the United States. *Post-entry social control* regulates the conduct of those who have been legally admitted (i.e., as students, workers, or permanent residents) but who then engage in a wide variety of prohibited behaviors (Kanstroom 2007). This distinction helps to illuminate the various underlying functions of deportation in complex industrial and postindustrial societies. Apart from its obvious immigration control goals, deportation has also regulated labor markets, controlled the movement of the poor, dovetailed with criminal law enforcement, particularly challenged dissidents and labor organizers, and facilitated various "national security" initiatives, which are themselves often amorphous and poorly defined.

As Edna's and Marco's cases illustrate, the deportation system has also utilized a parallel experiment with a massive system of internal detention,

provocatively named an "American Gulag" by reporter Mark Dow (2004). As Dow highlighted in 2004, enforcement procedures that had long "tended to be casual," became increasingly "brutal." Indeed, as early as the 1980s government officials began to see immigration detention as a tool with more utility than simply to guarantee the appearance of noncitizens at deportation hearings. It was also useful as a "deterrent." Immigration detention was applied as a deterrent to Haitian refugees during the Reagan administration, then extended to others as part of an increasingly militaristic approach to managing the southern border.[10] As this chapter explains, in recent years the system has grown dramatically from these roots.

As this chapter is being written, it seems that the fever of the contemporary deportation and detention delirium may be easing a bit in the wake of the 2012 elections. Still, despite some important executive branch initiatives such as DACA,[11] most versions of what has come to be known as "comprehensive immigration reform" have offered little in the way of durable legislative reform of the harshest aspects of deportation and detention. Thus, though current portents seem positive for some of the undocumented, especially the so-called DREAMers, it is likely that we will continue to live with massive deportation and detention systems for the foreseeable future. How should we understand these systems? How can we ameliorate their harsh excesses?

DEPORTATION

We might understand *extended border control* deportation and detention as a complex system of walls, evocative of Robert Frost's famous poem "Mending Wall." "Something there is," Frost (1976) famously began, "that doesn't love a wall." The tens of billions of dollars that have been spent building walls along the southern U.S. border make clear, though, that there is also something deep in the U.S. psyche that *does* seem to love a wall. If the border wall continues to fail to keep people out, then we increasingly use other walls—of jails, prisons, and detention centers—to lock people *in* until they can be brought back to the outer wall for removal and exclusion.

To be sure, those who have observed them at close range have long questioned the efficacy of physical walls at the border. One is reminded of then governor, later Secretary of Homeland Security Janet Napolitano's oft-repeated bon mot: "You build a fifty-foot wall, somebody will find a fifty-one foot ladder" (National Public Radio 2008). But most Americans undoubtedly support the general goal of border control, though its nature has changed considerably over time. In 1905, for example, the main focus was on control of the personal *qualities* of immigrants entering the country. In an era of

largely open immigration policies (at least for European immigrants), President Theodore Roosevelt sought

> an increase in the stringency of laws to keep out insane, idiotic, epileptic and pauper immigrants. But this is by no means enough. Not merely the anarchist, but every man of anarchistic tendencies, all violent and disorderly people, all people of bad character, the incompetent, the lazy, the vicious, and physically unfit, defective, or degenerate should be kept out. (Roosevelt 1906, 101)

Some of the provisions enacted in the following decade or so are still on the books, but the primary focus of current *extended border control* deportation has shifted to the removal of undocumented noncitizens, mostly of Mexican and Central American origin, as part of a more complete border control strategy (Ngai 2004). As Mae Ngai has shown, the quota laws of the 1920s led to the creation of a large new category of people known as "illegal aliens." As Ngai put it, "the notion of border control obscured the policy's unavoidable slippage into the interior" (57).

It is very difficult to determine whether either border control or its "slippage into the interior" has actually worked (Kanstroom 2012). As early as 2006, Wayne Cornelius argued that increased border enforcement since 1993 had not seriously impeded unauthorized migrants from entering the United States. More recent studies have raised similar concerns (Massey 2009). To be sure, increased border enforcement has made clandestine border crossing increasingly expensive, dangerous, and risky. But an ironic unintended consequence has been to encourage undocumented people to remain in the United States for longer periods and to settle permanently in this country in much larger numbers. Still, the proponents of *extended border control* deportation argue that "consistent, comprehensive enforcement of the immigration law [would] reduce the number of new illegal arrivals and persuade a large share of illegals [sic] already here to give up and deport themselves" (Krikorian 2006).

Such goals imply rather distinct enforcement models. Scholars have described two basic models: (1) a metaphorical fortress and (2) an interdependence or cooperation-based model, which has been metaphorically termed a "complex organism."[12] The fortress model aims for a secure physical perimeter, analogous to a walled-in city or a castle isolated by a moat. This model requires guards. There must of course also be a gate of some sort to permit economic and social activity with outsiders. The attractiveness of a fortress is clear in the context of such dangers as Mexican drug cartels and foreign terrorists crossing the U.S. southern border (Finklea et al. 2010). However, fortress-type systems are problematic in ways that range from the

symbolic (they challenge the ideals of an open society or a "nation of immigrants") to the pragmatic (they are static, unimaginative, and inevitably inspire criminal enterprises designed to circumvent their walls) (Kanstroom 2012).[13]

Recognition of increasing global interdependence leads some to support a more nuanced model, which might be called a "complex organism" (Netzer 1999). This model utilizes interdependent systems and offers much greater flexibility. It implies a view of the border that is neither isolated nor static. Border threats are "dynamic, frequently decentralized, and respond to market forces, as well as terrorist opportunities, both at the border and in the interior" (Haddal 2010). Unlike the fortress model, the overlapping systems of the complex organism model work "to expel undesirable elements while facilitating the movements of desirable elements" (Haddal 2010). The model utilizes interconnections among border systems, blends interior and foreign enforcement, and seeks international cooperation.[14] This arguably attains greater balance by distributing the risk of failure throughout the "organism," rather than shifting all risk to the border.[15] But it requires an effective, efficient, and, one would hope, a *just* deportation system (Kanstroom 2012).

The U.S. border protection and deportation systems have vacillated between these two models, though the government's stated goals have remained largely consistent for many years. The Border Patrol's 1994 Strategic Plan, for example, aimed for "confidence in the integrity of the border" (U.S. Border Patrol 1994). President Bill Clinton sought to "make it tougher for illegal aliens to get into the country" (Andreas 2009, 87). Both the Clinton and George W. Bush administrations increased spending on high-tech patrols, new walls, fences, radar, and border patrols (Andreas 2009). An array of militaristic projects, emblematic of the "fortress model," were appropriately named: Operation Blockade, quickly renamed Operation Hold the Line in response to criticism of the warlike metaphor (El Paso in 1993); Operation Gatekeeper (San Diego in 1994); and Operation Safeguard (Arizona in 1995).[16] During the Bush administration the Department of Homeland Security spent more than $3.4 billion on border fencing, completing 640 miles of fencing and vehicle barriers. A high-technology border control plan, called SBInet, budgeted $700 million for a "virtual fence" with some fifty camera and radio towers on a twenty-eight-mile region near Tucson and a thirty-mile stretch near Ajo, Arizona. It also used motion-detection sensors, remotely operated camera surveillance, ground-based radar, and unmanned aerial vehicles (U.S. Customs and Border Protection 2006). This was just one part of the broader "Secure Borders Initiative" (SBI), a multiyear plan designed to secure the nation's borders and to reduce illegal immigration.[17] The SBI also sought to expand detention and deportation, upgrade technology, and increase worksite

enforcement against unauthorized workers (Department of Homeland Security 2005; Kanstroom 2012).

Secretary Michael Chertoff of the DHS aggressively pursued such measures.[18] Indeed, the preoccupation with preventing another terrorist attack led to a "seemingly all-consuming pursuit of securing [U.S.] borders by *all means available*" (Papademetriou and Collett 2011). Presidential candidate Barack Obama initially embraced such expensive border control technology. In 2010 the White House affirmed that one of the administration's main goals was to "strengthen border control" and to "protect the integrity of our borders by investing in additional personnel, infrastructure, and technology on the border and at our ports of entry."[19] However, in March 2010 Secretary Janet Napolitano terminated the SBInet project and stated that "[n]ot only do we have an obligation to secure our borders, we have a responsibility to do so in the most cost-effective way possible."[20] *Extended border control* has long mixed the real with the symbolic, and the grandiose with the pragmatic (Kanstroom 2012).[21]

The specific mechanisms of deportation have also evolved rapidly in recent years.[22] Large, high-profile, sometimes brutal workplace raids marked the Bush administration following the 2008 failure of an earlier version of "comprehensive immigration reform" (CIR) (Kanstroom 2012). Interior enforcement methods substantially changed in the Obama administration. Dramatic raids gave way to more subtle modes of audits and targeted workplace enforcement. Still, the painful legacy of the workplace raids remains substantial, particularly for the deportees and their families.

The Bush administration raids were initially aimed at specific industries, and officials envisioned strong public support for the strategy. However, the stated goals of the raids often transcended immigration control, indicating that political support for raids was fragile and complex. In 2006, for example, ICE proudly announced the arrest of more than twelve hundred people for alleged immigration violations in a six-state raid on meat processing plants. "This is not only a case about illegal immigration, which is bad enough," said then Homeland Security secretary Michael Chertoff. "It's a case about identity theft and violation of the privacy rights and the economic rights of innocent Americans" (Leinwand 2006; Kanstroom 2012).

The proponents of raids similarly linked undocumented workers to various other crimes and thus gained some public support. However, a series of aggressive workplace raids began to erode such support. In 2007 in New Bedford, Massachusetts, a raid code-named "Operation United Front" mobilized ICE agents from around the country to arrest hundreds of poor, indigenous Mayan peasants from Guatemala. These noncitizen workers had been recruited to Massachusetts for such work as piecework stitching of leather bags (Ziner 2007a).

The "uniting of the front" proved a poignantly inapt phrase for those who were arrested. The ICE agents separated mothers from babies and husbands from wives (Rose and Ott 2007). Many were summarily transferred to detention centers in Texas before they could speak with lawyers (Belluck 2007). The ICE agents detained many others on a local military base. Community groups and politicians spoke of the raid as "a humanitarian crisis" (Ziner 2007b). Indeed, Massachusetts social workers were compelled to travel to Texas immigration detention facilities to ensure that the children of the detainees were receiving adequate care (Mishra and Ballou 2007; Kanstroom 2012).

Interviews with the detainees revealed the brutal nature of the New Bedford raids. One woman described how two immigration officers boarded her bus at the airport while she was being sent to Texas. Both men carried batons. One agent said "If you don't behave well . . ." as he forcefully kicked a trash can to imply that the deportees would be similarly treated if they didn't follow instructions. The officers reportedly yelled at the detainees, "calling us 'shit' and telling us we were worthless."[23] The ICE agents told the detainees that they never wanted to see them in this country again. Such reports, disturbing under any circumstances, are especially poignant in light of the backgrounds of these Guatemalan workers. As one deportee said, "When immigration officers said things like 'You're shit,' or 'You're worthless,' [I]" was reminded of similar treatment in Guatemala, where government agents may stop people on the street and demand information and where many have been beaten or even killed with impunity.[24] Another deportee offered chilling detail:

> Around me the armed officers were screaming very loudly. Among other things, I saw one man with a very bloody nose and a cut hand. I saw another individual named Susanna; she was dirty, as if she had been brutally dragged. She was crying. I remember feeling great fear, both for myself and my fellow workers. We were being treated like the worst criminals in the world.[25]

The Bush administration workplace raids were thus a problematic strategy for at least two reasons. First, rather than focusing on terrorism suspects or convicted criminals, their main targets were undocumented workers, with whom many people felt some sympathy. As one man arrested in a Baltimore raid put it, echoing Woody Guthrie's famous ballad "Deportee": "Instead of taking away people who are hurting the country or doing murders, they are taking away people who work hard and want this country to get ahead. . . . They chase us like animals and say they are doing it for the good of the country."[26] Second, the raids tended to be large, aggressive, often militaristic exercises that were disproportionate to the alleged threat posed by the often-terrified workers (Kanstroom 2012).

In 2008, however, as prospects for comprehensive immigration reform dimmed, the raids became still more aggressive. The raid regime seemed to have developed a momentum of its own. Young federal prosecutors engaged in the deportation enterprise with energy and enthusiasm. They aimed clever new removal techniques at another group of undocumented Guatemalan workers in a kosher meatpacking plant in Postville, Iowa (Moyers 2008). Announcing the arrest of some three hundred undocumented workers, U.S. Attorney Matt M. Dummermuth proudly asserted: "This is the greatest number of defendants ever to plead guilty and be sentenced in one day in the Northern District of Iowa" (PR Newswire 2008). Seventy-seven workers were later sentenced to prison after they pled guilty to using a false identification document to obtain employment. Sentenced to five months of imprisonment and three years of supervised release, they also faced automatic removal from the United States. The deportations of hundreds of people thus proceeded with remarkable speed and efficiency, as others were intimidated and took quick pleas to avoid prison time. The prosecutors had created a new fast-track deportation method by combining tools from the criminal system with deportation, a civil sanction.

However, observers began to raise serious questions. An interpreter, Erik Camayd-Freixas (2008), published a compelling account of the Iowa court proceedings. His role had been to explain their legal options to the arrested workers, together with a few court-appointed attorneys. The explanation was simple: If the client agreed to plead guilty to a charge of "knowingly using a false Social Security number," the government would withdraw the more serious charge of "aggravated identity theft." The noncitizen would then serve five months in jail, be deported without a hearing, and be placed on "supervised release" for three years. Those who sought to fight for their rights faced a daunting risk. A plea of not guilty could mean waiting in jail for six to eight months for a trial (because they were also facing deportation, the noncitizens were told that they had no right to bail). If they were found guilty, they faced a two-year minimum sentence, and quite possibly more. Even a victory at trial, however, would still be followed by deportation, as the workers were undocumented. Many of the migrant workers were illiterate; some of the Mayans did not even speak Spanish well. All were terrified. As Camayd-Freixas recounted: "[S]ome clients understood their options better than others" (2008, 5). Unsurprisingly, most took the deal. As one observer noted, this was "a cold clinical experiment . . . [which] sought to criminalize immigrants on a mass scale." The government had not only arrested and deported undocumented immigrants; they were now to be sent home as convicted felons (Leopold 2009). A variety of challenges followed the Postville raid, and the U.S. Supreme Court ultimately rejected the criminal law theory used by the

government, though this came far too late for many of the deportees (Kanstroom 2012).[27]

Increasingly, though, public opinion turned against such tactics and against large workplace raids. The Bush raids had shown a type of increased seriousness about interior enforcement; and they had deported a few thousand hapless workers. But it became apparent that this was not a viable long-term strategy. Both major party presidential candidates in 2008 affirmed that deporting twelve to fifteen million undocumented people was not realistic, humane, or affordable. The raids gave way to the Obama administration's choice of more sophisticated and allegedly "smart" mechanisms, such as the Secure Communities initiative (Kanstroom 2012).[28]

DETENTION AND TRANSFER: NAVIGATING THE "AMERICAN GULAG"

One of the major consequences of the 1996 changes to U.S. deportation law has been a massive and unprecedented increase in the detention of noncitizens.[29] Such detention had been largely abolished by the Immigration and Naturalization Service (INS) in 1954, except for those who were likely to abscond or who were deemed dangerous to national security or public safety (*New York Times* 1954). Since then, however, a variety of factors have coalesced to create the current massive detention scheme. In the Obama administration, enforcement has increasingly focused on "criminal aliens." However, the background reasons for the expansion are complex, including fears about asylum seekers, such as the 286 smuggled Chinese noncitizens in the famous Golden Venture incident of 1993 (Faison 1993), and concerns about absconders from deportation proceedings who were granted bond and then failed to show up for their hearings or for removal (Aizenman and Hsu 2007). National security concerns have also played a major role, especially since September 11, 2001.

The 1996 immigration laws expanded mandatory detention during removal proceedings for individuals convicted of certain crimes, including even nonviolent misdemeanors that carried no prison sentence.[30] Such individuals are detained without a bond hearing in immigration court or any other judicial review of their detention. Today, over half of the noncitizens in immigration detention are estimated to be subject to mandatory detention (ACLU 2011). The U.S. Supreme Court has upheld the basic constitutionality of mandatory detention (*Demore v. Kim* 2003). However, the Court has distinguished cases where the noncitizen has conceded deportability and where detention lasts only the "brief period necessary for [completing] removal proceedings."[31] Thus, legal challenges to detention remain possible.

Still, many noncitizens face prolonged and indefinite detention while they await trial or appeal their cases (ACLU 2011).

The terrorist attacks of September 11, 2001, and the subsequent emphasis on border security and immigration law enforcement, along with the broader detention powers authorized by the USA PATRIOT Act, have also played a major role in normalizing the idea of broad detention,[32] as has the expanded use of such fast-track mechanisms as "expedited removal" (Kanstroom 2007, 2012).

Increased state and local enforcement and privatization have also sustained and enhanced the immigration detention system. In the former case, this is largely due to "force multiplier" strategies and overlapping detention mandates. In the latter, one must consider the powerful effect of profit motives in large new privately run facilities and lobbying by private entities.

The cumulative results have been dramatic. ICE now operates what has been termed the largest detention and supervised release program in the country.[33] Rapidly expanding budget appropriations to the Department of Homeland Security (DHS) and changes in DHS policies that favor detention combined to more than triple the number of noncitizens in detention in the fifteen years from 1993 to 2008 (Kalhan 2008). Some 85,730 noncitizens were detained in 1995. This grew to 429,247 individuals detained in fiscal year 2011 (Immigration and Customs Enforcement 2011c). On any given day, the average number of noncitizens in detention has increased from approximately 5,000 in 1995, to 19,000 in 2001, to more than 33,000 in 2011 (Simanski and Sapp 2012; Immigration and Customs Enforcement 2011a). By 2011 there were some 350 facilities throughout the United States and territories, with an additional 19,169 people in supervised "alternative to detention" programs.[34]

Congress has steadily appropriated more funds to expand immigration detention centers, with an increase of 131 percent from 2004 ($864 million) to 2012 ($2 billion) (Transactional Records Access Clearinghouse 2012). The detention budget for Immigrations and Customs Enforcement (ICE) is tied to an inflexible quota of thirty-four thousand beds per day (Detention Watch Network 2013). Thus, ICE has a financial incentive to detain this number of individuals. The agency spends approximately $122 each day to detain each noncitizen in its custody, or $44,530 per person per year (National Immigration Forum 2012). If operational costs are included, these figures rise to $164 per person per day and $59,860 per year, respectively (National Immigration Forum 2012).

Of the approximately 350 facilities currently used by DHS to detain noncitizens, only eight are ICE-owned and operated (Detention Watch Network 2012). Many of the remaining facilities are run by the Federal Bureau of

Prisons and hold "criminal aliens" alongside the general prison population, a practice that began in the 1990s. The others operate through contracts between ICE and local or county facilities and private prison corporations such as GEO Group and Corrections Corporation of America (CCA), which in 2011 received about $425 million in revenues from government contracts (Kirkham 2012). In 2011 CCA received some 40 percent of its business from the federal government, including ICE and the Federal Bureau of Prisons (BOP).[35] Human rights activists have raised concerns about certain BOP directors who have overseen the transfer of millions of dollars in contracts to the CCA, left the government, and then accepted lucrative positions with CCA (Reynolds 2011).

Immigration detention facilities look and operate like prisons and jails, with similar problems of human rights violations. Since many immigration detainees are so-called criminal aliens, one might assume a certain level of dangerousness among them.[36] This, however, turns out not to be true. Indeed, the government's own figures estimate that the majority of the detained noncitizen population is characterized as "low custody, or having a low propensity for violence." Only about 11 percent have committed violent crimes (Schriro 2009). Although ICE has maintained several family and lower-security immigration detention facilities, the majority of immigration detainees are held in facilities that are jails or prisons, or have prison-like conditions of "security, surveillance, and control" (Human Rights First 2011). These conditions include multiple daily head counts; confinement indoors; restricted movement; limited privacy; required uniforms; limited or nonexistent programs and recreational activities; and limited contact with friends, family, and attorneys (Schriro 2009). Conditions are worst when noncitizens are subjected to prolonged detention in facilities that are designed for short-term detention, such as county jails (Amnesty International 2009).

The Inter-American Commission on Human Rights (IACHR) visited ICE detention facilities in 2010 and found "disproportionally restrictive penal and punitive measures." IACHR described facilities where "detained immigrants wear prison uniforms; all the units operate as incarceration facilities; on a daily basis detainees are subjected to multiple head counts that require that they remain in their beds for as much as an hour at a time; the prison guards sometimes lock them in (confine them to their cells or force them to stay in their beds); and detainees are handcuffed and shackled whenever they are taken outside the center's walls, even when they are taken to court" (Organization of American States 2010).

Reports of physical and sexual abuse, sleep deprivation, and isolation are common among noncitizen detainees. There has long been a well-documented lack of access to proper nutrition and exercise, medical care, legal and educational

materials, phones, and visitation in many of these facilities. In March 2013 ICE revealed that on the average day, three hundred individuals are held in solitary confinement in immigration detention facilities. Almost half of these detainees are kept in isolation for fifteen days or more, the point after which experts say that sensory deprivation may amount to torture. Thirty-five of these detainees were isolated for more than seventy-five days.[37] Secretary Janet Napolitano announced that DHS would reexamine its policies regarding the use of solitary confinement in immigration detention, but to date there has been no resulting policy change (Foley 2013).

The majority of detainees are held near to where they are arrested. However, ostensibly due to "detention shortages" in California and the mid-Atlantic and Northeast states, large numbers of people have been summarily transferred to areas where there are "surplus beds." Such transfers cause profound problems of right to counsel, access to witnesses, family visits, etc. One significant factor limiting access to legal representation is the remote location of many immigration detention facilities: nearly 40 percent of ICE's total bed space is located more than sixty miles from an urban center, defined as having a population over 250,000 (Human Rights First 2011). The remote locations of detention facilities also result in removal hearings and even credible fear interviews that are conducted through videoconference, with the immigration judge and attorney (if any) sitting in immigration court and the noncitizen remaining at the detention facility (Walsh and Walsh 2008).

Quality control at these privately operated facilities has long been a major concern. Although the Bush administration purported to know little about such problems, behind the scenes, deaths in private facilities generated thousands of pages of government documents, secret investigative reports, and a pattern of officials working to stymie outside inquiry (Bernstein 2010a). In 2010 the *New York Times* reported that nine deaths had occurred at the CCA's prison facility in Eloy, Arizona, more than in any other immigration contract prison facility in the country (Bernstein 2010a). Government officials, it seems, had in fact long been aware of such problems, but did little to mitigate them.

Nina Bernstein described the tragic case of one detainee at Eloy, Emmanuel Owusu. Mr. Owusu, a barber, had arrived from Ghana on a student visa in 1972. He had been a U.S. legal permanent resident for thirty-three years, mostly in Chicago. He was arrested by ICE in 2006 due to a 1979 conviction for misdemeanor battery and retail theft. By the time he was arrested, Mr. Owusu was sixty-two years old and a diabetic with high blood pressure. He had been incarcerated at Eloy for two years while he fought deportation. He died of a heart ailment weeks after his last appeal was dismissed (2010a). Even the Phoenix ICE field office director was struck by the case: "Convicted in

1979? That's a long time ago." Nevertheless, a government report on his death referred to a "lengthy" criminal history ranging from 1977 to 1998 (Bernstein 2010a). It did not note that this lengthy history, which had ended more than a decade earlier, consisted mostly of shoplifting offenses (Kanstroom 2012).

Local facilities, commonly run by counties, have long been problematic. About half of the detained population of potential deportees—nearly 200,000 people per year—has been held in a vast array of more than two hundred county jails throughout the country. These facilities frequently house county prisoners and other criminal detainees. In November 2000 INS published a Detention Operations Manual, which contained Detention Standards.[38] However, they were only "guidelines" for the county jails and prisons that incarcerated some 80 percent of detained noncitizens at the time.[39] The standards were not binding and were in most cases virtually unenforceable (National Immigration Project 2007). Some of the worst abuses reported regarding mistreatment and lack of medical care took place in these unregulated facilities. Why do counties want to house noncitizen detainees? The answer is simple: money. Mark Dow quotes a Pennsylvania county commissioner who said, "We tried like the dickens to get some of the Chinese . . . but it didn't pan out. . . . If no immigrants are secured, some layoffs may be inevitable" (2004).

Serious problems have also been found in government-operated ICE facilities.[40] The failure to meet the health needs of those living with HIV/AIDS has been a major concern.[41] And as Mr. Owusu's case exemplifies, a disturbing number of people have died during or shortly after leaving ICE custody (Priest and Goldstein 2008; Bernstein 2008; Miroff 2009). ICE has argued that the death rate for individuals in its custody has declined and compares it favorably to that of the U.S. prison population.[42] However, such comparisons are problematic, given the comparatively short periods of time that the average person remains in ICE custody (Venters 2008).

Human rights reports have also cited sexual abuse as a long-standing issue throughout the entire ICE detention system (ACLU 2010; Lloyd 2007; Weaver 2008; Collister 2008; Flood 2009; Gamboa 2010; Carroll 2010). Part of the problem stems from the bureaucratic structure of the immigration system. In 2012 the Department of Justice (DOJ) implemented rules to prevent sexual abuse in federal and state detention facilities in accordance with the Prison Rape Elimination Act of 2003, which established a zero-tolerance standard for rape in prisons.[43] Those rules included stricter guidelines for hiring prison guards and a better system for reporting abuse when it occurs. However, neither the act nor the DOJ rules applied to noncitizen detention facilities, because they are overseen by DHS. The DHS attempted to remedy this shortcoming by initiating a process to develop standards to prevent,

detect, and respond to sexual abuse in immigration detention facilities (Department of Homeland Security 2012). However, the standards will only apply in facilities where they are actually implemented, and as the proposed regulations read now, the standards only take effect in facilities that are operated by non-DHS entities when contracts are created or renewed (American Immigration Lawyers Association 2013).

Detainees who are LGBT also face special problems in immigration detention. The *New York Times* reported the case of Delfino Quiroz, a Mexican national, who had been living in the United States while waiting for lawful status from a petition that his father, a U.S. citizen, had filed twelve years earlier. In 2010 Mr. Quiroz was caught driving drunk. His probation officer reported him to ICE, and ICE detained Mr. Quiroz in Houston, Texas. Mr. Quiroz, a gay man, was kept in solitary confinement against his wishes, ostensibly for his own protection from other detainees. While confined in solitary for four months, Mr. Quiroz overheard three other detainees attempt suicide and became depressed himself. He remembers praying, "Please, God, don't let me be the same." Mr. Quiroz was released from detention in March 2011, but many other lesbian, gay, bisexual, and transgender detainees are subjected to solitary confinement despite their objections and the widespread condemnation of the practice (Urbina and Rentz 2013).

A letter sent by a detainee described the more general medical problems faced by women in ICE custody:

> Medical care that is provided to us is very minimal and general. . . . If you do not speak English, you cannot fuss, the only thing you can do is go to bed and suffer. . . . We have no privacy when our health record is being discussed. . . . When we've complained to the nurses, we get ridiculed with replies like: "You should have made better choices. . . . ICE is not here to make you feel comfortable . . . our hands are [tied]. . . . Well, we can't do much you're getting deported anyway . . . learn English before you cross the border. . . . *Mi casa no es su casa.*". . . Our living situation is degrading and inhuman.[44]

Though the metaphor of the Soviet *gulag* used to describe the ICE detention system is surely strained, the frequent transfer of detainees to remote locations has given it a certain bite (Kanstroom 2012). Imagine what this is like for families. One day your husband, wife, parent, or child is simply gone. You frantically search for him or her in hospitals, with local police, or even in the morgue. If you are lucky, perhaps you get a call from the missing loved one. But noncitizens arrested by ICE can be held in any of the hundreds of facilities around the country. Many detainees do not even know where they are when they make initial phone calls. Detainees from Massachusetts, for example, have found themselves suddenly held in Batavia, New York,

Oakdale, Louisiana, or Texas. Reasons for transfers are almost never given, nor is prior notice often given to families or to attorneys, who often learn of such transfers long after the fact. Though ICE has explained such transfers as a result of a lack of local bed space, the system's apparent arbitrariness and lack of transparency have long raised suspicions that it is also used tactically to facilitate deportations.

Detention and transfers have real consequences for the outcome of cases. Lack of notice of hearings remains a significant problem. One deportee described how he had missed the ninety-day window to keep his appeal alive, even as the Supreme Court took up the very same issue, because he did not receive notice of a denied appeal. "They don't give you a chance," he said. "They move you around to try to lose you." Another put it in more graphic terms: "I think I got railroaded," he said by telephone from remote detention, about 150 miles southeast of Naples, Florida. "I'm in hell here" (Bernstein 2010b).

Many detainees, deprived of contact with family, friends, or even their lawyers, simply give in to despair and give up, even though they may have viable defenses. One attorney sharply described the system in 2010 as "a war of attrition" (Bernstein 2010b). Some have also alleged that transfers are used to punish those who complain about conditions of detention. An ACLU report cited a group of detainees who had written to the *Boston Globe,* alleging that they had been forced to submit to a strip search in front of other detainees (Bernstein 2008). After the story broke, two of the detainees were quickly transferred, after having spent months in their prior facility without incident. Cellmates of one of the transferred persons said that his bed remained empty for weeks after his departure. A detained person who was picked up by his neck and slammed against the wall by a guard in Boston was transferred to a jail in Vermont, where an ICE agent told him that he had been sent there "to cool things off." Another Boston detainee protested her detention because she believed her habeas corpus petition had been granted. She wrote a letter to the sheriff and was soon moved to York, Pennsylvania. She said an ICE agent told her that she was being moved so she would stop speaking out. It is hard to assess the validity of such complaints, but neither ICE's history of self-investigation nor the system's lack of transparency inspires great trust or confidence (Kanstroom 2012).[45]

For many years one of the most frustrating and scary aspects of ICE detention has been the inability of family members and lawyers even to learn the exact location of particular detainees. While traveling in Guatemala in 2008, Daniel Kanstroom attended a meeting of distraught women in Chimaltenango. They were the mothers, wives, and girlfriends of men who had been arrested in the Postville raids. Tearfully, one after another, they

begged us to help with a simple task: to find the men. We reassured them that, unlike their worst fears based on the history of Guatemala, the men would not "disappear" in the U.S. detention system. And yet it was hard to explain to them that we could not easily find out where they were, in whose custody, under what conditions, and with what prospects for release. This was a common problem. As one report described: "After an initial arrest, the ICE Boston Field Office has no information for the first few days. Days after a transfer, the . . . computers continue to show that the person is at the facility they have just left, even though that facility's records reflect that the person was picked up by ICE" (ACLU 2007; Kanstroom 2012).

Critiques of the deportation detention system have forced some reforms. The government has experimented with a variety of "alternative to detention" programs (ATDs).[46] The Vera Institute of Justice and Lutheran Immigration and Refugee Services have piloted several ATD programs in the past two decades, with a high degree of success. The pilot programs reported high immigration court appearance rates and predicted significant government savings. Nonetheless, ATD programs remain unexpanded and underfunded.[47]

The ATD programs currently in use commonly combine regular reporting with electronic monitoring and have been shown to be significantly less expensive than traditional detention while still effective. Some ATD programs cost as little as $12 per day per individual and can still yield an estimated 93 percent appearance rate before immigration courts (American Immigrant Lawyers Association 2008). Aside from reducing costs and mitigating concerns about compliance and appearance, ATD programs can lead to positive results such as reducing wrongful detention and respecting the human rights of noncitizens by addressing their welfare and liberty interests.

Despite these promising outcomes, DHS only permits the use of ATD programs for individuals who have already demonstrated that they are neither a flight risk nor a danger to their community—meaning that they are already eligible to be released on bond or on their own recognizance. Thus, as long as the statutory scheme of mandatory detention remains in force, the options are limited. Furthermore, DHS usually employs only the most restrictive ATD programs, such as electronic monitoring (American Immigrant Lawyers Association 2008). Methods such as telephonic reporting and home visits remain underused. Other community-based programs that involve case management, legal orientation, and access to counsel may also sustain high appearance rates in immigration court without employing devices that restrict liberty (National Immigration Forum 2012; Kerwin and Lin 2009).

In fall 2009 ICE implemented a series of other important detention reforms (Immigration and Customs Enforcement 2012a). The agency created the Office of Detention Policy and Planning—as well as an independent

Office of Detention Oversight—aiming for greater federal oversight, more specific attention to detainee care, and the design of a better overall civil detention system (2012a). ICE has also launched a public, Internet-based tool designed to assist family members, attorneys, and others in "locating detained aliens in ICE custody."[48] This is a major improvement, the adequacy of which remains to be seen.

In 2010 ICE announced plans to use new detention facilities that would operate under less penal conditions, including increased indoor and outdoor recreation, freedom of movement, and visitation with family. However, these plans affected only some 14 percent of ICE detainees (Human Rights Watch 2011). One such facility opened in Texas in March 2012. The Karnes County Civil Detention Center can house 608 male inmates and is the first ICE detention facility specifically designed under a less penal model. However, ICE intends to use Karnes only for detaining "low-risk" individuals who do not pose a flight risk or danger to the community (Chishti and Bergeron 2012). These are individuals who would otherwise seem to be prime candidates for release on bond. Thus the new plan could actually *increase* the number of noncitizens in detention. Of additional concern is that Karnes is operated by the private, for-profit corrections provider GEO Group. The system, in short, has been improved during the Obama administration, but major problems remain.

The increasing use of prosecutorial discretion may reduce the number of detainees. Decisions such as whether to charge an individual at all, to release an individual on bond, and to "administratively close" an immigration case can have major effects. According to an ICE memorandum, factors to consider include an individual's criminal history, the DHS's immigration enforcement priorities, the circumstances of the individual's arrival in the country, and whether or not the individual is pursuing education in the United States (Immigration and Customs Enforcement 2011b). However, prosecutorial discretion remains vastly underused. In late 2012 ICE identified only 9 percent of nondetained individuals as reviewable for prosecutorial discretion, with only 4,363 individual cases closed or dismissed as a result. Of detained individuals, ICE identified less than 1 percent as eligible for prosecutorial discretion (Immigration and Customs Enforcement 2012b).

CONCLUSION

Deportation and detention policies in the United States call to mind Hannah Arendt's biting observation, "It's true that you can't make an omelet without breaking a few eggs but you can break a great many eggs without making an omelet" (Nagel 1991). The harm caused by these experiments has

been palpable, wide ranging, and in many cases dreadful. The gains, however, have been very difficult to assess. For those of us who believe *both* in the best aspirations of liberal constitutionalism and in the more particular ideals of a "nation of immigrants," deportation compels hard thinking about the relationship between power and rights. We must ask hard questions about *how* such laws can legitimately work within the rubric of our best conceptions of the "rule of law" (Kanstroom 2012). A right of communities to self-determination may justify exclusion laws. However, such rights to exclude (and to deport) must be constrained. We are surely obliged, for example, to provide aid to others who are in dire need, even if we have no established bonds with them. When people are admitted as residents and participants in the economy, they are surely entitled to acquire citizenship on reasonable terms. When we consider the legitimate limits of deportation, the question is not only how deep the distinction between members and nonmembers may run (a question of equality and status rights), but also exactly how the distinction may be enforced. This is equally true of detention. As Anil Kalhan has noted: "Immigration detention has embraced the 'aesthetic' and 'technique' of incarceration, evolving for many detainees into a quasi-punitive regime far out of alignment with immigration custody's permissible purposes" (2010). This is simply unacceptable, and it must end.

Deportation laws, in sum, are a rickety, swaying bridge between what Mark Tushnet has called "the heart of liberal constitutionalism," the concern of which is the "acceptable distribution of rights, duties, and benefits *within* a liberal polity," and those laws that "define who is within the polity and who is outside it" (1998, 311). We should reject the indefensible allure of such brittle, formalist doctrines as "plenary power" and such dichotomies as a territorial "on/off" switch for rights. Then we may directly confront the question of the legitimate limits of deportation. This presents both a normative challenge and a pressing, tangible task for the legal system. It is, however, ultimately what law, justice, and fairness are about (Kanstroom 2012).

NOTES

1. Deportation is now technically known as "removal," a process that includes removal of both individuals from the interior and, in some cases, those who are caught at or near the border or a port of entry. Government statistics generally refer to the latter process as "return." It has also historically been called "exclusion."

2. The most important legislative changes took place in 1996, when two laws, known by their acronyms AEDPA and IIRIRA, reconfigured the U.S. deportation system. Among other features, the 1996 laws retroactively expanded many grounds for exclusion and deportation, created mandatory detention for many noncitizens, invented new "fast-track" deportation systems, eliminated judicial review of certain

types of deportation (removal) orders, discarded some and limited other discretionary "waivers" of deportability, and vastly increased possible state and local law collaboration with federal immigration enforcement. As a direct result of these laws, hundreds of thousands of people have been excluded and deported from the United States who would have been allowed to become or already were legal permanent residents and perhaps could have naturalized under prior laws. See Antiterrorism and Effective Death Penalty Act (1996) and Illegal Immigration Reform and Immigrant Responsibility Act (1996).

3. Budgets for immigration enforcement have increased steadily. From 2004 to 2010 more than $100 billion was spent on border control and enforcement (Haddal 2010). This figure combines appropriations from FY2004–FY2010 to the four agencies with significant border protection functions: Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), Transportation Security Administration (TSA), and the U.S. Coast Guard (USCG).

4. Though the best available statistics are far from perfect, involving some double counting and some recidivist border crossers, the numbers are still quite impressive. If we include "returns"—some of which are technically called "voluntary" and many of which occur at or near the border—we see a tenfold increase in total deportation events from 1961 to 1970 (when the totals were 101,205 forced removals and 1,334,528 returns); to 1971 to 1980 (240,235 forced removals and 7,246,812 returns); to 1991 to 2000 (946,506 forced removals and 13,588,193 returns); to 2001 to 2010, when the forced removal totals rose sharply, to 2,794,946, along with 9,378,880 returns. Simply put, the system as a whole is huge and continues to grow dramatically (Department of Homeland Security 2011). See also U.S. Department of Justice, Executive Office for Immigration Review (2011).

5. Immigration and Customs Enforcement (2012b). See *Zadvydas v. Davis* (2001).

6. Thus, one in five people in the United States is either a first- or second-generation U.S. resident (see U.S. Census Bureau 2009, 2010).

7. I was involved as a consultant to the defense team in Ms. Borges's case. Normally I would not use the real name of a client. However, her case has already been widely reported in the press (Kanstroom 2007).

8. ICE is part of the Department of Homeland Security.

9. Amy Otten, quoted in Emery (2003). Due to the extraordinary efforts of her primary counsel, Susan Church, Edna Borges was ultimately granted cancellation of removal and then released from DHS custody. As a result of her incarceration, however, Edna lost the ability to breast-feed her baby.

10. Indeed, the Reagan administration also developed a "contingency plan" to detain hundreds of thousands of undocumented aliens in the event of a national emergency, along with "alien activists" (Dow 2004).

11. On June 15, 2012, the secretary of homeland security announced that certain people who came to the United States as children and meet several key guidelines may request consideration of deferred action for a period of two years, subject to renewal, and will then be eligible for work authorization. Deferred action is a discretionary

determination to defer removal action of an individual as an act of prosecutorial discretion. Deferred action does not provide an individual with lawful status (U.S. Citizenship and Immigration Services 2013).

12. These metaphors were developed in Haddal (2010). See also Kanstroom (2012).

13. Some also note how fortresses tend to divide communities and local economies that rely on mobility (Frank 2008).

14. There are, of course, also many risks to international cooperative relationships. Thus the complex organism model envisions cooperative arrangements based on mutual economic and security interests that are "built on an underlying foundation of unilateral safeguards" (Haddal 2010).

15. As an Israeli military expert put it: "Unilateral methods [of border security] rely on the use of military or police forces by the national government without regard to activities by the neighboring countries. Borders become fortified zones with observation posts, defensive positions, physical barriers, and heavily armed response forces. Unilateral actions have limits and disadvantages. Military based solutions to border security often have the undesirable effect of increasing tensions between two neighbors. . . . Confidence, the key factor in a stable relationship, becomes difficult to build" (Netzer 1999).

16. Operation Rio Grande in Texas used floodlights, watchtowers, video surveillance, and infrared sights along more than thirty miles of border (Netzer 1999).

17. Actually, SBInet replaced two previous efforts: the Integrated Surveillance Intelligence System (ISIS) and the America's Shield Initiative (ASI). The ISIS program, established in 1998, sought to provide continuous monitoring of the borders. Due to contracting errors and lack of government oversight of the contract, ISIS was considered ineffective and was never completely installed. In June 2003 CBP began developing ASI to integrate surveillance technology, communications, and visualization tools while maintaining and modernizing ISIS. In 2005 ISIS was formally subsumed under ASI, an integrated, national web of border security with centralized command. It was created to strengthen U.S. ability to detect, intercept, and secure the borders against unauthorized immigrants, potential terrorists, weapons of mass destruction, illegal drugs, and other contraband. It also came to be seen as ineffective and wasteful (see Kerwin 2009).

18. But the system was plagued by problems and faced challenges from both the Left and the Right. In 2008 Republican Lamar Smith of Texas denounced the virtual fence as a failed "shortcut to border security" and asserted, "[T]he administration's 'shortcut' turned out to be a dead end" (quoted in Mikkelsen 2008).

19. See "At a Glance: Immigration" (2013).

20. Hsu (2010). See also "At a Glance: Immigration" (2013).

> President Obama believes that our broken immigration system can only be fixed by putting politics aside and offering a complete solution that secures our border. . . . President Obama recognizes that an orderly, controlled border and an immigration system designed to meet our economic needs are important pillars of a healthy and robust economy. . . . President Obama will protect the integrity

> of our borders by investing in additional personnel, infrastructure, and technology on the border and at our ports of entry. . . . President Obama will remove incentives to enter the country illegally by preventing employers from hiring undocumented workers and enforcing the law. . . . President Obama will promote economic development in Mexico to decrease the economic desperation that leads to illegal immigration.

21. As ICE stated in its strategic plan for 2010–2014: "Our primary mission is to protect national security, public safety, and the integrity of our borders through the criminal and civil enforcement of Federal law governing border control, customs, trade, and immigration" (Department of Homeland Security 2010a).

22. For an excellent, comprehensive overview, see Meissner et al. (2013)

23. Affidavit of B. L. G. (sworn statements taken by lawyers representing people who had been arrested for deportation during Operation United Front, New Bedford, Massachusetts, in 2007), reprinted in Sauter (2009, 9).

24. Affidavit of B. L. G. *Id.* at page 33.

25. Affidavit of K. G., *Id.* at page 34.

26. Constable and Aizenman (2007). Guthrie, as quoted previously, had put it this way in 1948: "They chase us like outlaws, like rustlers, like thieves."

27. (Leopold 2009). *Flores-Figueroa v. United States,* 556 U.S. 646. The law enhancing the sentence for identity theft requires proof that an individual knew that the identity card or number used belonged to another, actual person.

28. Under this federal program, managed by ICE, when an individual is booked into a jail, his or her fingerprints are checked against federal immigration-related databases to search criminal and immigration history. See Department of Homeland Security (2009) and Immigration Policy Center (2011).

29. See note 2. ICE does not have authority to detain noncitizens for criminal violations, but it does have authority, pursuant to the Immigration and Nationality Act, to detain during the removal process.

30. See Immigration and Nationality Act (1996).

31. *Demore v. Kim* (2003) (emphasis added).

32. USA PATRIOT Act (2001).

33. Schriro (2009). About half of all detainees were held in twenty-one facilities, including seven service processing centers (SPC) owned by ICE and operated by the private sector; seven "dedicated contract detention facilities" (CDF) owned and operated by the private sector; and seven "dedicated" county jail facilities, with which ICE maintains "intergovernmental agency service agreements" (IGSA).

34. Immigration and Customs Enforcement (2011a). The average length of detention was 30 days and 95 percent of detainees were held no longer than four months. However, about 2,100 people are detained by ICE for a year or more, most typically as they contest their deportation cases, or because ICE is unable to deport them for other reasons. There are legal limits to such detentions. See *Zadvydas v. Davis* (2001).

35. The three largest corporations with stakes in immigration detention today are Corrections Corporations of America (CCA), the GEO Group, Inc., and the

Management and Training Corporation (MTC). In 2010 CCA and GEO reported annual revenues of $1.69 billion and $1.17 billion, respectively, but because neither the corporations nor ICE makes the necessary data publicly available, it has so far not been possible to determine what percentage of these profits are attributable to ICE contracts. See Detention Watch Network (2011).

36. ICE supposedly distinguishes among "non-criminal aliens," "non-violent criminal aliens," and "violent criminal aliens." In practice, however, a recent government report conceded the fact—long known by many involved in the system—that "'non-criminal aliens' and 'non-violent criminal aliens' are frequently housed together, as are 'non-violent criminal aliens' and 'violent criminal aliens'" (Schriro 2009).

37. In 2012 the United Nations special rapporteur on torture criticized the United States for its reliance on solitary confinement in detention generally and called for a global ban on its use except in limited circumstances (Urbina and Rentz 2013).

38. Immigration and Naturalization Services (2000). The Detention Standards apply to SPCs, CDFs, and IGSA facilities holding detainees for more than seventy-two hours.

39. As the Detention Operations Manual puts it, "IGSA facilities may find such procedures useful as guidelines."

40. See, i.e., Human Rights First (2004); United Nations High Commissioner for Refugees (2006); National Immigration Law Center and American Civil Liberties Union (2007); Women's Refugee Commission and Lutheran Immigration and Refugee Service (2007); and Amnesty International (2003); ACLU (2007).

41. A 2007 Human Rights Watch report found that ICE failed to consistently deliver medication, conduct lab tests on time, prevent infections, provide access to specialty care, and ensure the confidentiality of medical care.

42. A 2008 report by the Office of Inspector General for the Department of Homeland Security (2008) stated that between January 1, 2005, and May 31, 2007, thirty-three immigration detainees had died in custody. However, the government had only investigated two of those deaths in detail.

43. Prison Rape Elimination Act (2003).

44. "The Female Detainees," Pinal County Jail, Florence, Arizona, letter to Christina Powers, Attorney, Florence Immigrant and Refugee Rights Project, January 2008; reprinted in Human Rights Watch (2009a). As the report stated, "Unfortunately, the system for providing health care to detained immigrants is perilously flawed, putting the lives and well-being of more and more people at risk each year." Due to a series of exposés about substandard conditions in ICE detention facilities, Congress included language in its FY 2009 appropriations bill that requires ICE to discontinue use of any facility with less than satisfactory ratings for two consecutive years.

45. In 2007 alone, ICE spent more than $10 million to transfer nearly 19,400 detainees (ACLU 2008).

46. In 2008 Congress directed ICE to develop a plan for the nationwide implementation of an ATD program.

47. The ATD programs are currently operated through a contract between ICE and BI Incorporated, a private company owned by the private corrections company

GEO Group. BI Incorporated runs two programs. The "full-service" program provides case management, supervision, and electronic monitoring, while the "technology-only" program uses GPS tracking and phone reporting only to manage persons in the program. According to the annual report of BI Incorporated, 93 percent of individuals enrolled in ATDs attended their final immigration court hearings, and 84 percent complied with final removal orders (Department of Homeland Security 2010b).

48. The ODLS, located on ICE's public Web site (www.ice.gov), provides users with information on the location of the detention facility where a particular individual is being held, a phone number for the facility, and contact information for the ICE Enforcement and Removal Office in the region where the facility is located. A brochure explaining how to use the ODLS is also available on the Web site in the following languages: English, Spanish, French, Mandarin, Vietnamese, Portuguese, Russian, Arabic, and Somali.

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3

Border Violence, Criminal and Structural: The Paso del Norte Region

Kathleen Staudt

The U.S.-Mexico territorial line, nearly two thousand miles long, has long been a place of violence, but also of resilience and multicultural, multilingual exchanges. Border theorists call the region a "hybridized" place, one with evidence of both scars from its division by two sovereign states (Anzaldúa 1987; Heyman 2012) and collaboration from its extensive traffic of people and commerce among the world's top trading partners, Mexico and the United States. The border states (four in the United States—California, Arizona, New Mexico, and Texas—and six in Mexico) contain more than eighty million people (Staudt and Coronado 2002), while the cities, towns, and settlements close to the border have approximately fourteen million people.[1]

In the last decade or two, the border (especially its Mexican side) has been famous for the narrative of criminal violence, especially associated with drug trafficking. Certainly it is also a place of what Johan Galtung once called "structural violence" (1969, 161–197; Farmer 2004, 305–317), given the enormous inequalities that exist within and between both sides of the border and the militarization of the border by both governments. Galtung focused on structural systems such as institutionalized racism, classism, and sexism, which prevented people from meeting their basic human needs. He called

such systems "avoidable impairments," a useful way in this chapter to conceptualize public policy flaws on both sides of the border and how they affect border people.

In this chapter I focus on both criminal violence and structural violence, giving special attention to gender (i.e., the social constructions of women and men). The public policies addressed include those related to economics and trade, immigration, health, and the environment. I also examine the "border security" policies, which ironically devote little attention to human security and everyday violence and insecurity. This chapter begins with an overview of the history of the U.S.-Mexico border region and the categorization of borderlands. Following that, analysis focuses on the structural violence embedded in the political economy of the border region. Special attention is paid to the Paso del Norte Metropolitan Region of more than two million people—El Paso, Texas, and Ciudad Juárez, Chihuahua—at the center point of the borderline. For the last two decades this area has been one of the most visible places of violence against women and sexualized killings, known as *feminicidio,* and against people in general, with its journalist tag since 2008 as the "world's murder capital city." However, this chapter also includes examples from the various, multiple borders of the U.S.-Mexico borderlands, given the wide range of settlements and environments from the Pacific Coast to the desert regions and tropical borderlands near the Gulf of Mexico. It closes with a discussion of the ways in which border people have responded to the violence, including involvement in social movements, nongovernmental organizations (NGOs) that increase awareness and seek policy changes, albeit complicated policy changes, given the existence of two sovereign governments in the U.S.-Mexico border region.

CHANGING BORDERLINES

The entire area now known as the southwestern part of the United States was once part of Mexico. In 1848, with the Treaty of Guadalupe Hidalgo, and subsequently in 1853 with the Gadsden Purchase, Mexico lost half of its territory through war, conquest, and purchase. Oscar Martínez is the premier historian of the region; his meticulous, detailed analysis shows the constant shift and political negotiation over the precise location of the borderline (2006). The most recent change in that line occurred in the early 1960s, with the negotiation over and channeling of a meandering Rio Grande (known as Río Bravo in Mexico), in the central borderlands of the Paso del Norte region, under the Chamizal Agreement. The loss of valuable land, minerals, and ports through conquest and sale could be considered a foundation on which structural violence is embedded, given the inequalities between the two countries

and the border frontier/*frontera* spatial location, which has marginalized its people, except for federal government investments in policies to control and "secure" the border, with long-term impacts on border people.

In another contribution to border studies, Martínez developed categories for comparative borderlands studies (1994). He proposed four categories with which to conceptualize borderlands: alienated, coexistent, interdependent, and integrated. For most of the twentieth century, given the constant interaction and trade between the United States and Mexico, albeit amid asymmetrical relations of inequality, Martínez labels the borderlands "interdependent." Moreover, with the U.S. Immigration and Control Act of 1986 granting amnesty to approximately three million unauthorized immigrants who could prove residency and the subsequent entrance of many millions of unauthorized entrants during the 1990s and thereafter, fleeing the poverty and structural violence of Mexico and elsewhere, the U.S. Southwest became a region with increasing numbers of "Hispanics" in the population, citizens and noncitizens. The latter face various risks and variation in how state government policies shape their lives and opportunities in, for example, obtaining drivers' licenses and quality bilingual education for children (Staudt 2008b, 291–313). In the early 1990s several border blockades aimed to inhibit migratory movement in the urban areas of El Paso (Dunn 2009) and south of San Diego, channeling migrants to unpopulated desert regions where people perished during the crossing from dehydration, bandits, and feckless guides known as *coyotes.*[2] Each year hundreds of bodies are found in the deserts, especially in the Arizona-Sonora region. Moreover, U.S. vigilante groups, known as the Minutemen, also pose threats to undocumented crossers. As scholars show, variations exist among groups, whose leaders use not only nationalist discourse, but also critiques of U.S. bureaucratic inefficiency (Doty 2009; Eastman 2012). Militia groups like these are also examples of structural violence.

Despite what Galtung calls "avoidable impairments," considerable interaction occurs among people and the trade of goods at the border. People cross the border in droves, as pedestrians and in cars and trucks that facilitate the transportation of goods back and forth across the border: from the massive multiple highway corridors at Mexico's northeastern and Texas's southern border; at the central borderlands of the Paso del Norte region, with more than three hundred export-processing factories known as *maquiladoras* in Ciudad Juárez and near-quarter-million *maquila* workforce; equally large numbers of employees and factories at the Pacific Coast of Tijuana; and smaller numbers in interdependent communities in between, such as Mexicali and Nogales. For the central borderlands of El Paso and Ciudad Juárez alone, the Department of Homeland Security (DHS) Customs and Border Protection's (CBP) most

recent figures, from fiscal year 2011, show annual northbound crossings totaling 26.6 million persons (U.S. DHS 2011). These crossings are safe and legal, but times-consuming and burdensome.

STRUCTURAL VIOLENCE: AVOIDABLE IMPAIRMENTS IN POLICIES AND PRACTICES

Considerable cross-border trade has occurred throughout the border region's history, but the global economy and its focus on free trade policy increased trade markedly in the 1960s. Mexico established the Border Industrialization Program, and the United States cut tariffs on partially processed production. With the 1980s, General Agreement on Tariffs and Trade, enhanced even more by the North American Free Trade Agreement (NAFTA) in 1994, the border became a magnet for *maquiladoras,* which took advantage of lower production costs. In the early decades the predominant workforce was female, mostly girls and young women.

A combination of low labor and transportation costs make Mexico a wise investment for the mostly U.S., but also Canadian, Japanese, French, Belgian, and German, factories, especially coupled with the rise in Chinese manufacturing wages (*Economist* 2012; Fuentes and Peña 2010, 1–19). Mexico's legal minimum wage amounts to approximately US$4 per day (in contrast to the U.S. legal minimum wage of $7.25 per hour). The existence of formal employment with benefits draws migrants from Mexico's interior to the northern border, where they find higher living costs than in the interior. Structural conditions like these increase motivations for economic migration to the United States.

After the New York Twin Towers and other tragedies of September 11, 2001 (known as 9/11), the U.S. government put stronger controls in place that linked terrorism, immigration, and drugs (Payan 2006; Staudt 2009, 1–27). Conservative politicians introduced and passed strident and racist anti-immigration laws, such as Representative Sensenbrenner's H.R. 4437, as did various states (such as Alabama and Arizona), which involved racial profiling and everyday harassment. Yet criminal violence on the U.S. side of the border was and is minimal and lower than in mainstream America;[3] each year, the Congressional Quarterly Press shows El Paso and San Diego to be in the top ten safest cities as measured by serious felony crimes reported to the FBI.

Using the rhetoric of border security and overall securitization to justify increased staff, budgets, and control by the Department of Homeland Security (DHS) over an increasingly militarized border, conservative U.S. politicians polarized the border with the passage of the Border Fence Act of 2006, spending extensive revenue to add to and build approximately eight hundred

miles of fence (known by critics as walls) along the almost two-thousand-mile border. Many undocumented people, including children who came to the United States, have been caught in a web of fear, as "Secure Communities" programs—which involve negotiated agreements with local law enforcement to check names of authorized and unauthorized entrants through databases when residents are charged with civil and criminal offenses—have spread, thus creating a less visible "border" in any and all encounters between immigrants and law enforcement officers. María Hinojosa's (2011) chilling documentary *Lost in Detention* shows how DHS meets congressional budgetary targets of 400,000 deportations annually by deporting those charged with minor civil offenses (i.e., switching driving lanes without signaling), resulting in what in U.S. bureaucratic terms is called "collateral damage" when families are separated, breadwinners leave, and U.S.-born children leave the country for uncertain futures. According to a *New York Times* article by Damian Cave (2012), 300,000 U.S.-born citizen children moved to Mexico between 2005 and 2010. The DREAM Act and much-needed immigration reform still have not passed Congress and been signed into law by the president (outside of a temporary administrative measure in 2012 for DREAMers, i.e. children brought to the United States by their undocumented immigrant parents). The structural violence of these measures should be obvious.

Criminal Violence

When one looks at the history of northern Mexico and especially Ciudad Juárez, extensive everyday criminal violence is highly visible. In the early 1990s a pattern of sexual violence and murder became evident, with more than 370 women murdered over a ten-year period, according to government sources, NGOs, and international NGOs such as Amnesty International (2003) (Staudt 2008a). The grisly, sexualized torture involved in the murders became a preview for outlier murder rates thereafter, especially of men in 2008 and subsequent years. Murder rates, once at 200–300 per year in a city of approximately 1.5 million, jumped to 1,600 in 2008, 2,600 in 2009, and 3,100 in 2010, with diminishing numbers in 2011 and 2012.[4] More than 10,000 people have been murdered during this time period, some by competing organized criminals over drug-trafficking routes (*plazas*) to the high-profit U.S. drug consumption market, and others by Mexican military and federal police forces in a city and country characterized by long-standing impunity and human rights abuses by corrupt law enforcement institutions (Human Rights Watch 2011). Few crimes are investigated and prosecuted, although Mexico's Congress passed criminal justice reforms in 2008, giving states (in this federal system of government) until 2016 to implement reforms, albeit without incentives and resources (what in the United States would be called

"unfunded mandates"). Law enforcement operates with almost total impunity, meaning that crimes are rarely investigated, much less prosecuted. Many victims do not bother to report crimes to the police, not only because of their perceived ineffectiveness, but also because of fears that some police officers are criminals themselves (or work in complicity with criminals).

Mexico also exhibits a reality of structural violence. Low wages and poverty contribute to crime, and people have fled criminally violent border cities for other parts of Mexico and into the United States, to an uncertain welcome.

Migrants' Journeys: Unauthorized, Criminal, and/or Political

Both researchers and nonprofit organizations that assist immigrants and asylum seekers collect testimonies of their experiences. Mexican asylum seekers are the second-largest group (after Chinese), but only 1 percent of their asylum applications are granted, a declining percentage, according to the U.S. Department of Justice Web site (2012). Mexico and the United States enjoy cooperative relations, with the latter providing support for the drug war of former President Felipe Calderón (2006–2012) under the Mérida Initiative, including more than a billion dollars in technology, software, and other assistance. If more asylum requests were granted, the process would no doubt call into question the successes that both countries report in fighting drug wars (the most common confiscation is marijuana, a major mainstay of cartel profiteering), according to the DHS Customs and Border Protection annual figures for 2011 in the El Paso sector (U.S. DHS 2011; Payan, Staudt, and Kruszewski 2013).

In addition to the violence associated with supplying the U.S. demand for illegal drugs, the violence of migrants' journeys is also noteworthy, as is the structural violence from which they flee. Olivia Ruiz has analyzed women migrants' experiences with sexual violence at both of Mexico's borders (with Guatemala and the United States), which she deems magnets for violence, given the differing law enforcement systems and the ease of crossing in unpopulated or corrupted spaces (2009, 31–47). Alberto Martín Alvarez and Ana Fernández Zubieta provide gender-disaggregated data on crimes that migrants are subjected to by police, bandits, and railroad guards, a violence that they can hardly report, given probable delays, interaction with corrupt officials, and charges against themselves if they are unauthorized Central Americans on Mexican soil (2009, 48–62). Anna Ochoa O'Leary has analyzed testimonials from women migrants who were halted prior to crossing at the Sonora border with Arizona. Women fled violence in their home communities, and they face constant risk on the journey from sexual predators

and bandits (including law enforcement officials) (2009, 85–104). More recently the outbreak of violence in northeastern Mexico between the Gulf cartel and Los Zetas, interacting with Mexico's military and federal police, makes that migrant corridor particularly dangerous. The risk of being murdered is a grim possibility, but when more than seventy migrants are found in mass graves, as happened in northeastern Mexico in 2010, headlines are generated, evoking the image of chaos and mayhem in the "Othering" of Mexico and Mexicans.

Testimonials

Personal stories often reveal more than statistics, numbers, and other research. Sister Phyllis Nolan worked for the El Paso–based nonprofit organization Las Americas Immigrant Advocacy Center for almost three years, both with unaccompanied immigrant children and with adults who were seeking asylum. Although lacking adequate resources to respond to all cases, Las Americas provides some legal assistance (as does the Diocesan Migrant and Refugee Center), advice to those who wish to represent themselves, and/or contacts with lawyers who may take cases on a pro bono basis. Sister Nolan provides examples of diverse cases, including the following individual:[5]

> A young man we will call Bill resisted recruitment into a gang, and was punished for that by the brutal murder of his sister. Several of the offenders were members of government forces. Bill continued to resist, then escaped his country. After detailed and well documented evidence of his experiences, he has been denied asylum by an Immigration Judge. Why? The law requires that the persecution a person suffers be initiated by the government of his/her country or that it be from forces they cannot or will not control. Since no one involved acted "in the name" of the government which claims to try to control drug dealers, Bill's persecution does not meet the requirements for asylum.

As someone who has conducted research about violence against women in Mexico, I have written expert affidavits and given testimony in immigration courts, the harshest judgments of which occur in the border city of El Paso, with its high denial rates. Following is a summary of a case in which I testified, with the name of the asylum seeker changed:

> Lisa is a targeted young woman in a targeted family in a southwestern state of Mexico. After a corrupt state police commander and his gang kidnapped her father, who is likely dead, raped her mother, framed and jailed her brother, and murdered the uncle who gave her and her mother refuge when they fled to Mexico City, Lisa was next. Lisa requested asylum at the northern border. The next stop was the detention

facility, otherwise known as prison, complete with uniforms, dollar-a-day kitchen duty, and officially dispensed anti-depressant drugs for her to mourn the family deaths and losses as Lisa waited a year for her delayed hearings. The rookie DHS lawyer had a heavy caseload, with a pile of numbered documents recycled from case to case filled with evidence of Mexico's laudable signatures on international human rights treaties. Some of her paper documents supposedly "proved" that Mexico ran successful witness protection programs and had made promising attempts to clean up law enforcement, yet her other documents from the U.S. Department of State undermined that proof. The Las Americas lawyer had documentation from witnesses, newspaper articles, and 22 accusations of human rights abuses from the state Human Rights Commission (resulting in promotions for the Police Commander). Lisa's case was denied.

In yet another example, Mark Lusk and Griselda Villalobos interviewed refugees, including Eva (a pseudonym), who "stands out as the most eloquent and poignant expression of injustice, suffering, fear, and invisibility"(2012). According to the authors, Eva had been a middle-class attorney who entered the United States with her two children on temporary visas after threats of violence, potential and actual, and ultimately her brother was beaten to death. Her reports to the Juárez police led to threats on her life. To pay the rent and food, she found a minimum-wage job in the United States after being victimized by wage theft several times, and she drives without a license in order to work. Lusk and Villalobos quote from her testimony:

> We cannot even go out on the streets freely. . . . [W]ithin our hearts is the fear that any infraction or minor imprudence could provoke our deportation. . . . I have seen very, very much ignorance among people over here . . . of the other side of the story . . . who cannot imagine the suffering of a person. . . . You cannot understand what is happening in our country because it is impossible to understand if you don't know our stories . . . or perhaps they are simply indifferent or it does not matter to them. . . . We are not animals, we are humans who perhaps have had the misfortune of being born in a country that does not respect human rights and which does not honor the rights of its citizens.

Texas, like most states, makes it almost impossible for unauthorized people to obtain drivers' licenses after legal changes enacted since 9/11. As a lawyer, Eva knew and wanted to respect the law, but needed to work and travel to her job. Lusk and Villalobos note that she "has a sense of foreboding and occasional panic attacks." They name this phenomenon, one among dozens of stressors and mental health illnesses that asylum seekers acquire, "deportation panic."

The stories of refugees and asylum seekers document the structural violence surrounding people in both countries. In Mexico, the "rule of law" barely exists, whereas in the United States, the laws and their enforcement seem to

be purposefully designed to deny Mexican asylum seekers, given the mutual foreign policy cooperation that exists between officials in the capitals of both countries.

Avoidable Impairments: Structural Violence in Public Policies

From statistics alone, the borderlands present a grim picture of everyday life for residents—a life emblematic of structural violence. As Nuria Homedes summarizes about the U.S. side of the border, the per capita income in border counties in 2007 was "two-thirds the average national income (US$26,845 v. 39,013), the percent of residents living in poverty was almost twice as high (25.2% v. 13%), the levels of educational attainment were lower, and unemployment rates were higher" (2012, 127).[6] Border outlier locations are present, with San Diego County income well above the border norm and income in several south Texas counties well under it. As Homedes cites from a Border Counties Coalition report, if the border was the fifty-first state, "it would have 'the lowest level of health and wellbeing in the United States'." Similarly, the former Texas comptroller of public accounts, John Sharp, produced a study called *Bordering the Future,* which compared the rank order of forty-four Texas border counties in tables and showed that if that area were the fifty-first state, it would rank number one in poverty, limited education, and a whole slew of indicators that are amenable to policy changes (Homedes 2012, 128). On the other hand, Eva Moya and others note the research on the "immigrant advantage" and "Latino paradox," whereby persons from those groups "have better health and mortality outcomes than the average population despite generally low socioeconomic status" (Moya, Loza, and Lusk 2012, 163).

In contrast, focusing on northern Mexican communities that border the United States, socioeconomic conditions are better than in mainstream Mexico, exhibiting higher average incomes than the rest of Mexico and lower rates of infectious diseases (Homedes 2012, 128). However, sharp contrasts exist between law enforcement systems when comparing both sides of the border, as the previous section on criminal violence outlined. In northern Mexico police operate with almost total impunity, rarely investigating and prosecuting crime, as has been found in studies all over Mexico;[7] many residents do not bother to report crime, thus influencing reported rates. Insecurity and high murder/injury rates also contribute to health problems or the lack thereof. Staudt and Robles Ortega did comparative research on domestic violence, finding that most victim survivors are women and that the practice is underreported in both cities of the Paso del Norte region. It is a crime of low priority to Mexico's municipal police force, resulting, tragically, in domestic violence deaths (Staudt and Robles Ortega 2010).

From an epidemiological perspective, one must recognize that environmental and social forces contribute to public health problems. On both sides of the border, people live in unplanned settlements without access to safe water and sewer services. On the U.S. side, these unplanned settlements are known as *colonias,* and they have high rates of uninsured residents (May 2010). Even in planned settlements, such as U.S. cities and Mexican municipalities, lax federal and/or state environmental regulations have allowed dirty industries to pollute the air and contaminate soil and water (Grineski and Juárez-Carrillo 2012). This is especially problematic in northern Mexican cities, as zoning regulations (or the lack thereof) have allowed industries to locate close to where people live. Dangerous industries are located at the border, such as the Belgian-owned Solvay Corporation, which produces hydrofluoric acid (readers may remember the Bhopal, India, tragedy of the 1980s) and other cancer-causing pollutants, all part of the "the global transference of risk" from richer to poorer countries (Grineski and Juárez-Carrillo 2012; Morales, Grineski, and Collins 2011).

In a state that prides itself on limited government, including the regulation of pollution, the Texas Commission on Environmental Quality (TCEQ) appears to provide more protection to businesses than to residents (Jillson 2012). A 2012 National Institutes of Health (NIH) funded community-based research project studied a random sample of *colonia* households in northwestern El Paso County, located next to a half-century-old steel plant that is now a multinational recycling facility. The Industrial Areas Foundation (IAF) community organization, which challenged TCEQ's license renewal for the plant, finally secured a technical report with baseline data in order to monitor pollution emissions annually, but only after TCEQ permitted allowable limits to increase by fourfold from the baseline (Staudt, Márquez-Valderde, and Daneel 2013). The situation was far from ideal, but it put the largest steel plant in the world on notice that organized people can exert some control on formerly limitless pollution emissions in a state where government is aligned with business interests.

Health policies differ markedly on both sides of the border. In the United States, until the Affordable Care Act (ACA) of 2010, no principle of universal coverage existed; the implementation of this principle will go into effect in 2014 with a complicated system of subsidies, penalties, and continued reliance on private, for-profit insurance companies. As this chapter is being written, Governor Rick Perry of Texas refuses to cooperate with the Medicaid provision of the ACA, despite the guarantee that the federal government will contribute more than $9 of every $10 for its implementation. Health care for undocumented people will remain problematic even after the health care law is reformed, resulting in the use of expensive hospital ER (emergency room)

facilities when crises occur, rather than preventing many health crises from occurring in the first place.

In the United States until recently, citizens' access to health care depended on a wide array of fragmented coverage, whether private insurance available to formally employed workers or public access through Medicare and Medicaid. According to Homedes (2012), the Health Resources and Services Administration (HRSA) designated most border counties as "medically underserved," with shortages of physicians, high mortality, and a high level of poverty. From the U.S.-Mexico Border Health Commission report of 2010, she provides figures comparing the rates of health professionals per 10,000 people in U.S. border counties to the United States in general, with telling figures such as 16.3 physicians per 10,000 versus 26.1 per 10,000, respectively (2012, 131). Many impoverished U.S. border residents cross the border for health care and far less expensive pharmaceuticals in Mexican communities. Mexico provides universal coverage to residents through a variety of programs, but most comprehensively through *Seguro Popular,* passed and federally funded in 2011 and administered by state governments in a system similar to U.S. Medicaid (Homedes 2012, 129). Border crossers live insecurely, with fragmented, irregular, and uncoordinated provision of health care.

Border Security: National and Human Approaches

The picture this chapter has painted thus far is of the borderlands as a place with many human insecurities relating to public safety, public health, and income. Two decades ago the United Nations outlined a human security approach to policy making that attended to people's health, food, and shelter needs; all of these problems are "avoidable impairments" that produce structural violence. At the border, both governments give far more priority to a national border security paradigm that aims to control immigration and drug flows (however ineffectively) and to prevent terrorism, the latter of which is addressed in the mainstream and its less-visible borders everywhere. Ultimately these strategies reflect different budgetary priorities and therefore political priorities (Staudt 2009; Payan 2006).

Under the militarized border security agenda—visibly begun with Border Patrol–instituted border blockades in the early 1990s in San Diego and El Paso, but strengthened in earnest after 9/11, when the Department of Homeland Security (DHS) became a mega-agency—the number of what were formerly called Border Patrol agents, but are now ICE (Immigrations and Customs Enforcement) agents, increased fourfold. It should be recognized that agents face dangers and challenges and do not all behave alike or exhibit the same characteristics, ranging markedly from honest to corrupt

and from rigid to flexible. Agents implement problematic laws and deport criminals and noncriminals (civil offenders) alike in order to fulfill deportation targets set by the U.S. Congress, to sustain or increase their DHS budget allocations. Immigration reform is long overdue, still debated in a polarized U.S. Congress in 2014, and awaiting verification of "border security" despite the Southwest border cities' ranking among the top ten safest cities. Exceptions to this situation exist, perhaps mostly in the deserts of southern Arizona, where agents and migrants alike face perils.

BORDER VOICES: RESILIENCE AND RESISTANCE

Although the title of this chapter and its content may create a sense of doom and gloom among readers about many "victims" of structural violence and the public policies that reinforce such violence, it is important to discuss the resilience and creativity of border residents in dealing with this situation. Border people in the United States, despite a history of quiescence under assimilationist linguistic and cultural policies,[8] have begun to participate more in politics, vote at higher rates, and serve in policy-making elected and civil service positions. In the 1980s, with the move from at-large to district-based local elections, many more Mexican-heritage people won electoral victories in city, county, and school boards in the U.S. Southwest. In northern Mexico, long dominated by the PRI (Partido Revolucionario Institucional), pioneering opposition party candidates began to win elections at the municipal and state levels, thereby bringing about the sort of competition that could increase transparency and accountability in government. In their civil society organizations, border people display agency in business, environmental, feminist, human rights, educational reform, and antimilitarization groups (Staudt and Coronado 2002; Lusk, Staudt, and Moya 2012). Hundreds of effective nonprofit organizations, though many struggle for revenue and financial resources, provide advocacy, service, and representation to border people in the areas of health, legal assistance, shelter, civil rights and immigration reform advocacy, and addiction treatment.

In northern Mexico, *asociaciones civiles* (called "registered nonprofit organizations" in the United States) have emerged in communities. Noteworthy among many are the women's networks, social movements, and organizations that struggle against violence toward women and police impunity (Staudt 2008a; Staudt and Méndez 2014). These organizations have made alliances with antimilitarization forces and oppose the drug-war violence that wreaks havoc on Mexico. Scholars and groups have challenged the ineffective, forty-year U.S. drug war, which costs billions annually and has resulted in what some estimate to be more than 100,000 murders

throughout Mexico during former President Calderón's administration, 2006–2012 (Staudt and O'Rourke 2013). The Federación Mexicano de Asociaciones Privadas, A.C. offers health clinics and nonprofit hospitals in northern Mexican cities. Noteworthy among these efforts is cross-border collaboration, despite the obstacles to solidarity posed by the lengthy delays of border crossing in the post-9/11 era and the challenges of activism under two separate sovereign governments.

Multiple civil society organizations also operate in more traditional fields, including chambers of commerce on each side of the border and binational business groups. Some of these groups have especially strong voices in local and state governments, even acquiring subsidies from their governments, which are eager to create jobs (even if those jobs are low-paid, minimum-wage positions).

Notable achievements have been made as organized groups have engaged with local and state elected officials, developed relationships with them, and held them accountable in elections. Among these are community-based organizations such as the Border Network for Human Rights and the Industrial Areas Foundation (IAF) affiliates, found throughout the southwest. In El Paso these organizations successfully halted the county sheriff checkpoints that had resulted in the deportation of approximately eight hundred residents over a three-month period in 2008 (Staudt 2008b). Given their interest in plentiful, low-cost labor and greater demand for consumer goods and the multiplier effect on the economy that immigrants provide, business organizations often quietly lobby the anti-immigrant legislators.

The next generation of voters and activists bears watching for changing the party dominance of states and strengthening the Latino vote. In 2012 Latino voters made a difference in swing states with close margins in elections. However, public schools are caught in an excessive standardized-testing business model, which deters critical thinking, curiosity, and graduation rates for those who fail standardized tests over and over. In some states curricular material about Mexican Americans and Mexico has been erased from "standards" or was never in the curriculum in the first place. Many who do not pass standardized tests are Spanish-speaking English language learners (ELLs), who take English-language standardized tests in middle and high school before they are prepared in content knowledge (Staudt and Méndez 2010; Méndez and Staudt 2013). Such testing might be labeled a form of structural violence. However, promising educational practices exist, such as locally decided support structures for Spanish-speaking students of Mexican heritage to practice "service learning," which engages them in applied learning in their communities (Dow and Staudt 2012).

From "Avoidable Impairments" to Social Justice Policies

This chapter has focused on structural violence in crime and public policies, which Johan Galtung has called "avoidable impairments." Public policies, as practiced in the borderlands, create a vicious cycle of poverty, vulnerability, and violence, the latter especially as a result of the flawed drug wars and the impunity of law enforcement, particularly on the Mexican side of the border.

If border and mainstream residents work to reduce these avoidable impairments and change public policies through organized action in politics, then the kinds of conditions outlined in this chapter can change. That sort of action requires a deeper democracy that is free of obstacles to free speech, free association, and threats or intimidation for those who seek involvement in public affairs. Just as important, that action requires people who are willing to invest time and resources in creating a more prosperous and just binational society at the borderlands.

NOTES

1. The borderlands are viewed as constituting one hundred kilometers from the territorial line, based on the La Paz agreement of 1983.
2. On the range of *coyotaje,* see Spener (2010).
3. I recognize that the word and identity "America" could be used in the entire Western Hemisphere of North, Central, and South America. Despite its U.S. usurpation, I use the term in popular U.S. parlance.
4. Regional murder figure totals come from various sources, including *Diario de Juárez,* disseminated in the large fronteralist listserv and from Mexican government sources, which have shown the city and the state of Chihuahua to be the worst outliers in murder rates for 2008 to 2011. See discussion of sources in Staudt and Méndez (2014).
5. Unpublished document by Sister Nolan, June 13, 2009 (on file with Staudt).
6. Homedes (2012) draws from the U.S.-Mexico Border Health Commission report of 2010.
7. Staudt (2008a, ch. 5). In Staudt (2009), theft rates in Ciudad Juárez are extremely low compared to El Paso, attributable to low reporting rates.
8. See, for example, Romo (2005) about the 1893–1923 period and its aftermath of segregation, intimidation, and censorship of free speech in Spanish.

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4

Human Trafficking and Coerced Labor

Kathryn Farr

"I felt I was in darkness with no hope," the woman told a state task force investigating human trafficking and coerced labor in California. "Esperanza" testified that she had accepted a recruiter's offer of a good job and housing in Los Angeles. Once he had taken her across the border, her trafficker told her for the first time that she would be working in a garment factory and that her pay would go toward a trafficking debt of $2,500. In the factory, where she was also forced to live, she worked fourteen hours a day. In spite of the trafficker's threats of harm to her and her family should she go to the authorities, Esperanza eventually did escape and cooperated in the prosecution and eventual conviction of her trafficker. However, he was sentenced to just six months of house arrest, after which he went to Esperanza's family's home in Mexico to find her. She says she still lives in daily fear for her safety and that of her family (California Alliance to Combat Trafficking and Slavery Task Force 2007, 51).

In many ways Esperanza's experience typifies the scourge of cross-border human trafficking into coerced labor in the United States. Most commonly, traffickers recruit women and men from poor, developing countries with a promise of a legitimate job and decent living conditions in the United States; frequently they are not told of a sizeable trafficking debt they have "incurred"

until after they have arrived at the trafficking destination. Alone in a foreign country, they are isolated, threatened, and often beaten as they labor long hours under grueling conditions with little if any pay. Some do escape their enslavement, but few actually report the crime against them, and far fewer achieve justice through a trafficker's conviction. Even those who do, like Esperanza, are likely to find life ahead a struggle requiring exceptional courage and some luck.

This chapter examines human trafficking and coerced labor to and within the United States, including a look at legal definitions and social constructions of trafficking that impact its contours, the extent and geography of trafficking and coerced labor, factors that contribute to trafficking and that shape the trafficking industry, and strategies to combat these exploitative trades. The focus is on cross-border rather than domestic trafficking.

LEGAL DEFINITIONS AND SOCIAL CONSTRUCTIONS OF HUMAN TRAFFICKING

Human trafficking in the United States was federally codified in the U.S. Trafficking Victims Protection Act (TVPA) of 2000 (followed by edited reauthorizations in 2003, 2005, and 2008). The TVPA identifies two categories of "severe forms of trafficking in persons." The first comprises "sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age" (Pub. L. 106–368, 114 Stat., Sec. 103: 1470 [8,A]). Note that if the victim is a minor, the element of coercion is not necessary for the inducement to qualify as trafficking. The second, using language similar to that in the United Nations' 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, refers to "the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery" (1470 [8, B]). The privileging of sex trafficking as a distinct category is reinforced in the "Purposes and Findings" section (Sec. 102 [a]: 1466) of the TVPA, where it is noted that trafficking is a "contemporary manifestation of slavery" in which the victims are "predominantly women and children," and that many of these victims are enslaved in the "sex trade, often by force, fraud, or coercion" ([b, 2]). While the "Purposes and Findings" section goes on to point out that human trafficking is not "limited to the sex industry" ([b, 3]) sex trafficking is referred to as the modal trafficking crime in sections to follow.

Also influential in shaping this discourse has been the work of self-described (prostitution) abolitionists, including radical feminists such as Donna Hughes (2000) and Kathleen Barry (1995), who argue that prostitution constitutes

violence against women. Countering the view of other feminists (see Davidson 2010; Augustin 2007; Doezema 2002) that sex work is a choice for some women and that the rights of sex workers should be protected, the abolitionists see all women in the sex industry as "prostituted women"; in other words, as enslaved victims. From this latter perspective, rescuing prostitutes and abolishing prostitution itself are essential parts of the fight against sex trafficking. This abolition stance has surfaced in various punitive U.S. policies and laws that withhold aid from antitrafficking groups or agencies (in the United States and abroad) that fail to adopt a strong antiprostitution stance. The intertwining of trafficking and prostitution is reinforced in media accounts and is also reflected in a law enforcement focus, especially at the state level, on the domestic prostitution of minor girls (Farr 2012). Like the UN protocol, the TVPA does not consider the movement of people a necessary condition for a crime to qualify as trafficking as such; virtually any young girl who is brought into prostitution by any other person can be considered a trafficking victim, and anyone who recruits, harbors, or obtains her is a trafficker. Thus, what was until recently thought of as a minors-in-prostitution problem has increasingly come to be seen as a, if not the, major U.S. human trafficking problem.

Chuang (2010) argues that the construction of trafficking as the forcing of women and girls into sexual slavery by "social deviants" is a "reductive narrative" that ignores the complexity and scale of the trafficking problem and of the trafficking industry itself. Penttinen (2008) also eschews such reductionist thinking, pointing out that that there is no single, stable trafficking subject because of the diversity and complexity of migratory experiences. Yet trafficked persons are frequently dichotomized as either "innocent victims" (forced into enslaved prostitution) or "guilty migrants" (trying to enter the country illegally) (Chapkis 2003). A hyper-focus on the sex trafficking of young American girls, as well as the criminalization of migrants, can overshadow the enormous problem of cross-border trafficking of foreigners into coerced labor here (Brennan 2008).

Yet another definitional effort to determine victim legitimacy involves the distancing of human trafficking from human smuggling: that is, a would-be migrant who pays another to help with her or his illegal entry into the country is said to be partaking in smuggling and thus is *not* a trafficking victim. However, some have begun to reexamine this distinction, pointing out that the line between trafficking and smuggling is fuzzy and disputable (American Bar Association 2009; Haynes 2009). To begin, what may start out as a smuggling arrangement sometimes turns into trafficking. With more restrictive immigration policies and more intensive U.S. border patrols, migration (particularly across the southwest border with Mexico) has become riskier and more dangerous. Would-be migrants to the United States are

more vulnerable to smuggler-traffickers, who agree to bring them into the country for increasingly higher up-front fees, then force them to work off an inflated smuggling debt through prostitution or other enslaved labor, either while they are on their journey or after they have arrived in the destination country, or both. That is, human smugglers appear to be taking advantage of the profitable debt bondage system long used in the human trafficking, especially sex trafficking, industry (Haynes 2009).

In other situations, traffickers abduct would-be migrants as they try to make their way to the United States. Illustrative is the experience of two would-be migrants from Guatemala, a young woman and her brother who hoped eventually to cross into the United States. As they traveled north through Mexico they were stopped and brutally assaulted by members of Los Zetas, a well-known violent Mexican drug cartel; the attackers kidnapped the young woman and drove her to the U.S.-Mexico border, where they prostituted her for over two months before she was able to contact her brother, with whose help she was eventually rescued (McAdams 2009). This situation is far from unique; in fact, estimates suggest that of some 400,000 annual Central American migrants to Mexico (most of whom are headed north to the United States), as many as 20,000 fall victim to kidnapper-traffickers in Mexico (International Organization of Migration 2012; McAdams 2009).

Finally, definitional clarity is sometimes lacking regarding the various terms used to address the nature of labor exploitation, such as *trafficked labor*, *coerced* or *forced labor*, and *enslaved labor*. As treated in this chapter, *trafficked labor* follows the definition in the UN protocol or the TVPA, emphasizing the use of fraud, coercion, or force to profit from another's labor. While a distinct element of human trafficking per se is a transaction, the issue of consent is magnified in the terms *coerced* or *forced labor*. *Enslaved labor* goes further, referring, in addition to coercion or force, to an employer's treatment of the worker as a slave, for example, preventing her or him from leaving the work site, exercising legal rights, or receiving pay. Preferences for using one or another of these terms may reflect nothing more than an author's focus, be it the cross-border movement of people or on-the-job exploitation. Of course, because it affects measurement outcomes, a clear definition of terms is particularly critical to any epidemiological account of the human trafficking phenomenon.

Extent and Flows of Trafficking to and within the United States

Extent

The 2000 TVPA also required the U.S. government to produce and publish an annual Trafficking in Persons (TIP) Report, which would provide descriptions by country of the extent and nature of human trafficking and

include a rating (placement in one of three tiers) of each country's efforts to combat trafficking. According to the 2012 TIP Report (U.S. Department of State 2012), between 14,500 and 17,000 people are trafficked into the United States annually. This range is considerably lower than the approximately 50,000 estimate cited in a 1999 U.S. government report (Richard 1999) and repeated in the 2000 TVPA. Clearly the extent of human trafficking is difficult to measure; some studies lack rigor or generalizability, and estimates are often reported without a description of the methodology that produced them (see Gallagher 2009; Tyldum and Brunovskis 2005; and Laczko and Gramegnam 2003 for methodology critiques). Given the likelihood that untold numbers of victims never report their trafficking victimization due to fear of detention, deportation, or violence from the traffickers themselves, it is often assumed that any number is a serious undercount, but like other illegal activities, the amount of "hidden" trafficking is simply unknown. Another concern of some who are leery of human trafficking estimates is what has been referred to as the "woozle effect," in which an author refers to a prior study along with qualifications, followed by the same study cited by another author but minus the qualifications, and so it goes until the findings are accepted as reliable facts (Weiner and Hala 2008). Such cautions aside, there is some useful epidemiological research on trafficking.

In their effort to develop a methodology that more accurately measures the number of human trafficking victims, Clawson and Layne (2007) used source country data to determine estimates of "at-risk" persons and of persons who are "possibly trafficked" (allowing for some number who escape or die); from those two populations, the authors derived an estimate of the number who are "actually trafficked" in a given year. In phase one of their methodological research, Clawson, Layne, and Small (2006) collected data on Mexico and seven Central and South American countries and calculated estimates for sex trafficking and labor trafficking separately. In phase two, the researchers added fifteen Eastern European countries and dropped their effort to estimate labor trafficking after concluding that there were simply not enough data to produce reliable findings. In addition, they became convinced that their methodology had overestimated the number of actual sex-trafficked victims due to its reliance in phase one on TIP Report data regarding the extent to which individual source countries were able to protect their populations from trafficking victimization. In phase two, they changed their methodology and concluded that approximately 11,117 women and girls from these Latin American countries would have come from Mexico, and another 622 from El Salvador (the second most prolific of the Latin American source countries). Their findings also suggested that approximately 1,358 women were sex-trafficked to the United States from the fifteen Eastern European countries; the two top source countries were Poland (n = 348) and Ukraine

(n = 346). If these estimates are even close to accurate, then the numbers listed in the TIP Report of persons annually trafficked to the United States are surely an undercount.

Other relevant findings come from reports on the number of human trafficking cases opened and investigated by government bodies in the United States. According to U.S. Bureau of Justice statistics (Banks and Kyckelhahn 2011), federally funded task forces opened 2,515 suspected cases of human trafficking between January 2008 and June 2010. Over 80 percent of these were classified as sex trafficking cases. However, qualifications are in order regarding this data source as well. In a more in-depth analysis, only 1,306 of these cases were determined to come from "high data quality task forces," and of these, only 389 of the cases were subsequently confirmed to be human trafficking incidents (close to another one-third were still pending). Here again, the great majority of these were sex trafficking cases; however, it should be noted that cases including elements of both sex and labor trafficking were categorized as sex trafficking cases for analytical purposes. This data set also provided information on the demographics of victims and trafficker suspects. Considering only the high-quality, confirmed cases of human trafficking, findings indicated that of the sex trafficking victims, fully 83 percent were U.S. citizens, and 94 percent were female; of the labor trafficking victims, 67 percent were undocumented, and another 28 percent held the interim status of "qualified alien." Close to two-thirds of the labor victims were Hispanic, and 17 percent were Asian. Of the high-quality, confirmed cases, over 80 percent of the suspects were male, 62 percent of sex trafficking suspects were African American, and 48 percent of the suspected labor traffickers were Hispanic. These demographic findings provide support for the argument that the current target in the investigation of human trafficking cases in the United States is domestic sex trafficking. The data are also consistent with the claim that cases that are highlighted in government as well as media reports feature noncitizen, naturalized citizen, or minority men as the traffickers (Chacon 2010).

While the above data support the conventional belief that sex trafficking is the most common form of human trafficking, many have questioned this conclusion, noting that labor trafficking victims are dramatically undercounted in that they a) are often hidden away in isolated rural camps, heavily populated factories, and other infrequently investigated places of business; b) may have participated initially in a smuggling arrangement; and c) are not a primary focus of law enforcement. Indeed, the International Labour Organization (ILO) (2012) claims that of the almost 21 million it now estimates to be in forced labor worldwide, the great majority (14,200,000) are in labor sectors other than sex (4,500,000); a third category, state-imposed labor, accounts for the remaining

2,200,000 forced labor victims. The ILO does conclude that of the total in forced labor around the world, about 55 percent are women and girls.

Flows

According to the 2012 TIP Report, the top countries of origin for cross-border trafficking into the United States in fiscal year 2011 were Mexico, the Philippines, Thailand, Guatemala, Honduras, and India. Of these, the most important transit country is Mexico; trafficking victims brought across the southwest border include not only substantial numbers of Mexican nationals, but also Central and South Americans, and to a lesser extent Asian and Eastern European victims, who are often trafficked from their home countries across the ocean to Latin America, in transit to the United States. Also, well-established trafficking groups of different nationalities are known to travel by their own adopted routes. Chinese victims destined for the United States, for example, are commonly trafficked through Colombia and Panama and then north ("Human Trafficking" n.d.). Latin American traffickers often take women and girls through a corridor that begins in the Honduran cities of Tegucigalpa and San Pedro Sula, moves up through Guatemala to Mexico, and then goes on into the United States (*Inter Press Service* 2002).

Of course far from all trafficking victims coming from or through Mexico end up in the United States, as Mexico is a destination as well as a source and transit country. Clawson and Layne (2007) estimate that of all females whose (sex) trafficking journey originates in or takes them through Mexico, Mexico City is the destination of about one-third; another one-third are sent to the Yucatan region of Mexico, approximately 10 percent are moved north and enslaved in Mexican border towns (where sex markets serving both American and Mexican men thrive), and around 21 percent are trafficked to the United States. Once in the United States victims frequently make one or more stops before being sent to a final destination site. In one case young Honduran women trafficked by a ring operating in both Honduras and the United States were recruited with false promises of a legitimate job, then trafficked to Houston, where they were held until final arrangements were made; from Houston, they were taken to New Jersey, where they were dispersed to bars in several different cities and forced to work off debts of from $10,000 to $12,000 (U.S. ICE 2005).

Much of the cross-border labor trafficked into nonsex labor sectors comes from Latin America and Asia, and operations are set up in or outside of urban areas in states with sizeable immigrant populations. One study, covering a period from 1998 through 2003 (Free the Slaves & Human Rights Center 2004), found that of the at least 10,000 forced laborers in the United States,

most were trafficked there from one of thirty-five countries. China was at the top of the list, followed by Mexico and Vietnam, respectively. Another national study (California Alliance to Combat Trafficking and Slavery Task Force 2007) found that forced labor operations in the United States identified between 1998 and 2003 were located in some ninety cities, especially in immigrant-populated states such as Florida, New York, Texas, and California. Looking at the same time period as the national study, the Human Rights Center at the University of California, Berkeley, reported that more than 80 percent of forced labor cases in California were situated in or around urban centers, particularly Los Angeles, San Diego, San Francisco, and San Jose. The largest number involved laborers from Thailand and Mexico, respectively (Human Rights Center 2005).

Sex Sector Trafficking

Although young women and girls are abducted or sold to traffickers by family members in some cases, the great majority of victims are duped by traffickers, who promise them a legitimate job, often doing restaurant, domestic, or office work, or less often an educational opportunity or a marriage proposal. Some do know that the job will be in the sex industry, but rarely are they aware of the conditions under which they will work and live, including working around the clock, servicing as many as twenty to thirty customers a day, living in their work spaces, being subjected to rape and other forms of violence, and being kept under guard at all times.

Some sex trafficking operations rely on high volume, recruiting or abducting from the ample supply of young women and girls from particularly impoverished or abusive backgrounds in developing countries. The director of an antitrafficking coalition describes the experience of Reyna, a fifteen-year-old girl from Puebla, Mexico, who had come into the San Diego Police Department with a "split lip and an eye swollen shut from the beating she had just received" and asked for help. Her mother had died when she was seven, at which time she was forced to leave school and then was "given" by her father to a police officer, who routinely raped her. She gave birth as a result of the rape, and later met a man who professed to love her and persuaded her to go to work in the United States, temporarily leaving her baby behind. In Tijuana Reyna was prostituted as she waited to be taken across the border and was told that her baby would be killed if she did not cooperate. Eventually she found herself enslaved in prostitution just outside of San Diego (*El Universal* 2003, 5). These child "rape camps" were operated by the Oaxaca-born Salazar brothers, who trafficked hundreds of Mexican girls into prostitution in over two dozen home- and camp-based sites in San Diego County in the 1990s and

early 2000s. Many of the girls, most between the ages of fourteen and eighteen, were taken to areas covered by reed beds. A doctor who went to the camps to offer medical aid to the girls describes the scene there:

> In these dense reeds you will find around eight "caves" made within the reed thickets. . . . Within the caves . . . you find empty beer bottles, boxes of liquor bottles, shreds of cloth. . . . All this junk is mixed in with open condom packets and dozens of used condoms that leak semen into the ground. . . . The musky smell floods the air. . . . When I came here, in one hour, I counted that one little girl had been with 35 men, one after the other. She just lifted her skirt. (Hernandez 2003, 12)

This sector of the people trade involves the sexual commodification of women and fits well with cross-cultural objectifications of women as sexual body to which men are entitled (Farr 2012); their value is in their bodies, which may be sold and resold, making ongoing profits for their traffickers and pimps. Telling is the situation of "comfort women," abducted and prostituted by the Japanese government during World War II to service Japanese troops; these women, the majority of whom were Korean, were shipped "like army supplies throughout the vast area of Asia and the Pacific that Japanese troops controlled" and were listed on supply lists under headings such as "ammunition" or "amenities" ("Japan's Mass Rape" 2003, 2–3). In a modern illustration of commodification, women sex-trafficked from a number of Asian countries to the West Coast in the United States were packaged and sent across the sea in shipping containers ("Two International Sex-trafficking Rings" 2006).

Trafficked and Coerced Labor in Factory, Agricultural, Domestic, and Criminal Sectors

Women and men trafficked into coerced labor suffer many of the same abuses as sex trafficking victims: low or no pay, debt bondage, lengthy working hours, poor living conditions, and physical assaults and threats. However, it is in the (nonsex) labor sectors that the smuggling-trafficking nexus is typically most prominent. That is, those seeking work may accept job offers overseas from recruiters or contractors and agree to pay the smuggling fees, but once at their destination they find themselves in forced or enslaved working situations. In spite of the likelihood that many more of these cases exist than have been exposed, there are some examples of at least partial justice for the victims of these ventures.

One of the largest human trafficking cases uncovered in the United States involved six hundred Thai agricultural workers who had accepted offers of better jobs in the United States from Global Horizons, a U.S. company that recruited foreign workers for agricultural labor. The majority of the victims

were trafficked to Hawaii, but some were sent to mainland states. Once at their destination, the victims found that although they had signed contracts guaranteeing certain wages and work conditions, they were enslaved and told they owed recruitment fees of between $9,500 and $21,000. This operation allegedly began in 2001 and continued until 2007, when investigations intensified. In 2010 six people, including the president and three employees of Global Horizons, were charged with conspiracy to commit human trafficking (KITV 2010). This was not the first trafficking trouble involving Global Horizons; in 2006 the U.S. Department of Labor had settled with Global Horizons, requiring the company to pay eighty-eight Thai workers close to $300,000 in back wages and civil penalties.

Like the 2006 Global Horizons case, many of the few indentured labor cases that are actually brought to justice are settled in a civil rather than criminal finding. In 2001 Victoria Island Farms settled a civil suit, agreeing to pay back wages to asparagus harvesters who had been forced to work for little or no pay in the San Joaquin Delta area. These workers, mainly from Mexico, were also recruited by farm labor contractors (California Alliance to Combat Trafficking and Slavery Task Force 2007). Similarly, in 2006 a settlement was reached for forty-eight Thai welders, "hired" through a recruiting company and trafficked to Los Angeles, where they were enslaved in abysmal conditions and again were working for little or no pay (California Alliance 2007).

In another forced labor operation, more than 230 mainly female Vietnamese and Chinese workers were recruited and then enslaved in the Daewoosa garment factory in American Samoa (Free the Slaves & Human Rights Center 2004). They received little pay and were beaten, starved, and sexually exploited. However, in this case the factory's owner-manager, Kil Soo Lee, was found criminally guilty of holding the workers in servitude and sentenced to forty years in prison.

Whereas, as the above cases show, trafficking foreign workers into forced labor into agricultural camps and factories is often big, high-volume business, trafficking into forced domestic labor in the United States commonly involves the enslavement of one or several victims in private homes. Nevertheless, the number of victims is most likely substantial. In addition to women who may be illegally trafficked into domestic work, every year U.S. citizens and foreign nationals living and working in the United States bring thousands of foreign domestic workers into their households legally; some number of them are exploited and enslaved (Free the Slaves & Human Rights Center 2004). "Carmen" reveals how a decent domestic and child-care job turned bad when the Ecuadoran family for whom she worked in Ecuador moved to the United States and brought her with them. Once there, the family did not pay her, took her passport, withheld food from her, and would not let her leave the

house. Fortunately for Carmen, a neighbor became suspicious and contacted the police; subsequently she was freed from her enslavement (reported in Brennan 2010).

The enslavement of domestic workers by foreign diplomats, who have immunity from most criminal and civil charges in the United States, presents a special challenge. Foreign diplomats and international organization employees are permitted to bring domestic workers into the country on special (A-3 and G-5) visas. According to the Office of Immigration Statistics (2012), 12,847 individuals were admitted on such visas from 2008 through 2011. While by law would-be foreign employers must sign a contract guaranteeing fair wages and adequate work conditions for the foreign employees they bring into the United States, such contracts have been difficult to uphold, and consequences for violations are even harder to obtain. Diplomatic immunity from domestic enslavement has been vigorously challenged in a few cases, albeit with mixed results. In one publicized case, Indian nationals Kumari Sabbithi, Joaquina Quadros, and Tina Fernandes filed suit for human trafficking and forced labor against Kuwaiti diplomat Major Waleed Al Saleh and his wife. The plaintiffs argued that the Al Salehs forced them to work with no time off, kept them confined in the house, and physically abused them (*International Trafficking in Persons* 2007). In 2009 the suit was dismissed in U.S. District Court (Civil Action 07–155) under the ruling that the diplomatic immunity to which the defendants were entitled takes precedence over the TVPA and thus the defendants could not be sued in the United States. However, in February 2012 the ACLU, representing the plaintiffs, announced that the Kuwaiti government had agreed to a confidential settlement with the women (American Civil Liberties Union 2012), a victory of sorts.

Finally, it appears that trafficking-related forced labor in the United States is expanding in the crime sector. Migrants smuggled into the country may be forced by their smuggler-traffickers to work off their "debt" by selling drugs and other illegal commodities, working as lookouts for cartels, and carrying out other errands for criminal groups. The chances of these indentured migrants gaining recognition as trafficking victims are exceedingly low.

Difficult Paths for Possible or Confirmed Trafficking Victims in the United States

The TVPA provides several options for victims of human trafficking. The first is the nonimmigrant status T-visa, which allows victims to remain in the United States for up to four years as long as they cooperate with reasonable law enforcement requests for assistance in investigating or prosecuting their traffickers; after that period, victims can apply for permanent

resident status and subsequently citizenship. Another mechanism, known as Continued Presence, also provides for temporary residence and possible work authorization for victims who are potential witnesses in an ongoing trafficking case. Finally, there is the nonimmigrant status U-visa, granting immigration status for up to four years to victims of certain crimes, including but not limited to human trafficking, again as long as they cooperate in the investigation of their traffickers; here also there is the possibility of eventual permanent resident status and citizenship (U.S. Department of State 2012). Immediate family members are also eligible for these statuses. The granting of Continued Presence or either the T- or U-visa carries with it eligibility for a variety of public benefits and services, but the path to these statuses can be long and arduous. First, an individual must be confirmed by a law enforcement entity to be a legitimate victim of human trafficking, and then confirmed as satisfactorily assisting in the criminal case. The victim must file an application for a visa, followed by, in the case of the T-visa, a certification letter from the Department of Health and Human Services. Without considerable assistance, this process is simply insurmountable for many foreign victims with little familiarity with U.S. language, customs, or law enforcement practices. Nevertheless, in FY 2011 T-visas were granted to 557 victims and 722 immediate family members (an increase from 447 and 349, respectively, in FY 2010). Continued Presence was given to 283 victim-witnesses in FY 2011. The number of U-visas granted to victims of human trafficking specifically is not tracked.

Of those victims who have managed to navigate the visa course and have obtained at least temporary residential status in the United States, most still struggle to make ends meet. When they are able to find work, they tend to be employed in low-paying jobs with little security and few benefits. Many, as Brennan (2010) points out, are still paying back debts owed to banks or loan sharks, or are trying to send money back home to their families. Their lack of familiarity with the language, culture, and laws in the United States adds to their difficulties in finding necessary services. Often overlooked is the absence of social networks that have provided support for many immigrant groups adapting to a new country, let alone for immigrants who have lived through a series of traumatic, isolating, and often violent experiences. Brennan notes that there are no "communities of resettled trafficked persons" in the United States; rather, this population tends to be dispersed, an impediment to the sharing of experiences and information.

Adding to the other struggles faced by trafficking victims are the very real fears of harm from their traffickers. In one case a woman trafficked from El Salvador into indebted prostitution in Houston gave up her plan to escape when her trafficker, ringleader Maximinio Mondragon of El Salvador, became

aware of her plan and sent her a terrifying threat in the form of a photograph. He had traveled to the woman's family home in El Salvador with gifts for the woman's young daughter; as reported by Carroll (2007), before leaving he pulled out a camera and asked the grandparents if they would take a picture of him with the little girl, which they did. Mondragon (whose family sex trafficking ring enslaved hundreds of women in prostitution in the United States) and seven others from El Salvador and Honduras were arrested and convicted of trafficking crimes following a government raid in 2005. Of some 120 victims rescued in this raid, only 67 had received T-visas by 2008; the others were still awaiting a decision regarding their applications or had just disappeared (Olsen 2012). In many instances, fear keeps victims from testifying. Illustrative is the Mexico–San Diego child sex ring described previously. After ten years of investigating the home- and camp-based brothels in San Diego County, a joint federal and local team brought into custody more than fifty traffickers and victims. Ultimately, however, the intimidated victims were unwilling to testify, and the traffickers were released; most of the victims were deported (Hernandez 2003).

FACTORS CONTRIBUTING TO HUMAN TRAFFICKING TO THE UNITED STATES

Human trafficking flourishes because of economic and political trends and policies that affect vulnerable populations, high demand for sexual services and cheap labor, and a sophisticated transnational trafficking industry that takes advantage of supply and demand, along with enhanced transportation and communication technologies that facilitate their transactions.

Globalization, Growing Inequality, and Migration

Buttressed by privatization and deregulation of the means of production, a globalized "free" market economy has expanded across the globe, resulting in some instabilities and growing inequalities between and within nations. Particularly affected have been developing and transitioning countries with severe revenue deficits, high unemployment, and uncertain futures. To offset economic unevenness, a number of countries have incurred heavy debt in the form of loans from global institutions such as the International Monetary Fund and the World Bank; these institutions, in turn, often have required indebted countries to implement austerity measures, leading to a cutback in services on which the poor and unemployed rely. Particularly hard hit have been women in these poorer countries, whose higher unemployment rates and family service needs have left them vulnerable to dubious job offers elsewhere.

Globalization has also helped propel a massive population transfer worldwide, as work-seeking individuals move within and between countries in the global South and across national borders to affluent countries in the global North. Advances in communication and transportation technologies have increased efficiency in providing lucrative market sites with human commodities (supply) and consumers (demand). Also, information technologies can be manipulated to suggest to potential migrants that a plethora of jobs for poor- and low-skilled workers awaits them abroad (Chuang 2010). Governments of poorer and indebted countries often encourage this labor migration, as they have come to rely heavily on remittances sent back home from overseas workers. In 2011 developing countries received an estimated US$351 billion in migrant remittances, and this sum was expected to rise to US$377 billion for 2012 and US$406 for 2013 (Ratha 2012). The top four recipients of these international remittances in 2011 were India, China, Mexico, and the Philippines, all countries with sizeable trafficked migrant populations in the United States.

Demand and Immigration Policies

The increasing affluence of businesses and households in the top economic tiers in the United States has been both a product of the availability of cheap, migrant labor and a source of demand for more of it. Within the domestic sector, for instance, expansive householder demands for nannies, landscaper/gardeners, and handymen have been heavily filled by migratory laborers and recent immigrants to the United States. The demand for cheap labor and sexual services appears to be "inelastic"; that is, it remains high regardless of economic conditions (Schaefer and Gonzales 2012; Farr 2005).

Yet recent immigration policies in the United States have become ever more restrictive and focused on securing borders, especially the U.S.-Mexico border. The U.S. Department of Justice has stepped up its prosecution of illegal entry cases along this border; as of 2010, immigration prosecutions accounted for over 50 percent of all federal criminal prosecutions (Chacon 2010). Sometimes viewed as an antitrafficking strategy, restrictive immigration policies, coupled with pressures to migrate, actually push would-be migrants into the hands of smugglers and traffickers, leading to the buildup of a "migration mediation industry." Many argue that migration into the United States is more difficult, costly, and dangerous than in the past, and that with a greater reliance on smugglers, would-be migrants are more easily turned into trafficking victims both during and after their journey (Schaefer and Gonzales 2012).

The Human Trafficking Industry

Human trafficking is big business, and the industry has become more innovative and ruthless as it strives to maximize and secure its profits. According to the United Nations, human trafficking brings in some US$32 billion annually, and more than US$15 billion of this sum comes from the labor of those trafficked into affluent countries in the global North. In addition, in its 2005 global report, the ILO (Belser 2005) estimated annual revenues from forced labor more generally to be about $US 44.3 billion. Also lucrative is the human smuggling industry; in fact, smuggling migrants from Mexico into the United States is an estimated $6.6 billion business on its own (United Nations Office on Drugs and Crime 2010). Such revenues encourage industry expansion and growth, and like globalized businesspersons of all sorts, traffickers continually seek out new markets, adapting their business practices to specific, often regional, situations.

Of the five business models that she introduces as typifying the human trafficking industry, Shelley (2003) argues that the "supermarket model" best describes the human trade between Mexico and the United States. This model relies on high volume and relatively low costs for its victims; money is laundered by sending profits back home to be invested in land and farms there. While there is some evidence supporting Shelley's high-volume variable, especially the fact that criminal groups are smuggling and trafficking people across the southwest border in ever-larger groups and through expanded routes (Schaefer and Gonzales 2012), smuggling fees for would-be migrants are notably high. Interviews with migrants and their families, nongovernmental organizations (NGOs), shelter staff, and government officials indicate fees ranging (in 2010) from $3,000 to $6,000 per migrant. Moreover, "higher-tier" migrants, often from Asia and the Middle East, may pay from $20,000 to $30,000 for transport across the southwest border into the United States; one truckload of such migrants can bring in over $2 million in revenue. Unable to pay such exorbitant fees, some of these migrants become indentured servants once across the border (Schaefer and Gonzales 2012).

Changes in regional conditions and trafficking markets are often met with changes in the organizational structure and patterns of the trafficking industry in a particular location. From Shelley's view in the early 2000s, groups trafficking victims from Latin America to the United States were frequently family-based, maintained strong ties to the source country, specialized in trafficking victims into a particular labor sector, and remained separate from other illegal trades. However, with business booming in the Latin American–U.S. trafficking and smuggling industries in the mid- to late 2000s, and with the growing power of Mexican drug cartels, the three trades

have become more intertwined: human smuggling groups also engage in human trafficking; trafficking victims may be forced to carry drugs across the border; and drug cartels have either expanded to include human trafficking or smuggling in their business repertoire or have successfully sought to control aspects of the human trade. According to a high-level agent in the Phoenix Office of Investigations for the U.S. Immigration and Customs Enforcement (ICE), Mexican drug cartels now provide a sizeable stable of drop houses in the United States (Phoenix authorities found 163 such houses in 2007 alone), where smuggled migrants take refuge after crossing the border (Francis 2008).

Knowledge regarding the extent and nature of connections between human traffickers and smugglers and drug cartels appears to be still evolving. In its report on the globalization of crime, the United Nations Office on Drugs and Crime (2010, 64) states only that it "is possible" that the smuggling of Central and South American would-be migrants through Mexico and into the United States "has become the domain of Mexico's . . . drug cartels." The same report, however, does refer to Central American connections held by one powerful and violent Mexican drug cartel, the Zetas, along with anecdotal descriptions of this cartel's involvement in migrant smuggling. And although in his testimony to the U.S. Congress an ICE official stated that Mexican drug cartels "are dictating when and where smugglers can cross the southwest border into the U.S." and that human smuggling is often tied to human trafficking, he also testified that the human smuggling and illegal drugs industries in the region are separate entities (Mora 2012, 1). Similarly, Payan (2012, 48) refers to research suggesting that while human smuggling, the drug trade, and human trafficking are still largely distinct, they are increasingly "intersecting" and in some instances "criminal organizations may be cooperating across trades."

Within and across regions, a variety of trafficking groups operate side by side. Although some businesses are small and informal, large organized crime groups are also heavily involved in transnational trafficking. The larger operations can provide income for "employees" in a variety of roles, including recruiters, brokers, employment and travel agents, document forgers, transporters, club or business owners, premise guards, and money launderers (see Farr 2005). On some occasions a head trafficker plays more than one of these roles. For example, Young Joon Yang, who was arrested in 2005 in Seattle for allegedly trafficking more than one hundred Korean women into prostitution in cities on the West Coast, owned and ran an underground taxi service (for transporting the trafficked women) as well as a travel and tour agency (where trips and documents were arranged) (U.S. Department of State 2005).

Finally, research consistently indicates that the human trafficking industry could not operate effectively or efficiently without the help of "corrupt guardians," that is, police officers, border guards, immigration officials, and others in legitimate public and private positions who either aid or intentionally ignore border crossings and other trafficking activities (Farr 2005).

COMBATTING HUMAN TRAFFICKING AND COERCED LABOR IN THE UNITED STATES

The Crime-Law Enforcement Approach: Prioritizing Border Security and Prosecution

Antitrafficking policy in the United States has relied heavily on a crime–law enforcement model of human trafficking. Cross-border trafficking in particular tends to be treated by the federal government as a problem involving transnational traffickers illegally taking persons across the border and profiting from transaction fees and/or the victim's labor after arrival. Several factors played a role in the development of this model and the policies it suggests. First, the 2000 UN decision to situate its human trafficking protocol within the Convention against Transnational Organized Crime gave credence to a discourse connecting human trafficking to cross-border organized crime. The catastrophic 9/11 attacks on the United States and growing concerns about terrorism and security breaches arguably further affected U.S. trafficking policy (Hathaway 2008). Promoting an understanding of trafficking as a border security issue, the United States placed human trafficking under the purview of the Department of Homeland Security, with antitrafficking activity to be carried out largely through DHS's immigration and customs (ICE) arm (Chacon 2010). Stepped-up efforts to secure the borders, especially that with Mexico, were directed toward the interdiction of a mixture of alleged international terrorists, traffickers, and smugglers, but also led to the increasing criminalization of would-be migrants and victims of trafficking (Chacon 2010). Moreover, in spite of an expansion of fence and wall construction (covering an estimated 655 miles along the southwest border at the end of 2010); increased border patrols (more than 20,000 agents at the end of 2010); and a proliferation of aircraft, radar, and camera surveillance stations, the border is still not secure, and illegal migration continues (Schaefer and Gonzales 2012).

Although the TVPA lists prevention, protection, and prosecution as its three primary strategic goals, some suggest that greater emphasis has been put on the latter than on the first two (see, for example, Payne 2009 and Hathaway 2008). However, prosecution and conviction rates in human

trafficking cases have been low, relative not only to the suspected number of actual incidents, but even to the number of investigations. In FY 2011 Department of Justice task forces reported more than 900 human trafficking investigations involving over 1,350 suspects. In the same fiscal year the Department of Justice prosecuted 125 human trafficking cases, including 83 sex trafficking of minors cases and 42 adult sex trafficking and forced labor cases. Of 118 defendants charged in the latter 42 cases, 70 convictions were secured, equally divided between "predominantly sex trafficking" and "predominantly labor trafficking." Overall there were 151 federal trafficking convictions, an increase from 141 such convictions in FY 2010 (U.S. Department of State 2012).

Prosecution possibilities got a legislative boost with a provision in the 2008 TVPA reauthorization, requiring the Department of Justice to report on its enforcement of the Racketeer-Influenced and Corrupt Organization (RICO) law in the pursuit of sex and forced labor trafficking. The federal RICO statute (and its state-level counterparts) allows prosecutors to try cases under civil as well as criminal law; through the former, authorities can seize illegally gained trafficking profits. In 2009 federal prosecutors used the RICO statute in the indictment of Uzbekistan national Abrorkhodja Askarkhodjaev (the owner of Giant Labor, a labor contracting company operating in Kansas City) and eleven others for racketeering conspiracy and fraud, seeking $6 million in profits forfeiture. Giant Labor and two other companies were alleged to be part of a trafficking ring operating since 2001 whereby foreign laborers mainly from the Philippines, the Dominican Republic, and Jamaica were trafficked to the United States, charged thousands of dollars in trafficking fees, and then forced to work in enslaved conditions in hotels and other businesses. In 2010 Askarkhodjaev pled guilty to various conspiracy, fraud, and tax evasion charges under RICO and was given a ten- to twelve-year prison sentence (41 Action News).

Other Approaches: Immigration, Labor, and Demand

Some argue that the crime–law enforcement approach is not sufficient for, and perhaps not even effective in, curtailing the human trafficking problem. For some (see, for example, Chacon 2010 and Gallagher 2009), human trafficking is better characterized as a migrant-immigration problem; as such, humane and successful strategies for combatting human trafficking must include immigration reform and the provision of safe and reasonable opportunities for would-be migrants to cross borders. Relatedly, others take labor exploitation as the key issue, suggesting that trafficking and forced labor call for policies that protect all working people and that punish recruiters,

contractors, and employers who violate fair labor laws (Murphy-Aguilar and Tiano 2012; Brennan 2010; Pope 2010). Such advocates express concerns not only about the lack of labor law enforcement, but also about labor laws themselves. An often-cited example is the 1935 U.S. National Labor Relations Act, which provides employees with basic rights such as collective bargaining and organizing, but which excludes "any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home" (Sec. 2 [~152] (3)), two of the labor sectors most vulnerable to coercion and exploitation (Pope 2010). Another critique targets capitalism and the reliance of the U.S. market economy on exploitative labor practices to compete in the global economy (Haynes 2009); from this perspective, the enactment and enforcement of labor laws must be supplemented by more macrolevel social change.

Efforts to curtail demand for trafficked and forced labor could also be expanded. When they have been employed, demand strategies have focused primarily on sexual services, including identifying and outing customers, educating potential consumers about living and working conditions for women trafficked into the sex industry, or making the service less accessible and more costly for consumers. Confronting demand from corporations, factories, and agricultural businesses has often relied on passing or enforcing criminal legislation intended to increase risk for employers who hire trafficked labor and engage in forced or exploitative labor practices. Also, a handful of civil lawsuits have been filed against corporations for exploitative labor activities (Chacon 2010). However, the development of preventative mechanisms for reducing exploitative labor demands of corporations and other business entities has not been at the forefront of antitrafficking strategizing.

Strengthening and Expanding Antitrafficking Efforts

Many suggested and in-place activities, however, have not been shaped by perceptions about the appropriate conceptual approach to the human trafficking problem, but rather consist of pragmatic, organizational, and often evidence-based directives for strengthening and expanding antitrafficking efforts in the United States. In addition to calls for the articulation of a broad strategic framework, such directives include coordination and cooperation of federal, state, and local entities; passage of antitrafficking legislation at multiple levels; collection and disbursement of data on trafficking and coerced labor and on efforts to combat it; and improvements in the identification of and services for victims. Payne (2009) reports that research documents the importance of coordination between federal and state departments. For

example, one study (Braun 2003) found greater service effectiveness where interagency collaborations and roles had been established ahead of the time at which the trafficking victim needed assistance. To this end, a centralized and accessible database identifying trafficking victims and then following their progress, including service needs as well as access to and use of existing services, would be useful (Clawson, Layne, and Small 2006).

Collecting more and better data on trafficking and antitrafficking activities is on virtually everyone's list, but increasingly emphasized is the importance of disseminating and publicizing such data. Payne (2009) proposes an annual U.S. Trafficking in Persons Report (similar to the Department of State's global TIP Report) that would provide the antitrafficking community as well as the general public with epidemiological data, strategic advice, and state-by-state progress reports. Currently advancing the information-sharing goal is the National Human Trafficking Resource Center, a toll-free hotline through which law enforcement, service providers, and victims throughout the country can report trafficking incidents, obtain technical assistance, and get service referrals (Polaris Project n.d.). The center is the result of a partnership funded by the Department of Health and Human Services and operated by the antitrafficking NGO Polaris Project.

Improvements in training and general familiarity with human trafficking among state and local authorities have also been suggested. A 2008 National Law Enforcement Human Trafficking Survey found that of almost two thousand state and local law enforcement agencies, only 18 percent reported having any human trafficking training. The study also found that about three-quarters of the surveyed agencies thought that human trafficking occurred rarely if at all in their community; importantly, those agencies that had participated in activities organized by trafficking task forces perceived human trafficking to be several times more prevalent than those who had not participated (Farrell, McDevitt, and Fahy 2008). The survey's authors call for protocols for local law enforcement to guide them in the identification and coordinated investigation of human trafficking cases. Also noted is the need for increased training in the provision of Continued Presence and T- and U-visas for potential and confirmed trafficking victims (U.S. Department of State 2012).

The federal government has promoted state and local involvement in several ways. For example, it has pushed states to enact their own antitrafficking legislation. At the end of 2008 thirty-eight states had enacted such legislation, and by the end of 2011 all but one state (Wyoming) had an antitrafficking law (U.S. Department of State 2009 and 2012). In addition, during 2011 the Department of Justice, in cooperation with the Department of Homeland Security and the Department of Labor, established six antitrafficking coordination teams in select districts around the country,

and at the end of 2011 it continued to fund twenty-nine antitrafficking task forces nationwide (U.S. Department of State 2012).

CONCLUDING COMMENTS

The human trafficking and coerced labor industries have expanded and become more sophisticated over the last two decades. Among the illegal trades, human trafficking is now second only to drug trafficking in annual profits. Moreover, the human trade industry continues to seek out new, even more profitable markets, sometimes through collaboration with both legal and illegal entities. Links among human trafficking, human smuggling, migration, and forced labor have been forged as traffickers take advantage of global inequalities that serve to push people from poorer countries to seek job opportunities across borders. The United States is a major trafficking destination for such would-be migrants and job seekers.

Although much of the attention in the United States has been on sex trafficking, there have been efforts on the part of both the federal government and state entities to increase awareness and training regarding trafficking and coercion into other forms of labor, most notably in the agricultural, factory, and domestic sectors. In addition, policy advances, especially as set forth in the 2008 version of the TVPA, have further protected victims and facilitated provision of services to them. Yet antitrafficking strategies and the discourse on which they are based rely heavily on a crime–law enforcement model; as such, understanding of the factors that drive cross-border trafficking and forced labor, as well as the difficulties faced by victims once in the United States, remains underdeveloped. If a fuller picture of the complexities of human trafficking and labor exploitation to and within the United States is drawn and communicated to key actors and to the general public, perhaps more robust antitrafficking policies can be elaborated and implemented.

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Gender and the Undocumented: *Avanzando* or Abject?

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Take a moment and contemplate the images you hold in your mind of undocumented immigrant[1] women and men (even if you do not actively embrace them). What images come to mind? Whom do you see in your mind's eye? Now, think about *why* you come up with these images. Where did you get them? Do you have personal contact with undocumented immigrants or primarily get information from the media? Most people are unlikely to have done research among undocumented immigrants, yet you probably have very strong images in your mind of what they look like and how they act; we certainly do. When we think about undocumented men, the iconic wetback and farm laborer come to mind, and for women we think of victims of sex trafficking, nannies, and house cleaners. How accurate are these images, and what do they convey about gendered *realities* rather than symbols? For reasons scholars now understand quite well, but which go beyond the scope of this chapter, people both stereotype and are stereotyped very easily (Barrett 2005; DiMaggio 1997; Macrae and Bodenhausen 2000; Massey 2007). This is particularly true for undocumented immigrants (Chavez 2001, 2008). Such mental shortcuts are very difficult to change unless people come face to face with individuals who do not fit those stereotypes. In countries characterized by very high degrees of residential segregation (Massey and Denton 1993),

such as the United States, most people have few if any opportunities to encounter undocumented immigrants outside of a limited range of employment roles, such as hiring an undocumented nanny or landscaper.

In this chapter we ask readers to journey more deeply into the *lived reality* of a few undocumented people and their families as they negotiate their lives and both inflect and are inflected by gender. The chapter begins with a few vignettes because we feel that they effectively draw us into immigrants' worlds. We ask you to bring to your reading of these vignettes a "gendered optic," a heightened sensibility of what they communicate about gender. After presenting the vignettes we analyze them through our own gender lenses. We believe that this approach to "bringing gender in" to migration studies will be more useful to readers, given its multidimensionality, than a more traditionally formatted chapter devoted to a review of the literature on how gender affects undocumented immigrants. Of course this choice involves trade-offs: we are well aware that we cannot do justice to the large and growing literatures that engage gender and migration broadly as well as those specifically focusing on undocumented migrations and migrants to the United States. Though we are thankful that so much has been published when not so long ago gender was *not* a focus of migration scholarship, we know we cannot summarize it in a publication of this length. In addition, there are good reviews that do most of that work (i.e., Hondagneu-Sotelo 1999; Pessar 1999; Mahler and Pessar 2006; Morokvasic 1984; Palriwal and Uberoi 2005). We thus apologize in advance to those whose important work we cannot include or which we reference but do not discuss in depth. We value your contributions and hope that the emphasis here on ways to examine and interpret data will be of use to you.

UP CLOSE AND PERSONAL: GENDER AND UNDOCUMENTED IMMIGRANTS' EXPERIENCES

Vignette 1

Carmela and Miguel are a married couple from an indigenous village in the highlands of Ecuador. They have two children, who live there with their mother while their father is an undocumented immigrant in Queens, New York. Their lives are depicted in Jason Pribilsky's excellent ethnography (2007) *La Chulla Vida.* He opens the book with a scene depicting their transnational lives. Carmela and the children watch a short video featuring Miguel that he sent from *iony* (New York, adapted from the famous ad campaign "I ♥ New York"). In the video Miguel, dressed in baggy jeans and a "Chicago Bulls" jacket, walks down Manhattan streets. Miguel motions to accentuate how high the skyscrapers are, as if he ruled this modern scene—so different from the rural Andean Ecuador

of his background—and then the camera follows him as he slips through the doors of an empty restaurant and into the kitchen, where "dark-skinned men, perhaps also Ecuadorians, were furiously chopping vegetables" (2). After virtually escorting his family to his workplace, the movie jumps to Miguel's apartment during a party where Miguel, speaking accented, exaggerated English, greets other men, who laugh in response. The video ends with Miguel speaking into the camera and bidding his children good night while emphasizing how much he loves and misses them. He also adds that they should help their mother with the animals and in the fields. This last reference is very significant, for in Miguel's absence Carmela, much as have many other women in this village almost entirely devoid of late teenaged and adult men, has had to assume tasks once inconceivable for women there to do—from hiring day laborers, to driving trucks, to deciding on major purchases. Meanwhile Miguel, who never cooked in Ecuador—a feminine domain there—not only earns an income cooking, but must do other domestic chores in his male-only apartment as well as handle his budget carefully to ensure he can remit enough back to Ecuador to retain respect as a good provider. All of these tasks would have been unimaginable for him to accomplish in Ecuador. When Pribilsky interviewed Carmela about her interpretations of changes to her life, she responded (2007, 4–5): "Before, we had little choice in the matter of marriage, and then once you were married there seemed even less choice. Women before [migration began] were used by their husbands and did what they said. . . . With the men who leave to the United States, it is different, better. Yes, we [women] are alone and we are sad, but Miguel is different. Many women whose husbands are gone say it is different." Clearly from this couple's lived experience, gender appears to be in motion.

Vignette 2[2]

Urvi[3] and Santosh are originally from the state of Tamil Nadu in southern India. A software engineer by profession, Santosh has lived in the United States for more than ten years. He is a permanent resident (a green card holder), as are his parents, who live with him in Miami, Florida. Two years ago Santosh went back to India to get married to Urvi, a woman in her midtwenties with a diploma from a local college but not gainfully employed anywhere. Their marriage was quite typical by Indian standards; it was arranged by Urvi's and Santosh's families. The couple met each other only a few days before their wedding. As planned, after marriage Santosh and Urvi traveled to the United States. She entered not as his spouse but on a nonimmigrant visa. Urvi expected that Santosh would file for her permanent residency soon thereafter. However, after her arrival in Miami, Santosh did not feel any urgency to process his wife's legal documents. He felt that because his wife's duties started and ended at home and thus she would not be seeking outside employment, there was no need for her to have her legal house in order. Consequently, Urvi's legal status expired despite the fact that she had arrived legally on a visa. She became an "illegal" migrant.

Beyond legal status, another important part of their story is money. As is customary, Santosh's family demanded a lump sum of money—a dowry—from Urvi's family going into the marriage.[4] The resources her family brought to the marriage, however, were placed not in her name but in Santosh's name. This money, together with Urvi's wedding and ancestral jewelry, which she inherited during the wedding, was put in a safe deposit box in Miami. Only Santosh had access to it. Urvi's life in Miami became totally circumscribed within the house; she had to cook for the entire family, take care of all household chores, and attend to her in-laws unconditionally. Moreover, Santosh and his family were afraid that Urvi might talk about her predicament to others, so they neither let her meet any other people in Miami nor helped her develop her social and professional network. Instead, she was even forbidden to communicate with the neighbors. Her in-laws kept a close eye on her every move. She could not even leave the house without a family member or trusted family friend as her escort. This vigilance and workload made it impossible for Urvi to seek a way out. She also spoke little English and no Spanish, making it difficult for her to seek help. Urvi's parents and her family in India did not intervene on her behalf. In fact, they kept on telling Urvi that she should know how to adjust to her husband and his family. Returning to them was not an option, as it would bring shame to her family.

Urvi tolerated these conditions until the point when she could take it no more. In the meantime Promila, a friend of Santosh's sister who used to visit them often, noticed Urvi's suffering. One day Promila approached Urvi about her situation. Initially Urvi was very scared to tell her the truth, but in the end she mustered all her courage and confided in Promila. Promila then, very cautiously, put Urvi in touch with a neighbor who is a volunteer at a nonprofit organization that aids women victims of various types of domestic mistreatment. That is how Urvi escaped the worst, but she now lives in the shelter, without any legal status. Urvi faces two unpleasant options: either return to India and to her family, in which case she risks tainting her family's and community's reputation, or stay in the United States as an undocumented migrant and live a hidden life.

Interpretation and Analysis

You have just read two different lived experiences of being undocumented that involve gender. Bring your gender lens into focus and work on interpreting what each case illustrates about gender's influence on specifically *undocumented* immigrants (as opposed to how gender inflects the lives of immigrants with legal status as well as natives). What do you see, and why? We all bring our own experiences of gender, and our own lived realities more broadly, into our interpretation of others' experiences. When we tell our own stories about our own experiences, we enjoy varying degrees of awareness about

what we intend these stories to mean to our audience. This is no less true for those who tell others' stories, such as ethnographers. Returning to the vignettes, what evidence, if any, do you find that these "storytellers" are trying to get you to take a particular perspective on the people described? What information do you receive, and what information is lacking that might help you understand the immigrants' predicament in greater depth? These are all important questions to keep in mind as you analyze these stories.

Now consider what analytical tools, beyond your own personal experiences, you bring to interpreting these vignettes. Although our personal experiences cannot and arguably should not be eliminated from our analyses, there are more objectively analytical approaches to understanding phenomena: social science approaches. Theorizing gender has a long and valuable history that we cannot apply in its entirety to these vignettes in a chapter of this length. Therefore, we transition now into explaining our own analytical approaches, followed by how we apply them to the vignettes. This task is made more difficult by attending to our mandate, which is to focus on gender among *undocumented* immigrants in particular. The rich literature on gender and migration rarely, if ever, attempts to limit the focus to the undocumented. That makes sense, since people live according to networks of family and friends, and those do not always map seamlessly with immigration status. Therefore, our discussion emphasizes gender and migration, as well as whenever possible and appropriate drawing attention to the particularities of their interplay among the undocumented.

STUDYING UNDOCUMENTED MIGRATION THROUGH A GENDER LENS

An important yet often omitted step in theorizing is to make explicit the definitions of the terms being used. We begin our approaches to theorizing with this step and focus on the central term of this chapter: *gender.* Although it is very common on surveys and in everyday conversations to find the term "gender" used as a synonym for sex, as in differences between males and females, in the social sciences there has been an enormous amount of analytical work to keep these two concepts separate (Ferree 1990; Ferree, Lorber and Hess 1999; Hondagneu-Sotelo 1999; Lorber 1994; Ortner 1996). Most of the time when people ask, "What is your gender?" they really mean "Are you male or female?" and do not wish to ask, "What is your sex?" Hence the confusion. A simple yet effective way to thwart potential misunderstanding, then, is to use "sex" very narrowly as a *variable* having two options: male or female. However, gender can and should be understood as a much broader concept. *Gender* is the ways that people mark male versus female and the

cultural significance that goes along with this division. For example, we are born with particular genitalia, but that does not mean that pink is always associated with girls and blue with boys or that girls must wear dresses and boys pants. The criteria for performing gender appropriately vary culturally, but we learn them very early in life (Barrett and Buchanan-Barrow 2005; Bussey and Bandura 1999; Durkin 2005; Maccoby 1998; Martin, Ruble, and Szkrybalo 2002; Thorne 1993; Toren 1988); we learn them as normal. We take those criteria for granted not only as the way men and women, girls and boys among *our* people behave and think, but also as the way the world *should* be (Mahler 2013). We thus learn models of how we should think and behave according to gender and then we *do gender* to each other and ourselves all the time. That is, we are not born knowing how to behave in accordance with our society's gendered understandings of the world, but we learn this early in life, and with few exceptions we conform to those rules and also discipline others to conform.

Gender is not just confused with the variable sex; it is also commonly confused with the concept of sexuality. So we take a moment here to explain the difference. A person can grow up female but feel attracted to other females; the same can be said for males. So sexual orientation is not determined by gender. However, in many if not most societies across the world there are people who occupy what is often referred to as a "third gender" (see Butler 1990, 1993; Nanda 1996, 1999; Reddy 2001, 2005).[5] The typical case is a person who has male genitalia, who may dress as a female and does not engage in typical male activities in that particular society. In the United States today there are people who feel uncomfortable emotionally with the sex assignment they have been given by their obstetrician, their parents, and so forth, and undergo some type of procedure that transitions them to the gender identity they feel truly reflects who they are. Such people are acknowledged, albeit not universally accepted, under the term "transgender." Some people cross-dress and bend or blur gender lines in additional ways that occasionally are labeled and sometimes are not (Roscoe 1991).

Another terminological classification we feel merits discussion is the use of gender "roles" versus gender "relations." Some scholars use these terms interchangeably; we prefer, however, to distinguish them. For us and some others (Pessar 1999; Ferree 2010; Ferree, Lorber, and Hess 1999; Kimmel 2004; McKinnon and Silverman 2005), the term "role" is too static; we thus tend to avoid it in favor of arguing that people relate to one another. However, "role" can be usefully defined in a limited way as a term signifying the ideological expectations that we know. We are aware of what role(s) we are expected to play, but these can and usually do differ from the ways we interrelate as males and females.

In short, we view gender as highly flexible, given that it is not a binary (male/female) and that there is such a wide variation in how peoples around the world understand and perform gender. Therefore, we find it useful—though it also can be disturbing for many people and for reasons discussed in the section "Boundaries and Boundary Work"—to abandon dividing people into male or female, gay or straight, documented or undocumented. Instead, we think that such "axes of identification" are best plotted along a continuum, with endpoints of male and female, gay and straight, documented and undocumented, and so forth. People do not necessarily fall within a category, but rather along this continuum. Some women may behave in ways that appear—in that society or even in a particular cultural context—as more masculine, while others will appear more feminine.

These last couple of sentences begin to illustrate that gender—and not just for the undocumented—is contextual (Lamphere, Ragone and Zavella 1997; Ridgeway and Correll 2004; Risman 2004). We never really stop "doing" gender in our daily lives, but what we do varies by context. Thus in any given day how we perform gender can and usually does shift, such as in the case of Carmela. At one moment she is preparing food for her family according to quintessentially "female" expectations, and in the next she is driving a truck, which masculinizes her. Now take a step further by plotting gender performances as they shift across the life course. The gendered world of a girl resembles but is also distinct from her life as an adolescent, an adult, a mother, a grandmother, a wife, and so forth.

Immigrants' lives also go through recognized epochs—at a minimum childhood and adulthood. What typically happens, however, is that *their childhoods (or significant parts of them) occur in one society and their adulthoods in another.* Therefore, they grow up within and become very adept at a gendered set of expectations for how they should behave and believe. When they migrate they encounter themselves in a new context, in which gendered expectations for how people should behave and believe still exist, but the new gendered expectations rarely align perfectly with the ones in the immigrant's homeland. This ability to compare and contrast premigration against postmigration realities has been referred to as having a "dual frame of reference" (Ogbu 1993) and serves to explain why so much research on minor age immigrants takes seriously the age of migration, differentiating those who arrive as young children with few memories of their homelands from those who arrive later (Levitt and Waters 2002; Portes and Zhou 1993; Rumbaut and Portes 2001; Waldinger 2007). Given advances in understanding the brain, possessing a dual frame of reference takes on additional significance. Our minds pay attention to differences, and these differences help bring to our awareness our own practices and assumptions about life, which otherwise

lie in our subconscious, given how we learn them in childhood and take them as normal and natural. When immigrants encounter differences as adults, however, they not only have years of practicing gender behind them, but they also have lost a great deal of the flexibility they had as children to learn and adapt their practices and ideas (Mahler 2013). They still can adapt, they still can change, but it is not at all as easy as it was when they were children.

There are important additional aspects to the experience of undocumented immigrants that we argue should be factored into a gender analysis. First, they almost always arrive burdened with huge debts from their travels (Mahler 1995; Pribilsky 2007) that do not permit them the luxury of adjusting more leisurely. On the contrary, they must immediately get to work, cobbling together adjustments to circumstances as best they can. Second, research documents how they typically live and even work largely with conationals (such as in enclaves) (Portes 1987; Maira 2002), and therefore when they do encounter the broader society, they get only partial exposure to how gender is manifested there. Thus immigrants' day-to-day existence is typically only punctuated by, not saturated with, cross-cultural encounters, making it difficult both to understand the differences they do perceive as well as to adapt even if they want to. Third, as undocumented immigrants they cannot travel back home physically, as those with legal status can. Therefore they typically conduct their lives transnationally in concert with their family members in the homeland (Boehm 2012; Das Dasgupta 1998a; Kibria 2005; Mahler 2001; Pribilsky 2007; Smith 2006).

The question to ponder is the degree to which prolonged stays abroad produce changes that are not necessarily perceived by the undocumented about themselves, because they work so hard to maintain and improve the lives of those at home, but which nonetheless occur. That is, their orientation is toward preserving and enhancing the lives they left behind rather than toward how they themselves might be transforming in their new circumstances. Fourth, when they *do* attempt to effect conscious change back home, they often pick changes that promote themselves as more "modern" than those at home (Hirsch 2003; Kibria 2005; Mahler 2001; Maira 2002; Pribilsky 2007). Their efforts to update life back home can and sometimes do inflect gender relations, but we argue that altering gender *is not a primary goal or concern.* Fifth, when they emigrate they leave behind people who have to adapt to their absence, and this is well documented as producing major gendered consequences for those at home as well as for those who migrate (Boehm 2012; Das Gupta 1997; Das Dasgupta 1998b; Kurien 1999; Kyle 2000; Pribilsky 2007; Smith 2006). Therefore, whether or not those changes are intentional or desired, they typically occur due to necessity—such as women who must take on traditionally male responsibilities and migrant men who must do domestic chores in all-male

households abroad, which they would never consider doing when at home. Finally (this is not a comprehensive list, but merely one illustrating many complexities), the varied ways that undocumented immigrants communicate with their families who stay behind (such as via phone conversations, remittances and gift flows, etc.) also negotiate gender between these societies. This phenomenon is more typically referred to as negotiating gender "transnationally" (Boehm 2012; Charsley and Shaw 2006; Hirsch 2003; Smith 2006). That is, there is an alchemy that occurs for gender and other axes of identification when there are cross-border influences, which inflect and affect these "identities" above and beyond what occurs within a society's borders.

How can we study (and understand) undocumented immigrants' experiences through a gender lens? We argue that there is an important added factor that must be taken into consideration, above and beyond those already cited. In any particular group of people, we would collect both individuals' understandings of how people *ought* to behave as men and women, girls and boys, as well as observations of these individuals' behaviors. Good research gathers and then compares and contrasts the gendered models or ideals that people hold in their heads (and which they have learned in childhood) against actual observed behaviors. We need to assemble both what they say and what they do, theory and reality, ideology and praxis. We also can and should collect these models or ideals based on different contexts, since we know that how people do gender can and typically does vary by context.

It seems logical that doing gender according to different contexts *within* a particular society or group of people will not budge gendered ideals or practices as much as doing gender *across* societies in which ideals and practices differ. That is, *it makes sense to expect greater change in both ideologies and practices of gender when people migrate to contexts that are far different from those in which they grew up.* This hypothesis holds even given the previous discussion about how the lives of undocumented immigrants often, but not always, afford little engagement with the broader society. The key is being exposed to differences. Yet how do we measure such differences and changes in immigrants' gendered practices, let alone ideologies, given how contextual gender is? Moreover, should we not measure changes over time to see if they are sustained or temporary? A famous albeit nonmigration case in point is how women were summarily dismissed from their jobs after the end of World War II, how "Rosie the Riveter" was told to go home and have babies (Coleman 1995). In that case, short-term shifts in gender praxis were quickly reversed and gender ideologies reinforced. To summarize, conceptualizing gender across transnational field sites, not to mention shifts over time, is no easy task; fortunately there are some good theoretical frameworks that can be applied. We explain these frameworks here and later apply them to the vignettes.

GENDER IMBALANCES IN MIGRATION STUDIES TO GENDERED CARTOGRAPHIES OF POWER

The Gendered Geographies of Power (GGP) framework was proposed by anthropologists Sarah J. Mahler and Patricia R. Pessar (2001) as a multiscalar and multidimensional approach for examining gender among people, documented or not, living their lives across transnational social fields. Throughout the 1990s, as the transnational perspective on migration arose and was embraced by numerous scholars, race, class, nationality, and other axes of identification were incorporated into their analyses (Glick Schiller, Basch and Blanc-Szanton 1992; Basch, Glick Schiller, and Szanton Blanc 1994), but gender—with a few exceptions—remained on the sidelines. Mahler and Pessar (2006) sought to remedy this absence by bringing gender from the periphery to the center of transnational migration research. Some two decades earlier, feminist researchers had identified and rectified the absence of women in migration studies (for excellent reviews see Hondagneu-Sotelo 1999; Morokvasic 1984; Pessar 1999). Over time this corrective produced a more balanced approach that emphasized neither male nor female immigration, but rather documented how gender organizes migrations (Hondagneu-Sotelo 1994). The GGP perspective takes gender's organizing power as a starting point for a broader examination.

Briefly, GGP revolves around three gendered elements: (1) social locations, (2) geographic scales, and (3) power geometries. "Social locations" refers to what other scholars often term "intersectionalities," meaning that we are all socially situated and evaluated according to various axes of differentiation (gender, race, class, religion, etc.), which interact with one another and which, as discussed previously, are also contextual. These axes of differentiation themselves reflect historical, political, and economic processes and are not static. We learn them, and then at any given moment we perform some or all of these different "identifications" (we prefer this term over the much more static and structural term "identities"; see also Brubaker and Cooper [2000]), with varying intensities. In the GGP terminology, "social locations" signifies how someone socially locates herself and how she is socially located by others. Titling the framework "*Gendered* Geographies of Power" serves to underscore that gender is ever present; rarely would we be socially locating ourselves or others be locating us without reference to gender. "Geographic scales" refers to the fact that social contexts are scalar and operate simultaneously across these scales from, for example, the body (how we socially locate ourselves in our manner of dress, etc.) to the globe (how transnational flows of ideas affect how we socially locate ourselves regardless of social scale). "Power geometry" is adapted from the work of Doreen S. Massey (1994) and reflects the

important fact that we are not merely *products* of our circumstances, but rather can and do act in the world in ways that may not always conform to expectations given our social locations. In short, we still retain agency, but we exercise "it" to varying degrees as well. In fact, one of the principal ways we identify agency is when we do *not* conform to rules and regulations. We sometimes transgress them. This brings us to the second framework we find useful for analyzing gender among undocumented immigrants.

Boundaries and Boundary Work: Negotiating Gender

The term "boundary work" (BW) dates to the foundational paper by Thomas Gieryn (1983), but owes much to Fredrik Barthes (1969) and has been usefully elaborated in a review by Lamont and Molnár (2002). The concept is increasingly being used for understanding immigration (Alba 2005; Wimmer 2008; Zolberg and Long 1999, among others). Put as succinctly as possible, we are not born knowing the sociocultural categories that organize our group's way of life. We must learn these, and learning them involves figuring out the boundaries between categories (such as how male is distinguished from female or natives from immigrants). Without any awareness that they are doing this work, infants and young children seek these social regularities or patterns by interacting with others, then proceed to use them to interpret others' actions and to act and think appropriately. We grow up silently assuming that what is normal and natural for us is also the same for others (Mahler 2013). That is, until we encounter difference. When we encounter difference, our minds activate and we respond by doing one or more forms of boundary work. If we reaffirm our group's ways, we keep others out and reaffirm a boundary between us. If, conversely, we are attracted to another's ways, we might individually cross the boundary to the other side. If enough people cross over a boundary, the boundary itself might become blurry or less apparent (Alba 2005; Zolberg and Long 1999). And in some cases boundaries can shift to include previously excluded groups. A good example of boundary shifting is how in U.S. immigration history southern and eastern European immigrants were excluded from the privileged racial category "white" until after the integrating forces of World War II (Katznelson 2005). During that war the racial boundary blurred for these groups, but it remained strong (or bright in Alba's terminology) for Latinos, African Americans, and most Asians, particularly the Japanese. Another case is how at the turn of the twentieth century racial boundary work was exceptionally severe against Asian immigrants, particularly in California, but a series of processes has shifted the boundary of social acceptance there as in the rest of the country, albeit not inclusively enough for

even the native born of Asian ancestry to be accepted as "true" Americans (Gibson 1988; Hing 2004).

Boundary work involves spatial as well as social concepts, and it also engages with agency. Therefore it is a kindred conceptual framework to GGP. Douglas S. Massey (2007) tightens this kinship by adding a direct power dimension. He argues that all social stratification processes "boil down to a combination of two simple but powerful mechanisms: the allocation of people to social categories, and the institutionalization of practices that allocate resources unequally across these categories" (2007, 5–6). That is, categorizing people into groups is a necessary but not sufficient condition to creating systems of inequality. But with inequality comes knowing who is on top and who is on the bottom of the hierarchy. And this knowledge is also extremely important. Those on the bottom are frequently dehumanized—socially located outside the category human—and treated as such. They become a society's abjects (Kristeva 1982; Sibley 1995). Immigrants deemed very different from the rest of a nation's population are especially likely to be abjected, to be labeled "illegal" and not merely unauthorized or undocumented (De Genova 2008; Gonzales and Chavez 2012).[6] Social psychologists have even found that the brains of dominant groups in a society respond very differently to images of and even just descriptive terms (wetbacks, illegals) for these despised groups. These studies of brain scans show that people may quite literally not care about society's abjects other than to despise them (Fiske 2011). These findings hopefully remind you of the opening to this chapter, of images of undocumented immigrants and the power of stereotypes.

Analyzing the Vignettes: Applying GGP and BW

This section utilizes these frameworks to interpret the two vignettes, beginning with the Ecuadorans. We anticipate that this brief exercise will encourage you to try them on your own analysis. Our interpretations introduce some additional ethnographic detail that was difficult to convey completely in each vignette. A critical starting point for both a GGP and a BW analysis is to identify people's reference groups. These situate or socially locate people and also set up the dynamics for all types of boundary work. Most important is to identify the group(s) to whom people aspire to belong as well as the group(s) at the bottom that they desire to avoid. A good way of referencing these parameters, which stems from field research by Mahler, is the illustrative quotation, "No one wants to be at the bottom." This position can also be captured by the concept of the abject. Of course there are many "bottoms" depending upon the sociogeographic scale and the axis of identification. For example, and very generally, the group(s) at the bottom on one side of a

transnational social field can and typically are very different from the group(s) at the bottom on the other side.

In the rural highlands of Ecuador, the indigenous occupy the abject position as determined by the surrounding and dominant mestizos. Pribilsky writes that the villagers he studied are highly disparaged when they go into the nearest metropolis, Cuenca, and that youths who head there typically don *iony*-style[7] clothes and work hard to pass as *iony* sophisticates there. They do not want to be labeled as backward, a stereotype applied by the mestizos to the indigenous populations and one that the youths associate with the *ñaupa tiempos* (olden times). However, in the context of New York, being indigenous Latin American has little impact on social location; the primary axes of identification there are immigration status (undocumented) and being Latino. Pribilsky does not enter into a prolonged discussion of how being indigenous Ecuadoran fits into the local Latino hierarchy, but our own knowledge leads us to believe that they are not on the bottom, a bottom variously defined as Mexican for undocumented immigrants and as Puerto Rican for Latinos holding legal status (Massey and Sánchez 2010; Smith 2006). In fact, Pribilsky is asked by a villager if being indigenous is as low in New York as it is in Ecuador, and he responds that he does not think so. This is important information, but not as important to someone who views himself as living *temporarily* in *iony* as a way to "*avanzar*" or improve his family's life in Ecuador.

So from a male, highland indigenous, undocumented immigrant perspective, living in *iony* socially locates a man several rungs up the social status ladder—in Ecuador. He has fulfilled local masculine expectations by emigrating successfully; he can make claims to being more sophisticated by living in *iony* (even if in his day-to-day existence he rarely engages any of its glories); he is doing what all good men do (dominant gendered model), which is to provide for his family; and he is also moving them forward ("*avanzando*"). Moving forward means that he is passing himself and his family across very bright status boundaries in his village that are tied *not* to ethnicity but to another axis of differentiation—land ownership. As Pribilsky (2007) explains well, in this region of Ecuador generations of large families living on limited areas of land have resulted in very, very small plots of land being bequeathed to children, not enough to sustain another generation. Going to *iony* is viewed as the only viable solution to being economically bounded, given that outside the villages mestizos dominate, and few if any indigenous can cross those very bright boundaries.

In some ways Santosh's situation parallels and in other ways it diverges from Miguel's. Both men migrated to the United States in no small part out of family obligations. And both sought to "advance" their family's welfare.

They also enjoyed the assistance of their parents—and most likely additional residential and transnational kin—to accomplish gendered and sexual boundary work against their wives. This was facilitated by shared patrilocal, postmarital residence traditions of wives moving to live with their husbands' kin. Though significant, the similarities are few and the divergences many. Santosh arrived with education and legal status, and he was able to reconstitute his family in the United States. He did not live socially isolated, but he certainly isolated his wife. All Santosh's actions, along with those of his parents, reproduced a gendered geography of power characteristic of life in India: arranged marriages, huge family involvement in arranging the marriage, a patriarchal system in which the daughter-in-law is socially located at the very bottom of the gendered family hierarchy and her labor is controlled by her mother-in-law. These are all extremely common in India despite recent and rapid changes there that are altering gender relations (Charsley and Shaw 2006; Das Dasgupta 1998a; George 2005). In fact, though we do not and cannot know, Santosh and his family might even have been trying to *avoid* the possibility of his getting a more modern wife by moving to the United States, where she would presumably have less recourse than in India, where she could have—given her relatively high education and language abilities—found employment and supported herself.

Santosh and his family worked ardently to reify the "traditional" GGP despite migrating into a very different gendered society. In so doing, he would enjoy much higher masculine privilege than a typical married man in the United States would enjoy even if the U.S. man were the sole breadwinner. And there is another, more transnationally negotiated scale to consider in this family's GGP. By acquiring high education and a good job, particularly a good job overseas in the United States, Santosh raised not only his own social location but that of his extended family as well—an enhanced status that would accrue even to his community back in India. Furthermore, his gendered and kin social locations within that broader community—in India again—were further elevated when he agreed to an *arranged* marriage. That is, and in contradistinction to Miguel, Santosh achieved higher social status by reaffirming tradition. Miguel, meanwhile, negotiated this axis of identification by embracing symbols and practices of modernity—and in so doing lifted himself up vis-à-vis the "traditional" peoples back home in rural Ecuador. Santosh's bargain with tradition thus necessitated the extreme gendered boundary work used with Urvi and reinforced by his parents. A "modern" wife would threaten their social-climbing achievements, much as a disobedient daughter would stain her family's standing. Ironically, of course, Miguel's absence resulted in *greater,* not lesser, personal freedom for Carmela, albeit confined to their traditional community and always subject to the vigilant

eyes and ears of her in-laws. Meanwhile her counterpart, Urvi, likely enjoyed much higher personal freedom in India and was able to physically migrate into the United States (unlike Carmela and other women from her village), yet found herself *more* bounded than Carmela.

Now we turn to a more nuanced gender interpretation. While the men are the overwhelming *international* boundary transgressors in the Ecuadoran case described by Pribilsky, women are transgressing some local gender boundaries. At first glance women remain highly circumscribed by kinship customs, particularly postmarital residence rules, which call for new wives to move to their husband's kin and provide labor for their mothers-in-law (in both the vignettes). Pribilsky's survey indicates that only 50 percent of married women conform to this rule, a finding that underscores why studying both cultural prescriptions for behavior *and* actual behavior is so important. Carmela and other women living in the village find they have absolutely no possibility of engaging in extramarital affairs, because there are watchful eyes on them everywhere, even if they do not immediately live with their in-laws. This is gender and sexual boundary work at its most effective: a gendered, sexed panopticon that Foucault (1991) would have appreciated. And yet the very absence of their husbands *requires* that the women assume tasks normally handled by men in order to maintain their families and, hopefully, *avanzar*. This is the great, gendered irony. But it signifies the classic example of Rosie the Riveter: women moving into traditionally male occupations and tasks *only* when men are absent. The real question is if these changes in gender *practices* (recall that the men abroad assume quintessentially female tasks as well) result in shifts in gender models. Here the data suggest that gendered boundary work allows transgressions only to a point.

Sometimes even the preceding gender transgression is not allowed. For Urvi and other married South Asian women who migrate with husbands to the United States and live with their in-laws, this gender boundary work often reaches extreme proportions. As evidenced in the second vignette, young married women who migrate—even legally—with their husbands can, and often do, become household servants. Arguably, domestic sequestering of wives is not as abusive boundary work as sex trafficking, a far too common transnational and gendered phenomenon (Augustine 2005; Schrover et al. 2008), yet it is a "crime" that gains much less visibility even if it occurs regularly (Das Dasgupta 1998a, 1998b). Moreover, and in contradistinction to much sex trafficking, the boundary work applied to wife-servants is performed by her kin and underscored by deep-seated norms regarding her obligations to husband and family. These are reinforced during negotiations leading to the arranged marriage and during wedding rituals and then even more strictly enforced after marriage, when the wife is completely beholden

not only to her husband's wishes but to her mother-in-law's as well. All parties' honor would be deeply tarnished should she transgress these rules. And she has no recourse, as her natal family rarely will receive her back even when she is abused. In sum, the gendered boundary work operating on Urvi is more hegemonic than that for Carmela, even though both live with their in-laws and they occupy different socioeconomic locations. In Urvi's case her day-to-day existence was so intentionally bounded that she had little to no contact with the broader society. This prohibited her from even experiencing the syncopated contact with gender in the new society (the United States) characteristic of most undocumented women. Though they might live and work highly segregated from the larger society, they typically interface with it occasionally, such as when handling their children's schooling, health care, and so forth. Moreover, domestic work for the broader society's families creates another means of encounter (Hondagneu-Sotelo 1994, 2001).

In both Miguel's and Santosh's cases, family honor is largely preserved through the boundary work over their wives performed by their parents and additional kin. Yet both men also aspire to respect, and respect in both cases is intimately related to gender. Negotiating their own respect within their communities—both in country of origin as well as in their new society—involves bright gendered boundaries. In the Ecuadoran context, a man hits bottom on the local social hierarchy if he is called a "*mandarina*" (literally mandarin orange), a pushover, a man who has no authority within his family and thus within the community. For the South Asian (Hindu) context from which Santosh hails, the bottom for a man is when he disrespects his parents and family and acts against their wishes. He immediately loses authority, and his reputation is tarnished not only within his immediate family but also across his extended family network and the larger community.

Now that the bottom or abject position has been identified, a question remains: What are the gendered expectations—at least minimal expectations—for men to enjoy respect? In the case of Santosh, respect is a function of conforming to social norms expected of men. This means that he should be educated; employed; marry the woman that his parents and family choose for him; and earn well in order to provide enough for his family, his wife, and his larger community. In the case of Miguel, respect is overwhelmingly earned through being a provider. Indeed, in the village Pribilsky studied, men are not sanctioned if they beat their wives and children, so long as they are providers. Many local men drink, and as a consequence domestic abuse rates are high. However, women have little to no recourse against men as long as they provide. According to Pribilsky (2007, 250), "Women could thus pay sorely for placing men in positions where they appear as *mandarinas,* with physical

abuse (*maltrato)* being an all too common response. Therefore, men prevent themselves from being the local form of the abject (the *mandarina*) by transnationally earning a living that preserves their *local* authority—even as their wives assume masculine tasks. The bottom line for Miguel and men like him—and this is why knowing the bottom is so important to a BW perspective—is that the gendered moral order of male authority is *preserved* even when so many men are absent. The additional irony is that it is the local, nonmigrant men, many of whom are rendered abject by *not* emigrating and others who are pater familias, who nonetheless maintain this order. Because male authority is maintained, it is very difficult to imagine that migrants returning to the village could alter it, even if they so desired. They would undermine their very authority, an authority they sacrificed so much to uphold.

Something more likely to shift these bright gendered boundaries would be the transgressive work of young women emigrating. Pribilsky found toward the end of his research an "incipient stream" of young women beginning to leave. Whereas their brothers could emigrate and gain prestige, the young women were facing a totally different degree of gendered boundary work. Leaving disgraces not only their families but also the broader community, because emigrants represent the community and females who emigrate cannot be controlled sexually as they "should" be. Females' emigration causes "community disdain because their movements conjured up long-held beliefs linking women's mobility with unbridled sexuality. One woman told me bluntly, 'Women who leave [alone] are seen to be like whores [*putas*].' Considered most disgraceful, however, were married women with children who migrated alone, leaving their kids behind to live with relatives, usually grandparents or aunts and uncles. Their actions called into question not only their sexuality, but their obligation to family as well" (Pribilsky 2007, 157–158).

So for these highland Ecuadoran women, migrating results in their swift social relocation into the single greatest abject position possible, the lowest of the low. It is almost unimaginable to think they can renegotiate from that position, because it is not a condition that can be remedied; it is a condition of cultural pollution (Douglas 1966; Sibley 1995). A woman whose sexuality cannot be controlled threatens male authority and thus the entire gendered system. This is why young women are policed so heavily and their emigration is so derided. This type of double standard is not unique to this case (see also Boehm 2012; Espiritu 2001; Kyle 2000). Their gender-bounded situation evokes the domestic incarceration of Urvi; in one case migration is prohibited to protect family and community honor, and in the other case migration is permitted but only so long as the migrant never actually moves unescorted or

encounters the new context. And in both cases, transgressing the bright gender boundaries results in total exclusion or banishment.

Do the GGP and BW interpretations behind these two vignettes offer an alternative narrative from the one typically delivered in the gender and migration scholarship? Are undocumented women always in a gender-dependent relationship vis-à-vis the men with whom they associate? We acknowledge that the pictures we are painting have more gloomy than vivid colors for women, yet we emphasize that Urvi *did* indeed escape, and although her future is uncertain, her present is in at least some ways less constrained than her past. Perhaps she will file a case under the Violence Against Women Act (VAWA)[8] and find her way to documented status, learn the new language, and utilize her college education. Maybe she will become an advocate for women similarly socially located and isolated. In the case of highland Ecuadorans it is also important to restate that nonmigrant women in this village, such as Carmela, experience shifts in gender relations—many of them empowering—that may portend greater changes in the future. They drive trucks and manage male workers and the family budget, to name a few additions to their responsibilities. And we know that some young women *are* emigrating despite the gendered social costs. We can imagine one single young woman who emigrates and somehow redeems her social location through some type of transnational action—some type of power geometry—that would pierce this very tightly policed gendered boundary in the village or the patrilocal household. Perhaps she becomes a professional in *iony* or a businesswoman and translates much of her economic capital into social and cultural capital back in the village. She may have to remain unmarried—and certainly not have any children out of wedlock—to accomplish such a feat, but we can imagine that she sacrifices over a long period of time during which she invests steadily in acclaimed projects back home. Slowly, and particularly as she ages and her sexuality becomes less important locally, she might turn her long-sullied reputation from whore to heroine.

Something akin to this happened over generations with Filipina emigrants who were accused of abandoning their children for their own egotistical desires (Basch, Glick Schiller, and Szanton Blanc 1994; Constable 1997; Parreñas 2001). Unlike the Ecuadoran men in the vignette under study, the Filipinas were not culturally interpreted as breadwinners earning a living to take care of their families. After much heartache and being nationally maligned, they were later recast as national heroines when their remittances became recognized as maintaining the national economy. Yet they still are subject to social criticism for living away from their children and are criticized

more than fathers who earn their living abroad. The double standard, in which men and women are not treated equally for doing similar work, survives transnationally. In sum, the *transnational* gender lens is very much the appropriate optic, for without this perspective many actions are easily overlooked and others are misinterpreted. Bringing to that transnational lens the frameworks of GGP and BW hopefully contributes much additional detail and texture to an analysis.

CONCLUSION AND LOOKING FORWARD

In this chapter we have purposely chosen to favor two theoretical approaches to understanding the gendered experiences of (un)documented immigrants instead of providing an overview of the massive literatures that address the interrelationships between migration and gender. As stated previously, we chose this way to utilize our limited space in part because it is so difficult to adequately reflect and review others' important contributions—a task that has been done handily by several scholars before us. In addition, we feel and hopefully have demonstrated the added utility to theorizing and understanding gendered migration experiences through viewing them from the optics of BW and GGP. This dual optic shows that undocumented status, in particular, does have some effects on gender, and gender also inflects undocumented status. But simple measures such as "some effects" tell little of the story, which is why we spent so much time on the two vignettes. We have found in our own work that such narratives convey nuances that cannot be captured by either statistics or simple quotations.

We wish to close this chapter—and also to honor our dear colleague, mentor, and friend Patricia R. Pessar, whose work has been so critical to advancing our understanding of gender and migration—with a speculative, not conclusive, idea. Speculation "is nothing to be ashamed of: every virgin area of scientific inquiry must first be explored in this way. . . . We need to roll out our best hypotheses, hunches, and hare-brained, half-baked intentions, and then rack our brains for ways to test them" (Ramachandran 2001, xvii). The central idea to problematize now is that of being a mother versus being female. Everyone has a mother, yet not all women become mothers. Arguably this is truer now than at any other time in human existence, given our very recent ability to control fertility. The combination of urbanization, access to contraception, and women's expanding entry into the paid labor force is increasingly separating the gender axis of identification from the parent axis. What are and will be the effects of this separation? We argue that they may be very profound—and troubling. Why? We turn to the critical work of

Susan T. Fiske and its application to social hierarchies as found in Douglas S. Massey's 2007 book *Categorically Unequal.* "The mechanisms devised by human beings to promote gender stratification," writes Massey, based on Fiske's work,

> are different from those used to perpetuate inequalities on the basis of race and class. Whereas elites may frame minorities and the poor as unlikable and incompetent, and thus prime targets for exploitation and exclusion, such a framing cannot very well be used to anchor categorical distinctions based on gender. Husbands have wives, fathers have daughters, brothers have sisters, and sons have mothers to whom they are emotionally attached and with whom they live in intimate association. These emotional bonds preclude the positioning of women as a despised out-group. As a result, gender stratification relies on a different framing, one that positions women as likable and approachable yet exploitable, a tricky balancing act that has given sexism a distinctive attitudinal structure compared with racism and class prejudice. (2007, 212–213)

What does this mean? What we glean from this passage and the research behind it is that BW can only go so far against women when they are mothers. That is, men can always position themselves as dominant over mothers, but they are very unlikely to push mothers into the despised boundary work category, because that would mean despising their own female kin, particularly their mothers. Thus, it is *motherhood* more than gender that is the protective factor here, and motherhood is declining. Women are rising across the world in terms of work and education, but when these achievements cause women to have fewer children and in many cases to remain childless, then we worry about what this bodes for females overall.

The particular plight of immigrant women who bridge motherhood to work—nannies—provides a clarion case, a warning not to be taken lightly. Nannies toil as surrogate mothers to children who often grow up to distance themselves from—and even hate—the very women who nurtured and loved them as children. This is seen quite dramatically in the research by Rebecca Ginsberg (2008), who studied white children raised by black nannies in South Africa and in the fictive work (but nonetheless based on real experiences) *The Help,* which describes similar scorn by white American women toward their black servants. We can only imagine the pain felt by innumerable undocumented immigrant women who by day labor to provide not just material sustenance to their young charges but also the emotional and psychological devotion they need to grow up normally and humanely. At night they retreat from the terrain of the privileged and head "home" to much more modest circumstances, where they begin their second or third shift tending to their own children, whether face to face or via Skype or phone. Imagine them listening to the radio or television repeating the same message over and over,

that they are lawbreaking, boundary-trespassing illegals who should not be allowed any access to the Promised Land. This truly is a social location to ponder . . . and one that should motivate us to act.

NOTES

1. The term "immigrant" is used here because it is the term used in this volume as a whole. However, we want to state at the outset that this term, intentionally or not, implies that people migrate from one society to another with the intention of settling. That certainly is not always true, and in many cases it is not true at all. "Immigrant," then, is a kind of stereotype, a kind of expectation for people's behavior that we problematize at the outset in order to make sure that readers know we use it with caution. Elsewhere we and others sometimes draw attention to this issue by utilizing the term "im"migrant. We choose not to do so in this chapter because that is not the main purpose of our essay. We also intentionally choose to use the term "undocumented" instead of "illegal" in part because this is the term used by the editor of this volume, yet we acknowledge that these terms have become very political. In general, those who seek greater border control characterize people who are in this country without proper authority (whether they came in by crossing the border or with a legal visa that later expired) as "illegal," and those who emphasize situating migration within contexts broader than border control use "undocumented" or "unauthorized." We acknowledge the political nature of terminology, but as with "im"migrant, we take note only here at the beginning so as to not disturb the main purpose of the chapter as we go forward.

2. The source of this vignette is an interview conducted with an immigration attorney who is also a founding member of a nonprofit organization in South Florida.

3. Names provided in this vignette are pseudonyms.

4. In spite of the Dowry Prohibition Act of 1986 and the Domestic Violence Act of 2006, associated with dowry and enacted by the Indian government, dowry continues to be a social practice in many parts of South Asia in many forms (for detailed discussions of dowry practices see Bhat and Halli [1999]; Dalmia and Lawrence [2005]; Narayan [1997]; and Thakur [1998]). In dowry systems there is a graduated scale that the groom's family uses to extract money and property from the bride's family. This graduated scale depends on the groom's and family's status. The higher their status, the greater the dowry that is expected. Monetary prices are attached to each professional category. In Urvi's case, Santosh's family demanded a sum of 200,000 INR (approximately U.S. $4,000) in addition to underwriting wedding expenses. Often there are intermediaries who broker these marriages. There is an important emerging body of literature examining how transnational ties are exercised as a marital strategy directly linked to dowry demands (i.e., Charsley and Shaw 2006). This growing literature documents how migrant bachelors use their transnational ties as a premarital strategy for economic gains during marriages, such as dowry.

5. The 2011 national census of India has introduced a third category under "sex": male, female, other (http://www.pewsocialtrends.org/2011/02/07/india-census-offers-three-gender-options/). The Nepal Census also now recognizes the third gender (http://www.undp.org/content/undp/en/home/ourwork/hivaids/successstories/Nepal_third_gender_census_recognition/).

6. A three-minute video that wonderfully depicts how categorization and boundary work produce immigrant abjection is *Performing Naturalness* by Dada Docot (2008). It can be found at http://vimeo.com/4452050.

7. Recall that *iony* is their way of referring to "I ♥ New York."

8. For a thorough discussion of VAWA see Villón (2010). At the time of writing in February 2013, VAWA was up for renewal in the U.S. Congress. It has since been passed and renewed.

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6

Dreams Deferred: The Effects of Undocumented Status on Latino Youths' Education and Livelihoods

Elżbieta M. Goździak

INTRODUCTION

The United States received record numbers of unauthorized migrants during the economic boom of the late 1990s and early 2000s. Although the economic crisis that followed considerably reduced the levels of unauthorized migration, one of the legacies has been an increase in unauthorized children and U.S. citizen children of undocumented parents. Recent estimates indicate that there are approximately one million unauthorized children and youths growing up in the United States and more than four million citizen children with at least one undocumented parent (Passel and Cohn 2010). In total, one in every ten children in the country lives in a mixed-status family (Passel 2006), and those with undocumented parents make up approximately 7 percent of school-aged children (Passel and Cohn 2010; Passel and Taylor 2010).

As migrants and as children, unauthorized youngsters stand at the crossroads of different and to some extent conflicting policy agendas. The unresolved tension between commitments to protect children and children's rights on the one hand, and curbing unauthorized migration and securing borders on the other hand, has shaped their everyday lives. In this chapter I focus on

the challenges Latino children face in pursuing formal educational opportunities and transitioning into the labor market. I examine the ways in which their legal vulnerability intersects with various forms of discrimination, parental influence, and household livelihood strategies and affects their educational attainment and access to the labor market. Theoretically, I engage with a range of concepts: "suspended illegality" (Gonzales 2011), acculturation and integration (Portes and Zhou 1993; Portes and Rumbaut 2006), social capital (Portes 1998), and stigma and stereotype (Guyll et al. 2010). This engagement is discussed somewhat tangentially, as the main purpose of this research was to inform policy making and program design. Toward these ends, I argue that unauthorized status alone is not adversely affecting Latino children's access to formal education, certainly not at the primary and secondary levels. In fact, their lack of legal immigration status is an incentive to stay in school for the relatively safe legal environment it affords. However, Latino children and youths face many challenges in persisting in school and graduating from high school or college. While regularizing their families' immigration status would go a long way toward facilitating access to postsecondary education and improved educational outcomes at all levels, DACA (Deferred Action for Childhood Arrivals), the DREAM (Development, Relief, and Education for Alien Minors) Act, and comprehensive immigration reform alone are not a panacea for the difficulties these children face. Once graduation from high school forces them out of the safety net (see Gonzales 2011), the limited options for work available to these youths create difficult decisions, wherein some seek work in safe environments for less compensation while others choose more formal, higher-paying positions that come with exposure and high risk. Whichever direction these youths decide to go, it is clear that the social networks (O'Regan and Quigley 1993; Wilson 1987) and positive mediators (Gonzales 2011) that are much hailed in the urban poverty and youth development literature, respectively, take on added importance in the context of their unauthorized status.

The Study

This chapter is based on a study of the experiences and everyday lives of migrant children who, through a range of different routes and circumstances, happen to reside in the United States without legal residence status, as well as citizen children who live with at least one unauthorized parent. The research aimed to show the multiple ways in which lack of legal status affects the lives of young migrants, both directly or through their parents, shaping their social worlds and more importantly their chances for the future. Through exploration of services and resources available to these youngsters, the study aimed at

shedding light on migrant children's encounter with public services and the complexities and idiosyncrasies of the immigration system at a time of economic downturn and radical reform of public services.

My research team and I conducted a total of twenty-four individual interviews with children and young adults (eleven males and thirteen females) and one group discussion with eight young adults (two women and six men). The respondents ranged in age from twelve to twenty-two; the majority were between fifteen and nineteen years of age. Although we did not ask directly about our interviewees' immigration status, all of them volunteered this information. Immigration status has impacted their educational pursuits so profoundly that a meaningful discussion about access to education was not possible without mentioning their status. This was particularly true for older adolescents discussing college aspirations. As an immigrant myself I often brought up my own experiences of living in the United States without papers in the early 1980s. This information was eagerly discussed by both the youths and their parents and facilitated an honest exchange about the effects of undocumented status on immigrant families.

Ten of the interviewed children were citizen children born in the United States but living in largely undocumented households. One had Temporary Protective Status (TPS), while the remaining noncitizen children were unauthorized. They came from El Salvador, Guatemala, Mexico, Bolivia, and Colombia. In addition, we interviewed seventeen parents (thirteen mothers and four fathers): six parents were interviewed individually and eleven participated in two different group discussions. Five of the parents lived in a household where all members were undocumented; two were part of documented households, while six lived in mixed-status households. Four of the interviewed parents did not disclose their immigration status.

We also interviewed a number of stakeholders working with Latino children and youths. The stakeholder group included governmental officials in the Office of Latino Affairs (OLA) in the Mayor's Office; teachers, college counselors, and social workers in DC Public Schools; administrators and teachers in two different charter schools; case managers working with low-income families at each site; a program manager at a youth center with offices in DC and Langley Park; members of an intentional community living side-by-side with low-income Latino families in northern Virginia; a gang prevention specialist in Alexandria; a teen pregnancy prevention expert working out of an educational campus in Washington, DC; and representatives of a couple of programs employing immigrant youths as part of the DC Summer Youth Jobs 2012. We held a group discussion with twenty college students tutoring Latino children attending primary public schools in the Columbia Heights, Shaw, and Petworth neighborhoods of the District of Columbia. We also

conducted participant observation of community meetings, including a Latino Youth Town Hall organized by OLA and a focus group discussion on neighborhood safety facilitated by youths from the Latin American Youth Center (LAYC), as well as parent training programs; adult ESL classes; a parent leadership gala and graduation ceremony; a needs assessment session conducted by immigrant teens in Columbia Heights on safety and security in the neighborhood; a summer theater program at the Gala Hispanic Theatre for at-risk youth; various community meetings; Christmas, Holy Week, and Easter celebrations organized by the Sacred Heart Church; and a Three Kings' celebration organized by the Gala Theater.

LEGAL VULNERABILITY AND K–12 EDUCATION

Alejandro came to Washington, DC, from San Miguel in El Salvador when he was ten years old. About his journey from Salvador to El Paso, he said: "I traveled by everything. You name it and I was on it: plane, bus, truck and on foot." The journey took him about three weeks but it seemed "like forever." He was separated from his mother for over three years. She came, he said, "because we were very poor; we had no money." When he arrived in Washington, DC, he was placed in fifth grade. He did not speak any English, and he found school very hard. Alejandro reported that he was not doing well academically or socially. He missed a lot of school because he didn't feel that he really understood what was going on in class. By ninth grade he dropped out. On the advice of his aunt, he went to the Latin American Youth Center (LAYC) in Columbia Heights and got connected with the Next Step School. He did very well there and received his GED within a very short time. In addition, he got certified in Microsoft and during the summer of our first interview he was teaching a computer class at LAYC. Alejandro is committed to furthering his education. He is taking classes at a community college and is working toward a two-year degree in life sciences. He hopes to get a scholarship to the University of Maryland and transfer there. He didn't understand how undocumented youths can pursue higher education and under what conditions, but he trusted that his counselor at LAYC would help him figure things out. I checked with Alejandro recently, and indeed LAYC had successfully helped him apply for DACA. Alejandro is interested in becoming a medical examiner. He is also very passionate about performing arts and has been participating in Paso Nuevo, an at-risk youth theater collective at the Gala Hispanic Theater.

Alejandro's story illustrates many of the challenges unauthorized youths face in pursuing educational goals. Similarly to other unauthorized children, Alejandro had legal access to public elementary and secondary school. Since 1982, based on the U.S. Supreme Court's seminal decision in *Plyler v. Doe,*

children in the United States, irrespective of their immigration status, have a constitutional right to free public education from kindergarten through high school graduation. However, despite this fundamental right, Latino children's path to formal education is far from straightforward. Many people think that because unauthorized children have legal access to primary and secondary education, advocacy efforts should focus mainly on postsecondary education. Having legal access to K–12 education does not mean that Latino children—both unauthorized and citizen children—have access to the resources and the support needed to do well in school and obtain a high school diploma.

Nationally, 40 percent of unauthorized young adults, ages eighteen to twenty-four, have not completed high school. Unauthorized children who arrive in the United States before the age of fourteen fare slightly better—72 percent finish high school (Passel and Cohn 2009). On average, in the DC-Arlington-Alexandria Metropolitan Statistical Area (MSA), 25 percent of all high school students, native and foreign born, do not graduate. There are 160 public high schools in this area; 19 are considered among the nation's lowest-performing schools. In Chirilagua, Virginia, where the foreign born constitute approximately 46 percent of the total population, 42 percent of all residents are without a high school diploma. Graduation rates of Latino students at T.C. Williams High School—where 31 percent of the student body is Latino—are 52 percent. In Langley Park, Maryland, where Latinos constitute 76 percent of the population, with 66 percent foreign born, 51 percent of all residents, native and foreign born, have less than a ninth-grade education. Thirty-two percent of Columbia Heights residents do not have a high school diploma; the average for the District of Columbia is 15 percent. Graduation rates in the neighborhood differ dramatically among schools: at Bell Multicultural High School 90 percent of Latino students graduate, while at Cardozo Senior High School only 53 percent finish high school. Community leaders attribute the high graduation rates at Bell Multicultural to a unique partnership the school has with the Multicultural Career Intern Program (MCIP), a nonprofit organization housed within the walls of the Columbia Heights Educational Campus, which provides a wide range of services: teen pregnancy prevention and support, parenting classes, youth development, summer enrichment programs, and precollege counseling.

Many interviewees—migrant children, teachers, and community leaders—attributed the high dropout rates to lack of sustained familial and school support. Alejandro was lucky that his aunt not only encouraged him to get his GED, but also knew where he should look for the assistance he needed. The support he found at LAYC kept him motivated even when things seemed bleak and he couldn't get his scholarship to transfer to the University of Maryland or get a job to help out with his school expenses.

Teens Who Never Dropped-in an American School

The statistics quoted here do not convey the difference in the dropout rates that occur across groups because, ironically, many teen migrants never "drop-in." Javier came from Guatemala when he was fourteen to join his brothers. He first lived in Kansas, where two of his brothers still reside. He came to the States even though there is plenty of work in agriculture in Guatemala; it does not pay well and he wanted to make more money. After three and a half years in Kansas, he moved to Maryland to join his brother. Javier attended school in Guatemala for six years. He said he was never particularly interested in school and started working at a young age. His twelve-year-old brother wants to keep studying, and Javier is very supportive of this decision. Javier says, "Once you grow older, you realize the value of studies." It seems that it never occurred to Javier to enroll in school once he got to the United States, because he was already working in Guatemala. He came to the United States to work, not to go to school.

In the course of this research I met a number of Latino youths who have never dropped-in to an American school; some worked while taking classes at the Next Step Public Charter School, a bilingual GED and ESL program affiliated with LAYC in Columbia Heights. Isabel Martínez suggests: "These youth experience life stages of childhood and adolescence that differ from mainstream characterizations and thus adopt older age-graded identities that do not coincide with full-time schooling in the United States" (2009, 34). Indeed, some respondents pointed to cultural definitions of childhood and adulthood and said, "By now I wouldn't be in school anyway. I am not a child."

Community leaders suggested that these adolescents are pressured by their families to contribute to the household income and are not encouraged to enroll in school. However, not only do they have the right to education, but school attendance is compulsory until eighteen years of age in Virginia and the District of Columbia and until sixteen years of age in Maryland. Others indicated that while these teens seemingly came to the United States to reunite with their parents, the families that now include U.S.-born children and stepparents are not always eager to support them financially, hence the need to trade school for employment. Many of the young people interviewed in the course of this study felt abandoned by their families. Cesar remarked:

> I don't know why, but my mom abandoned me twice: first when she came to the States and left me with my *abuela,* and later when I came here. She told me she paid for the *coyote* to take me across the border, but now I have to repay her. I wish I never came.

It is difficult to estimate how many adolescents are in Cesar's situation, but interviews suggest that these numbers are not insignificant.

Another group of young adults included individuals who migrated on their own and had no other choice but to work. Unaccompanied children and youths migrating on their own do not have the luxury of choosing school over work. Lack of legal status prevents them from accessing any publicly funded programs, and absence of family means that they must work to survive. Their unauthorized status means that their access to employment is limited, and they are often exploited. The Next Step School has set modest educational goals for these young men and women: to improve their literacy in Spanish and English in order to improve their employment prospects in fields that require good communication skills. The school offers GED training, but the teachers indicated that, realistically speaking, they would be very pleased if the students learned to speak English and acquired some literacy and numeracy skills in English. These competencies would serve them well and could even lead to some upward mobility in the labor market. One of the students said: "I don't want to wash dishes for ever. I would like to be a waitress, but my English is not good enough." Another one said: "I get crappy jobs because I cannot read a measure tape. I don't even have a feel how long a foot or a yard is."

Beyond Immigration Status: Parents' Education and Social Class

What are the factors that contribute to dropping out of school or never dropping-in? Legal vulnerability is not the sole element; it intersects with many other issues plaguing children and youths in unauthorized households. Parental engagement with their children's school—a positive predictor of academic achievement, higher self-esteem, and higher rates of high school completion and college enrollment—is often a challenge for immigrant families. While many of the immigrant parents we interviewed had high educational aspirations for their children—some told us that the very reason they came to the United States was so their children could have better educational and employment opportunities—few had the resources to realize these goals. Many had very limited formal education themselves and as a result were only semiliterate in Spanish and illiterate in English; thus, they were unable to help children with homework.

Employment pressures—many parents worked more than one job or worked graveyard shifts—also contributed to parents' inability to actively engage with their children's education. Parents' involvement with their children's education and engagement with schools decreased as the children got older. Participant observation at parenting programs organized by the Mayor's Office of Latino Affairs (OLA) at several primary schools in Columbia Heights suggests that

Latino parents of small children are eager for their children to succeed in school and meet developmental and educational milestones. We met with several groups of mothers who took pride in their children's progress at school, participated in a variety of parenting programs, and attended parent-teacher meetings. However, with few exceptions, parents of high school students were not interested in their children's achievements or problems at school. It seems that parents who have limited education themselves aspire for better education for their children, but that does not necessarily mean a lot more formal education: finishing primary or middle school seems sufficient.

Jamie's mother, who supported her children throughout primary and secondary school, thinks her role ended there. She has the financial means to contribute to her children's education, but refuses to help them out. Luckily Jamie's younger brother, Juan, received a full scholarship to an Ivy League university and graduated without needing his mother's financial help. Jamie was not so lucky. After three years in college in upstate New York, Jamie, who needs just a few credits to graduate, put his college career on the back burner and is training to be a sous chef. I check in with Jamie from time to time, and at the time of this writing he is training with a French chef in Paris.

The story is quite different when it comes to middle-class immigrant parents. There is a sizable community of Bolivians in northern Virginia. The Bolivian parents interviewed in the course of this study were poor and unauthorized but middle-class, with at least a high school diploma and in many cases a college degree obtained in Bolivia. These parents were much more supportive of their children's education than poor, unauthorized working-class parents or parents coming from very rural backgrounds. Other researchers (i.e., Portes and MacLeod 1996) also discuss the effects of class on educational progress of children of immigrants, but equate class with economic status. The Bolivian parents' class standing was not related to their current economic status but to their educational capital obtained in the country of origin. While they were fairly well off in Bolivia, they have not been able to rebuild their economic standing in the United States.

Researchers have written extensively about the propensity of Latino immigrant parents to provide "noninterventionist" moral support (*apoyo*) and "indirect guidance" (among others through *consejos* or narrative advice) for education (i.e., Auerbach 2006) and noted how such support is often invisible to educators and as a result dismissed as unimportant (Mehan et al. 1996). Others criticized "the mainstream dominant discourse perpetuated by schools about the hegemony of English and the valuing of white middle class definitions of academic success and parent involvement" (Cuero and Valdez 2012, 317). Given the size of the sample, it is difficult to dismiss these

arguments. On the other hand, the collected ethnographic data suggest that parents of primary schoolchildren both provided moral support—mothers told young girls how the demands to help their own parents with farming or baby-sitting prevented them from staying in school—and actively engaged in their children's education—many mothers attended parenting classes and were eager to discuss the effects of TV and video games on child development and wanted to know about bilingualism. Mothers who were monolingual and could not help their children with homework discussed the need to set aside a place in the home for children to study and eagerly hosted college students who tutored their offspring. However, working-class immigrant parents' enthusiasm for their children's schooling waned considerably around middle school. With few exceptions, mostly middle-class immigrant parents continued support and involvement through high school and college.

Stigmatized Identity and Discrimination

The youths in this study reported significant ethnic stereotyping by teachers, administrators, and peers. Several community leaders echoed these sentiments. One of the schools had a program in which students could sign up to be teachers' assistants. Four Mexican students signed up, but none of the teachers wanted to work with them, because "Mexicans are lazy and use their lack of English language competency as a crutch not to work." The teacher who reported this story said she was "surprised to hear those opinions voiced so openly, but not shocked," because such sentiments are not unusual. She decided to give the students a chance and was very pleased with the outcomes. "Those students were the hardest working, most polite, and punctual student aides I've ever had," she said.

Ethnic and racial stereotyping often leads to Latino students being overlooked, excluded, or negatively tracked and results in unequal educational opportunities. Community leaders and Latino educators were very critical of the DC Public Schools' attitude toward Latino students. One advocate said: "DCPS does not value you as an individual, puts you down because you cannot speak English and your literacy in Spanish is not up to par either. There are no incentives to move forward." An expert on bilingual education remarked that both Latino students and Latino advocates are marginalized within the DCPS system. "In a school system where the majority of students are African Americans—with their own set of educational challenges—it is virtually impossible to get anyone focused on the Latino kids." He met with me in his official capacity and was therefore reluctant to talk about overt discrimination, but remarked that he sometimes wonders "where neglect ends and discrimination begins."

A school counselor working with immigrant students in a suburban school said that teachers often discriminate against Latino students, and peers bully them because of their accent and language abilities. She added: "It is difficult for immigrant children to communicate with peers who do not speak Spanish. These limitations often lead Mexicans to self-segregate. Migrant children make friends within their migrant network, creating an insulated cultural and language bubble." Latino students, however, were not without blame. Indigenous students and black Latinos experienced discrimination from within the Latino community as well. Recounting being teased and bullied in high school, Benjamin said: "It was just like in Guatemala. They judged me by my clothing. I didn't have a lot of friends." Benjamin's story is quite typical of indigenous students who do not speak Spanish and are seen as "different" from other Latinos. Black students from the Dominican Republic, for example, were accepted by neither the wider Latino community nor their African American peers. Even the local Catholic churches discriminated against black Latino children. One community leader said: "The priest always fusses when I include black children in the Christmas pageant or Easter Passion."

Discrimination by school officials, teachers, and peers is not conducive to a good experience in school. Fistfights experienced by many of those interviewed, as well as gang violence, further discourage Latino students from attending school; many skip school often or drop out altogether. On the first day at school Alejandro was "kicked in the chest by a big girl. She seemed so big, maybe 6 feet tall. She was black." He did not report the incident: "No, I did not do anything. I did not know where to go. I told my friend and he told me 'Man, there is nothing you can do' so I just sat there on a swing." Poor relationships with classmates, the majority of whom were African American, contributed to Alejandro's dropping out of school. He felt he had no allies in teachers. "No teacher is going to say anything against a black kid. Not when the quarrel is between one of us and one of them!" Black Dominican students, however, also indicated being discriminated against by teachers and shunned by African American classmates. A prominent Afro-Caribbean community leader has been working hard for years to give his community the same respect and political clout enjoyed by African Americans in Washington, DC. These complex dynamics are borne out in both empirical studies and theoretical literature and seem to be related to racialized ethnic labels applied to Latinos on the basis of physical appearance and Latinos/as' racial self-identifications (Golash-Boza and Darity 2008), which are fluid and contextual and can vary over the course of one's life or even the course of one's day (Rodríguez 2000) and do not parallel processes of racial categorizations and identification in Latin America (Rodríguez 1994; Duany 2005).

How do the experiences of Latino children in the metro DC schools differ from or resemble those in other parts of the country? Building on earlier research, Hamman and Harklau (2010, 157) analyze educational outcomes in Latino communities in new settlement areas in light of two competing hypotheses, suggesting that 1) "in areas with little history of anti-Latino institutionalized racism and little record of Latino school success or failure, educational improvisation might lead to better outcomes than in areas with long established racialized patterns of weak Latino educational outcomes," and 2) "racialized patterns of interaction with and schooling for Latino communities in California, Texas, or Chicago are carried into and re-created in new settings, leading to similar or even poorer educational outcomes." The Washington, DC, metropolitan area is an emerging but relatively new immigrant gateway; however, it seems to be suffering from racialized interactions between Latinos and established residents that result in regrettable school experiences and poor educational outcomes, particularly in resource-poor public schools. On the other hand, a strong Latino advocacy community dating back to the early 1980s, accompanied by proliferation and growth of public charter schools, has made significant strides in educating young Latino children. CentroNia, a nationally recognized, multicultural learning community with a pioneering approach to bilingual education, promotes a curriculum that engages the whole family and sets the stage for lifelong success. When the school's founder, Beatriz "BB" Otero, first opened the school in 1986, the program served fifteen children; today CentroNia serves twenty-five hundred children and families across Washington, DC, and Montgomery and Prince George's counties in Maryland. However, despite innovative educational practices promoted by CentroNia, the Next Step School, or LAYC, there is no evidence of any large-scale systemic changes in the local public schools.

POSTSECONDARY EDUCATION: LEGAL VULNERABILITY AND BEYOND

In recent years the plight of unauthorized immigrant students has emerged as part of the larger debate on immigration. Sometimes the issue is brought up within the context of high-profile cases such as that of Dan-el Padilla Peralta from the Dominican Republic or Juan Gomez from Colombia. Padilla is the 2006 Princeton graduate and salutatorian who was offered a scholarship to Oxford; as an unauthorized immigrant he faced a dilemma: if he went to Oxford, he would not have been able to return to the United States, but if he stayed in the United States, he would not have been able to legally obtain a job. Juan Gomez, a senior at the McDonough School of Business at Georgetown, told us that he will have to look for a job in Canada when he

graduates. He had a job offer from JP Morgan in its Latin American Banking Division; however, the job required foreign travel, and that was impossible in his legal situation. Juan was considering employment in Canada because he thought he would have a better chance of legal settlement there. He attended a Quebec career fair that Georgetown held in hopes of establishing contacts with Canadian companies. Juan graduated before DACA was announced, and we lost contact.

Advocates of the DREAM (Development, Relief and Education for Alien Minors) Act, a proposed piece of legislation that would provide a pathway to legalization for unauthorized immigrant students, often invoke stories of similarly gifted immigrant students, arguing that the passage of the DREAM Act would enable countless other immigrants to pursue their educational dreams. Indeed, discussions about the DREAM Act dominate the discourse on unauthorized children's access to education. Similar discussions followed the issuance of DACA. However, as Gonzales points out, "the use of star students as the face of undocumented students, to the exclusion of other stories and trajectories, is both limited and limiting" (2010, 470).

Researchers and advocates alike bemoan the fact that only a small fraction of unauthorized youths actually move on to postsecondary education (Gonzales 2010). Fix and Passel (2003) estimate that approximately sixty-five thousand unauthorized students graduate from high school each year, but only about thirteen thousand enroll in U.S. colleges. Even with the promise of in-state tuition in eleven states—California, Illinois, Kansas, Nebraska, New Mexico, New York, Oklahoma, Texas, Utah, Washington, and Wisconsin—the hurdles seem insurmountable for many unauthorized students (see also Contreras 2009). To the best of my knowledge, there are no statistics on the number of citizen children living in mixed-status families who avail themselves of in-state tuition benefits. Interviews in the District of Columbia suggest that few immigrant parents with children born in the United States know about the DC Tuition Assistance Grant (DC-TAG), a program for DC residents designed to make up the difference between in-state and out-of-state tuition. Parents were astounded that their citizen children could use this program to apply to any public university in the country.

Again, lack of tuition assistance is not the only obstacle to postsecondary education. In order to go to college, one has to successfully graduate from high school. Nationally, 40 percent of unauthorized young adults have not completed high school, and among high school graduates, only 49 percent are in college or have attended college (Passel and Cohn 2009). It needs to be stressed that unauthorized immigrants who arrive in the United States before the age of fourteen fare slightly better—72 percent finish high school and 61 percent of those who graduate from high school go on to college—but these

figures are still much lower than for U.S.-born residents. Graduation rates in the studied neighborhoods varied greatly, but were far from levels ensuring high numbers of college-bound Latino youths. A recent study by the Migration Policy Institute (MPI) estimates that nearly 62 percent of potential DREAM Act beneficiaries would likely fail to gain permanent (or even conditional) status due mainly to the bill's educational attainment requirements (Batalova and McHugh 2010).

While some parents in this study pointed to lack of a DREAM Act as a huge obstacle to their ability to finance their children's college education, others were not convinced that such legislation alone would pave the road to college for unauthorized students. Community leaders were equally ambivalent. On the one hand, they worked tirelessly with local and national organizations to advocate on behalf of immigrant students: participated in meetings, organized rallies, wrote letters, and educated immigrant communities. On the other hand, they were cognizant of the fact that the act alone will not drastically affect access to higher education among unauthorized students. One Latino service provider in Virginia remarked:

> If a miracle occurred tomorrow and every state in the union had a DREAM Act, it would only help those students who are already motivated to go to college. Unfortunately, it would not change the situation of the majority of our clients. . . . I do not dare speak about these issues publicly very often, but many of the parents we work with just do not seem to value education. Maybe because they themselves do not have much formal schooling, they cannot imagine what a college degree would do for their children's future.

Her colleague pointed out: "We do not have much better results in the Latino immigrant families with U.S.-born children. College just does not figure in their plans for their children." Ironically, most of the interviewed immigrant parents told us that they came to the United States to secure educational opportunities and economic mobility for their children.

Immigration status affects immigrant youths' access to higher education in many different and not always very direct ways. Federal law does not expressly prohibit the admission of unauthorized immigrants to U.S. universities. In contrast to employment laws, no federal statutes require disclosure and proof of immigration status for students to enter institutions of higher education. Unfortunately, many college counselors are either unaware of the legal provisions or just gloss over them. The prevailing sentiment expressed in interviews was that "these children cannot go to college; they are here illegally." Immigrant students confirmed that many teachers do not see them as college material. As always, there are exceptions: a mental health counselor in a DC public school said that she has been working with a Mexican boy who "is an A student, really

eager to learn and go on to college, but he does not get the support from his teachers that he needs. They just don't see past his accent and his status." She is determined to do whatever needs to be done to get him into college.

While immigration status does not prohibit the admission of unauthorized students to institutions of higher education, it does affect unauthorized families' ability to finance their children's college education. Unauthorized youths are able to avail themselves of in-state tuition only in thirteen DREAM Act states. When fieldwork for this study commenced, this provision was about to become available to students residing in Maryland,[1] but not to those living in Virginia. The ability to pay tuition at in-state rates would certainly help to offset the cost of higher education, but in many situations students also needed access to additional financial assistance. With the exception of two states—New Mexico and Texas—unauthorized students are not eligible for state financial aid (Gonzales 2010, 480). Highly motivated students with a lot of social capital and unconditional support from parents and teachers managed to secure private scholarships to both public and private colleges.

Citizen children living in mixed-status households also feel the brunt of their parents' unauthorized status. They are "in danger of becoming the unsuspecting victims of state and federal policies aimed at addressing illegal immigration" (Seo 2011, 312). Most readers are familiar with the situation in Arizona, where "in early 2011, the legislature . . . introduced bills that would deny US citizenship to children of undocumented immigrant parents and mark them with a different birth certificate" (Seo 2011, 311–312), which would possibly revoke their eligibility to public benefits such as in-state tuition or financial aid. The Alabama legislation barring unauthorized students from attending any public college also received a lot of national attention (Preston 2011). Nationally, less attention has been paid to citizen children living with their unauthorized parents in Virginia. In 2008 the Office of the Attorney General in Virginia published a memorandum indicating that the undocumented status of parents could effectively disqualify their U.S.-born children from receiving in-state tuition if the children were unable to independently prove eligibility (Virginia 2008; see also Seo 2011, 314). The issue is whether unauthorized immigrant parents can be considered residents of the state and whether minor children can prove that residency independently. Without going into too many legal details, suffice it to say that many public universities in Virginia resolve this issue on a case-by-case basis. Interviewed immigrant parents residing in Virginia shared with us stories of their college-bound children emancipating themselves in order to establish eligibility for in-state tuition. Parents felt badly about this "symbolic gesture." One mother said, "I know I will always be his mother in my and his heart, but it still hurts that he had to ask for this piece of paper."

Parents' unauthorized status affected citizen children's access to higher education in many other ways. A couple of U.S.-born Latino high school seniors stated that they did not realize how much their parents' or siblings' unauthorized status affected their ability to be successful in applying to college until they sat down to write their college essays. Marisol remarked:

> I have the grades to get to a good college, but I don't have any extracurricular activities to brag about in my essay. My friends are writing about trips abroad, community service, sports achievements and I have nothing! All I ever did during high school was study. My mom told me to lay low, because she was afraid that someone would tell immigration authorities that both she and my older brother are here without papers.

The fear of possible deportation of her family members overshadowed Marisol's everyday life. Several community leaders told us that the "issue of immigration status just hangs there" both for unauthorized children and those living with unauthorized family members. Many Latino children feel pressure to not get noticed and to never discuss immigration status with peers. A director of a youth leadership program in DC spoke of the constant fear and the psychological effects of immigration status on Latino youth: "Even if they are here legally, they hear every day about someone having been deported or someone having been shot at—or worse, having died—while crossing the border. It's difficult to shake it off." The Pew Hispanic Center (Lopez and Minushkin 2008) indicates that a majority of Latinos worry about deportation. Some 40 percent say they worry "a lot" and an additional 17 percent say they worry "some" that they, a family member, or a friend may be deported. This is up slightly from 2007, when 53 percent of Latino adults said that they worried "a lot" or "some" about deportation (PHC 2007). On the other hand, only one-fifth of the surveyed Latinos know possible deportees. These statistics include all Latinos, and for unauthorized immigrants the worry might be substantially greater. Researchers and advocates alike agree that the condition of illegality—one's own or one's family members'—places many Latino children in the untenable position of interminable liminality (Suarez-Orozco et al. 2011).

A longtime immigrant children's advocate in DC spoke about the effects of parents' undocumented status on young Latino children born in the United States:

> The number one problem is not undocumented status anymore—relatively few [unauthorized] kids come these days [to Washington, DC]—but the indirect effect of the undocumented status of immigrant parents, particularly those who came in as children or teens, and resulting lack of security and feelings of abandonment affect their parenting skills and ability to raise and educate their children well.

Beyond Immigration Status and Socioeconomics: Parental Support Is Crucial

Resilience and perseverance in pursuing educational goals are shaped by relationships with caring and supportive parents (Gonzales 2010), other family members, and in the absence of close family members, adult mentors. Sadly, few youths in this study have experienced unconditional parental support of their educational pursuits. As indicated previously, Jamie's mother was not interested in her children's education. When her oldest daughter, Elena, was offered a scholarship to Trinity College, she told her that if she went to an all-women's college, she would "become a lesbian and never get married." Elena did not want to enroll against her mother's wishes. After a very tumultuous adolescence in a female gang and single motherhood, Elena realized that she needed a college degree to support herself and her toddler daughter. Currently, Elena is studying nursing and working part-time. Her mom helps out babysitting and sharing food, but she has never praised her daughter for doing well in her studies.

Maria, a young local community leader, did go to college and graduated with a BA in anthropology. Maria is working for a small nonprofit organization helping Latino immigrant families and homeless African Americans in northern Virginia. Her uncles constantly complain to her mother that she raised such "a lazy girl." They consider Maria to be lazy because she does not "work with her *manos* [hands]." Maria's professor would like her to come back to school to get a master's in applied anthropology; she promised to help Maria secure financial aid. Maria said, "I would love to go back to school, but I am sure that would enrage my uncles even more and they would take it out on my mother."

On the other end of the spectrum was a group of very determined, unauthorized middle-class Bolivian parents in Virginia. They went out of their way to establish several programs to support their children who are college-bound or already attending college including fund-raising events, mentoring programs, free-of-charge college prep, and youth leadership programs. Although poor, often holding multiple menial jobs and working graveyard shifts, these parents worked tirelessly so their children could graduate from college. A Salvadoran couple has recently joined this group of Bolivian parents. The man, a father of two small children, said, "I want to be like them. I don't see parents like them in my community. My wife must learn English so we can send our children to college too!"

The Decision to Work: Facing Conflicting Motivations

For many young people from immigrant families, poverty and financial hardship are facts of life (Crowley, Lichter, and Zenchao 2006). In these poor

and working-class environments, the labor contribution of children and youths is often crucial for the family's survival, in the United States just as in their country of origin (Berrol 1995; Song 1999). Furthermore, Bachmeier and Bean (2011) have described the role of labor force participation for Mexican youths as it relates to the decision to drop out of high school, arguing that a strong draw to the labor force is partially a result of cultural factors inherent in working-class migrant groups. In the case of unauthorized youths, these forces also create a pull toward the labor force and away from school. However, for this group the final calculus may be altered due to their limited access to the labor market. Our research suggests that while unauthorized youths often face pressures to work that are consistent with their family's economically disadvantaged status, many end up eschewing work in favor of school because the latter provides a safer environment.

We expected that most of the Latino youths in the Washington, DC, metropolitan area, even those who attended school, would be working, either to support their family or themselves, or to pay for various expenses. As Gonzales (2011) suggests, "Many of the 1.5 and second generations of certain immigrant groups are in reciprocal financial relationships with their parents, often even supporting them." In reality, however, few of the teens we interviewed in the course of this research were working. At first we assumed that we were not finding working youths because our access to work sites was limited. We also hypothesized that adolescents connected to community-based organizations may be inherently less likely to be in the workforce and out of school than young people without such connections. The adolescents who attended school did hold summer jobs, but did not work during the school year, except for helping in the family business—mainly restaurants and stores—or taking care of younger siblings while their parents held multiple jobs. Some adolescents were desperate for paid employment, but were having a hard time finding jobs. Alejandro was taking evening courses at a community college in Maryland, but wanted to work during the day to help out his mother and to have pocket money to buy his baby brother presents. He searched high and low, but to no avail. He even contemplated changing his course schedule to accommodate the possibility of working night shifts at a neighborhood restaurant, but in the end the restaurant hired someone who "had papers." It took Alejandro several months to land a job as a receptionist at a nonprofit organization. He was paid in cash under the table. Pedro told us that whenever he approached construction managers along the 14th Street corridor in DC for a job, even a day job, he was asked if his father was looking for work. Construction work was plentiful in Columbia Heights, he said, but employers were looking for adult men with experience in hanging drywall or painting, not youngsters eager to work but with fewer vocational skills.

Employers at fast-food eateries or big box stores we talked to indicated that local youths—both immigrant Latino and native African American young people—were competing for jobs with adults who were laid off from work as a result of the economic downturn.

Financial Pressures: Some Common, Some Not

For those who do work, as with other immigrant Latino youths in the United States, labor roles actually differ from those in their countries of origin, affecting how children grow up here, as a key stakeholder in our interviews pointed out. In their countries of origin, these same children would merely help with chores and domestic work, whereas here they are expected to contribute to the family's income, which typically involves work outside the home. Therefore, in spite of legal barriers to labor market access, these youths have to find some way to aid in supporting the family.

Outside of family obligations, some children whom we interviewed had to work to support themselves. Jesus, for example, came to the United States by himself when he was thirteen years old and worked to pay for his own rent and food while in school. He continued to be entirely financially and socially independent until his schoolteachers realized his situation and he was put in foster care at age seventeen. More often, unauthorized children who have to be financially self-sufficient do not attend school at all. Instead, they function as independent adults even before they reach age eighteen. This group is typically composed of older adolescents and young adults who come to the United States in their late teens, usually after years of being separated from their parents and, as indicated previously, never "drop-in" to a school in the United States. Instead they enter the labor market immediately to repay the money that their family paid the *coyote.* The family often pays up front, and then the youth spends years paying off his or her debt. For this group, the need to work is a burden that limits their freedom and brings them to the stresses of adult life at an earlier stage.

Jose, an eighteen-year-old day laborer interviewed in DC, had been working in the United States for four years and lived with his brother. The siblings supported each other and sent money back home to Guatemala when they could. While some self-supporting youths are also assisting their families through remittances, these cases are rare, since the primary focus for these young people must be paying their own expenses in the United States, or *coyote* debts, with what little they earn. Josefina, a teen mom, dropped out of school in tenth grade, and when we first met her worked as a server in a restaurant to support herself and her baby. Her daughter's father was in and out of the picture, and she couldn't rely on him. She was also studying English

because she wanted to move up and become a hostess in a more upscale restaurant. She regretted her decision to drop out of school, but there were few alternatives for her since she didn't have anybody to help care for her child.

U.S.-born Latino youths living in unauthorized families struggled with the same challenges as other poor U.S.-citizen youths. However, these challenges were much more daunting for unauthorized youths, because they have less access to financial aid than their citizen peers and thus typically a much greater financial burden in attending college. As indicated previously, a particular expense unique to unauthorized youths is the common need to pay the family back for *coyote* fees. This can create tension in a family environment. One interviewee talked about the need to pay his mother back for the *coyote* fees and how this obligation and the fights that ensued because of it made him feel abandoned by his mother. Although not all unauthorized youths are responsible for paying these fees, many do have to contribute, creating a significant financial burden. Migrants have to pay approximately $3,000 to *coyotes* to be smuggled from Mexico, while Central American migrants (the main Latino population in the DC area) pay upwards of $6,000.

Unauthorized Status as a Pull Toward School

Yet as noted, many of the youths we interviewed did not work, and our research suggests that their unauthorized status was often a mitigating factor for the attraction to work. Some simply found their legal status to be too strong a barrier to employment, in spite of the fact that their parents work for cash or with forged paperwork. Fernando said that he had always wanted to work when growing up, but that he had been unable to find jobs due to his legal status, and so had dedicated himself to academics instead. Analisa said that her father forbade her to work because he did not want her to forge documents. He wanted his children to follow the law as best they could, she said, in spite of the fact that they are unauthorized. Her father's prohibition was frustrating to her, and she spoke about her hope of working, at least in the summer, and how her father's employer (a foreman at a metal recycling company) could help her find work. However, Analisa's biggest aggravation was how her peers who did work viewed her. She said, "People think I am a pampered princess because I am not working and my dad is paying for everything. But it isn't that I don't want to work!" Thus it appears that parental pressure is far from a unidirectional force pushing children to contribute to the family income. In fact, parents often respond to the legal employment barriers by wanting their kids to focus on education.

In some cases, even if the children had legal status, they would not work during school, such as one interviewee, Flora, who said that even if she could

legally work she did not think she would. While such decisions may simply be a symptom of the financial freedom afforded to youths whose parents have been especially successful in the labor market, some scholars have suggested that working-class Latino immigrant families possess what they call a "cultural repertoire" that emphasizes distinctive orientations to school and work engagement and discourages the participation of youths in both simultaneously (see Van Hook and Bean 2009 and Bachmeier and Bean 2011). This theory suggests that whereas for many Latino youths there is a natural attraction to join the workforce, for those unauthorized youths who are successful in school, cultural factors may cause added pressure from the family to focus solely on school.

An Awareness of Future Exclusion

Whatever the reason for focusing on school, most unauthorized youths will eventually face the same harsh realities upon completion of high school. The inability of families to afford college means that most will be forced to enter the labor market and thus face what Gonzales (2011) has likened to a rude awakening. These youths must "learn to be illegal" as they suddenly transition from the protected environment of school, where they enjoy de facto legal status, to the complete exposure and vulnerability of adult life. In his research Gonzales describes this transition for unauthorized youths whose legal status was either unknown to them until they graduated from high school or who did not fully realize the difficulties it would present and then faced severe disillusionment as the realities of trying to pursue their aspirations with unauthorized status set in.

Yet in our research we found that many unauthorized students were already fully cognizant of the difficulties they would face after graduation. Indeed, many who were still in school already expressed a sense of hopelessness about their future job prospects. Maria talked about wanting to become a math teacher, but said she has no idea how she will ever achieve that after graduation. One parent spoke of his sixteen-year-old stepson, who was generally withdrawn and unmotivated because he was certain he could not find work without a Social Security number. Two other young men, Francisco and Luis, both said they had even considered going back to Mexico and from there seeking employment in another country. But, said Francisco, "as graduation approaches, I realize that I don't want to leave the US."

Obtaining Employment: The Risk of Exposure

Once unauthorized youths do make the decision to work or graduate from high school and are compelled to seek employment, they face resource

barriers due to their inability to work legally. Most feel the frustration of being forced into low-wage jobs or having to work informally alongside their parents (Gonzales 2011). Some find waged employment where they are paid in cash, while others obtain forged documents in order to work, a process they often do not fully understand. Those who do work for cash may do so for seemingly benevolent employers, but some may also face exploitation and legal risks in the workplace.

The literature on urban poverty has long emphasized the important role of household members in providing access to jobs for young family members (O'Regan and Quigley 1993; Wilson 1987). The inability of unauthorized youths to apply for most job openings makes their reliance on family and friends doubly important. Indeed, many undocumented youths work informally alongside their parents rather than finding waged employment. Several mothers who worked cleaning houses or office buildings brought their adolescent children to help out. "My daughter works very fast and my son can carry heavy things," said one mother; "with their help I can clean twice as many houses in the same time and make more money." This informal arrangement is often for the sake of augmenting the earning potential of a family member, rather than earning an independent wage. For example, starting at age ten, Cata helped her mom clean apartments during breaks from school. She worked from noon to midnight or later, but did not earn any money. It was simply a matter of supporting the family without putting herself at risk of needing to forge paperwork.

Cata's situation is also a reflection of the gendered differences in employment of unauthorized youths. Girls tend to work alongside their parents or work unofficially in the home, whereas the boys tend to have more official, waged employment. The work that girls do inside the home is often not considered employment, but is just as critical to supporting the family and ensuring that the parents can maximize their work hours and therefore their incomes. Often parents who do not want their children working illegally see this work inside the home as another way for their children to contribute to family life without running the risks of formal employment.

Employers: Benevolence or Exploitation?

Many unauthorized youths do find illegal, waged employment from a variety of sources, either through informal connections or with forged paperwork. Some talked about jobs that never required them to show paperwork. These opportunities most often came through friends or community connections. In the case of Marta, she obtained employment as a cashier in a local bakery via the recommendation of a friend from her church, and the

employer did not require her to complete much in the way of paperwork. As indicated previously, Alejandro worked as a receptionist in a small nonprofit and was paid in cash. He had looked for some time for waged employment with no success before a community leader connected him with the job. Another young man, Francisco, had worked in several places at his university thanks to connections with university officials who helped him obtain employment without requiring legal documentation. Employers in each of these cases had some idea that their employees did not have the immigration status to work legally but were willing to overlook this barrier due to personal connections. Employers also often ignore immigration status due to the altruistic desire to help young people access better opportunities and financial resources.

However, while these employers could be considered "benevolent" in the sense that they offer employment to young people without paperwork requirements, such jobs can also leave unauthorized youths vulnerable to various forms of exploitation. This is the case for youths who work as day laborers and are paid in cash at the end of the day. In such cases, workers often suffer wage theft, in which they will complete a day's work and the employer will refuse to pay, knowing that the laborers will not use legal recourse to obtain their wages. In fact, even through the appropriate legal channels it is difficult for these day laborers to recover the wages they have earned. Another class of employers who do not require legal documentation are those who offer very low-paying jobs. As one interviewee said of DC-area restaurants, "they don't pay enough money to require paperwork." According to interviewees, these jobs are not necessarily below minimum wage, but they seem to be below what authorized workers will accept in compensation. Therefore, such jobs are economically exploitative of unauthorized status and serve to distort the labor market.

False Documentation: Stepping into Murky and Dangerous Waters

Most employers do, of course, require legal documentation, and some unauthorized youths obtain false documentation in order to work. Typically these youths are not aware of exactly how such documentation has been obtained. Fernando said that he simply paid someone whom another immigrant had recommended. That person then filled out the employment forms for him, and Fernando submitted them. With these forms he was able to work at a sandwich shop and later a restaurant. Another youth said that his aunt and uncle had taken care of the forms, and he was unsure of how he overcame the legal barrier to employment. In these cases of false documentation, the youths in these interviews did not appear coy or unwilling to reveal

the process they had undergone; they just were not aware of the intricacies of obtaining false documentation, and someone else had taken care of the process for them.

Yet whether they are fully cognizant of the decision or not, working with false documentation clearly involves undertaking serious legal risks for these young people. Suárez-Orozco and colleagues describe this process as crossing a threshold from a passive and innocent childhood into an adulthood that, for them, requires sudden criminality: "Once they dip their toes into the underground waters of false driver's licenses and Social Security numbers, they are at risk of getting caught in the undertow of a vast and unforgiving ocean of complex legal currents" (Suárez-Orozco et al. 2011, 455).

Innovation Happens, but Struggling Is the Norm

Beyond the more typical channels for securing employment already discussed, some highly innovative unauthorized youths, on their own initiative, sell products and create side-businesses. Often these enterprises are insufficient in and of themselves to financially support the youths, but they do help with overall expenses. One interviewee had begun a truffle reselling business. Another produced works of art when not working at his job, which he would sell either as special requests or simply on the street. Such entrepreneurship is a sign of the creativity and determination of many unauthorized youths, who look for different ways to earn a living in spite of legal barriers. Yet these instances were rare among our interviewees.

Moreover, these and other successes reported here should not distract attention from the reality that faces most unauthorized youths, who are simply unable to find steady work due to their immigration status. Some may find small side jobs that are insufficient to generate the income that they need. One interviewee, Alejandro, obtained his GED but reported that he was unable to find steady employment because everywhere he looked required a Social Security number. He made a small amount of money in babysitting and other odd jobs, but was frustrated by his inability to contribute to his family's income. Rafael also reported that it was difficult to find an employer without a Social Security number. Employment difficulties had already forced his family to move to Texas, where his uncle had jobs lined up for most of them. These stories are more the rule than the exception for unauthorized youths.

Some community organizations found creative ways to compensate undocumented youths for on-the-job training. One organization secured a grant from the DC Council to place immigrant youths as counselors at a summer camp for at-risk youth. These youngsters worked alongside other

youth counselors who were employed through the DC Summer Youth Employment program, but were given educational stipends as opposed to wages. The youngsters and their families were very appreciative of the opportunity to participate in this creative program.

Several advocates and employers suggested that the economic crisis has adversely affected immigrant youths as they compete for jobs with adult immigrants, often their own parents. One interviewee who arrived in the United States in 2007 reported seeing the effects of the economic crisis in drastically reduced employment opportunities soon after he arrived. The American dream of endless employment opportunities was no longer true, and he has found life here much more of a struggle than he expected. A couple of employers in retail stores indicated that they prefer U.S.-born college students to fill seasonal positions during the winter holiday season. Sometimes their preference for college students stemmed from their preconceived notions that Latino youths do not speak English, are illiterate, and do not have good people skills. "Why would I want some country hick who barely speaks English when I can have a college kid from Georgetown or GW?" said one store manager. It is difficult to distinguish among increased employer-based immigration enforcement under the Obama administration, the economic crisis that diminished job opportunities in general, and discrimination against Latino youths.

Education and Future Job Prospects: Falling Flat

The legal status of unauthorized youths affects their ability to find waged employment and gain meaningful work experience. Yet as a growing body of literature has established, it also has deleterious effects on educational outcomes. The DREAM Act has focused attention on the fact that unauthorized youths cannot access in-state tuition and other financial aid in most states, and they thus face substantial barriers to pursuing higher education. But evidence is also mounting that unauthorized status, whether of the children themselves or their parents, harms students' performance in high school (Bean et al. 2011; Bean et al. 2012; Olivas 2012; Haskins and Tienda 2011; Gonzales 2011). Nationwide, 40 percent of unauthorized young people, ages eighteen to twenty-four, have not completed high school. Those who entered the United States before age fourteen have fared somewhat better, with 72 percent having completed high school (Passel and Cohn 2009).

Reasons for the underperformance of unauthorized students and U.S. citizen children of unauthorized parents are numerous and complex. Broadly, they include lack of positive parental involvement, the stress of unauthorized

status, family pressures to work, and possibly ethnoracial discrimination (see Goździak 2012; Gonzales 2011; Bean et al. 2012). Indeed, research has suggested that the sending of remittances by a family is highly correlated with children not completing high school.

Whatever the causes of high school dropout rates among these youths, the result is diminished opportunities for upward mobility. A commonality across most of the youths we interviewed was that career and employment aspirations were typically rationalized in reference to the jobs of the parents. The desire to earn more than their parents did was a primary motivation for most of these young people. Indeed, many parents also expressed the desire for their children to surpass their own economic status, and as one mother phrased it, "become someone." However, she and others had few concrete ideas on how to achieve this or what this scenario would look like. For those who do not graduate from high school, the lack of a high school diploma will compound their troubles in a labor market where their legal status may already be a substantial barrier.

Those who do complete high school often experience intense disillusionment when they realize that they do not have access to jobs beyond the restaurants and cleaning services in which their parents work. For them, "the assumed link between educational attainment and material and psychological outcomes after school is broken" (Gonzales 2011), as they find themselves stuck in industries where employment has often expanded but wages have stagnated or fallen in the United States over the past three decades (Autor 2010). Those who arrive later in adolescence may never integrate into the school system at all. One young man from Honduras who arrived four months before we interviewed him expressed his intention to eventually return to school, but admitted he had no idea how to even go about this process or whom he would turn to for help. For this group, lack of upward mobility is less of a ceiling and more of a wall. And for all of these youths, the result is "not emerging, but (sub)merging adulthood" (Suarez-Orozco et al. 2011), in which, despite their aspirations, the dual effects of stunted education and a lack of productive work experience put this generation at risk of remaining at the same economic level as their parents.

NOTE

1. Maryland's version of the DREAM Act was to take effect on July 1, 2011, but Republican delegate Neil Parrot flooded the Maryland secretary of state's office in Annapolis with 55,736 signatures, or 3 percent of voters from the last gubernatorial election, needed to put the law up for referendum on the ballot for November 2012. The DREAM Act passed in 2012.

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7

A Family of Strangers: Transnational Parenting and the Consequences of Family Separation Due to Undocumented Migration

Ernesto Castañeda
Lesley Buck

> What kind of life is it when, in order to feed your children, you are forced to leave them; when, in order to "fill" your house, you start by deserting it, when you are the first to abandon your [land] in order to work it? . . . Their country is back there, their house is back there, their wives and children are back there, everything is back there, only their bodies are here . . ., and you call that "living." . . . Who are these people? Men, but men without women: their wives are without men, but they're not widows because their husbands are alive; their children are without fathers, orphans even though their fathers are alive.
>
> —Algerian male working in France, quoted in Sayad (2004, 59)

> It does not matter how many thousands of dollars you make here if you cannot feel the caresses from your son or daughter or see love in the eyes of your wife.
>
> —Mexican worker in the United States

Much of the migration literature focuses on the effects that immigrants have in their new places of residence, the structural causes of migration, the policies enacted in an attempt to manage migration, the attitudes that locals have toward immigrant populations, and the frequent neglect of immigrants'

human rights. This chapter discusses a phenomenon that affects almost every migrant and yet is rarely considered when studying migration: family separation. It also touches on some of the implications of family separation, including its effects on mental health. This chapter takes an ethnographic and clinical approach in representing the experiences of an individual's daily life as part of a family divided across borders.

Most migrants have to leave loved ones behind—extended family such as grandparents and often also immediate family members such as spouses and children. Because many individuals emphasize strong ties and meaningful social and emotional connections with extended family, moving away from kin and friends can involve a considerable loss of social capital, as well as material and emotional support (Falicov 2007). The move is most often understood as temporary, even though the migrant's return date is uncertain (Castañeda 2013).

We define transnational households as nuclear and multigenerational households that are physically separated and often divided by patrolled political borders (Castañeda and Buck 2011). Many migrants leave their families when they become young adults, which is a phenomenon that can be seen as part of the normal life cycle (Carter and McGoldrick 1999), but it is common for unmarried young adult migrants to still consider themselves as part of the household of origin and to send remittances to help support parents and siblings (Massey et al. 1987). Yet in the majority of cases labor migrants may face the difficult choice of having to move away from their newlywed spouses or pregnant wives or from their babies and young children. In a typical example, a young mother or father lives abroad while her or his partner and children stay in the place of origin. Despite the distance between them and their families, migrants most often continue to fulfill their familial obligations, such as providing financially, staying loyal and loving, and continuing to see themselves as part of the same household (Tilly 2007; Zelizer and Tilly 2006). The members of a transnational household share plans, aspirations, and economic resources; they remain a virtual household even though they are physically split into two domiciles in different countries.

Remittances are the money and gifts that migrants send back across long distances to family members, friends, and loved ones, who typically stay in the place of origin (see figure 7.1). They offer not only tangible material support, but also evidence of continued commitment to the transnational household (Tilly 2007). Remittances can be considered a "product of love" because they are made possible by the sacrifices and physical separation that migrants must endure for the sake of family members' economic well-being (Gil Martínez de Escobar 2006). The boy in figure 7.1 has been left behind because his parents migrated to New York City. He is

Figure 7.1
Boy plays in an arcade in the Mixteca Region of Guerrero, Mexico. Notice the American flag on his jeans. He is able to play for long hours at the arcade because he receives remittances from his parents in New York City. (Castañeda © 2005)

able to play for long hours at the arcade because he receives remittances from his parents. He also wears jeans that have a small American flag, a gift his parents sent him.

The remittances received by migrant-sending nations worldwide add up to billions of dollars per year (World Bank 2012), creating a growing interest in the phenomenon by development experts and the media and bringing attention to the transnational families that make these financial flows possible (Castañeda forthcoming). Much of the literature assumes that given their magnitude, remittances must bring upward social mobility and economic development to migrant-sending communities. However, a large inflow of remittances to a locality implies that family separation has become widespread. While this money often increases the total income of the transnational family, it also signifies an inevitable increase in household expenditures due to the necessity of sustaining two living quarters (i.e., a house in Guerrero and an apartment in New York City), with the corresponding expenses (Castañeda 2013). The negative implications of remittances are

often underreported and overshadowed by their perceived positive effects in policy papers and news stories (Castañeda forthcoming).

The literature on migration and development also often ignores the human drama and the social and psychological effects that family separation has on the members of transnational households. Development theorists often employ a cost/benefit analysis of family unity and economic improvement brought about by migration, concluding a priori that the possibility of increased income outweighs the possible negative consequences of family separation. However, the existing evidence forces us to take a skeptical view of this one-sided evaluation, because the long-term economic benefits of remittances depend largely on the local political, economic, and social circumstances of the migrant's community of origin (Castañeda 2013). At the same time, the emotional and mental health aspects of family separation cannot be neglected, because they affect the overall well-being of migrants and their family members and thus have consequences for both human and economic development. For example, if the partner of a migrant is depressed as a result of a separation due to emigration, he or she is unlikely to be able to use remittances to become a successful entrepreneur, or if a returning migrant suffers significant negative psychological effects from his migration experience, he is unlikely to start a business. If children are withdrawn and isolated because of a parent's departure, they are less likely to succeed in school and aspire to higher education, no matter how much financial benefit they receive from remittances.

Parent-child relationships within a transnational family fall far outside of what is considered the social norm and play an important role in any discussion of the emotional and psychological effects of migration. Migrant parents who are members of a transnational household have to engage in teleparenting (Castañeda and Buck 2011), defined by the authors as parenting across long distances, or parenting by proxy. Since the mother, father, or both are not physically present in the everyday lives of their children, they have to show affection, receive reports, and provide instructions and advice via the telephone, letters, and the Internet and through caregivers. Parenting is always a challenge, and the chances for successful parenting by proxy via long distance communication are clearly low. This form of disjointed parenting through the early, formative years of a child left behind can be very disruptive and have lifelong consequences for self-efficacy and confidence (Webster-Stratton 2006).

METHODS AND DATA

We take an ethnographic and clinical approach to representing the experiences of individuals who are part of a transnational family. Our insights come from in-depth interviews, surveys, and ethnographic fieldwork

conducted by the first author, Ernesto Castañeda, in the United States, Mexico, Algeria, Morocco, Spain, France, and Switzerland between 2003 and 2013. This information is expanded by data from the clinical work of the second author, Lesley Buck, a psychotherapist who has worked with immigrants and the children of immigrants in New York City and El Paso, Texas, two major immigrant-receiving cities in the United States. To secure the anonymity of the interviewees and to protect this vulnerable population, records kept contain no identifying data, and all names provided are aliases.

Given how little has been written on this topic, we purposely concentrate on cases demonstrating negative consequences. Our data offer new evidence of the long-term emotional consequences of migration and family separation on the children left behind. They also demonstrate that remittances do not always compensate for the absence of parents in the lives of children of transnational families. We do not mean to say that all migrations or all temporary family separations will result in irreparable emotional damage. People are resilient, and temporary family separation can strengthen the family and leave it in a better financial situation. However, in some cases the consequences are grave. Following are some accounts that illustrate common dilemmas faced by those who experience separation from a primary caregiver due to migration.

Case Studies

Reuniting with Father Abroad

It may have been 1980 when my father left to the U.S. My sister and I were about two and three years old. Therefore, growing up without a father was almost normal. My mother chose not to tell us why our father had left and why he was in the U.S., but stories would be heard from aunts and uncles about how he abandoned us. These stories made us curious as to who our father was and why he was not there with us. My sister and I knew my father only by phone calls. . . . In these occasions my father would tell us to behave and listen to our mother or else. As a young boy who thought he knew it all, I knew those were just words that would never come true. His role as a parent from afar was lost. After all it had been years since we had seen him.

You can't miss something you never had: this is how I felt about my father. My father consistently sent us remittances which in turn kept us fed, clothed and housed, but that is all it did. His remittances did not fill the void that was left by his absence. . . . His absence was definitely felt when other children would mention their father or were doing fun activities with their father. I did not despise him, but this was because I did not know him enough to. I believe the only person that was greatly affected was my mother because not only did they have children together, she still loved him and was destroyed by his abandonment.

I grew up with uncles, aunts, cousins and my mother's parents (my grandparents). We were a very tight family. At times we would eat dinner at each other's house and sometimes I would sleep and spend time at my grandparents while my mother was working. My grandparents provided the help and the support my mother needed as a single mother. My aunts and uncles became my family while my mother was away [working] and my father was in the U.S. Without meaning to, my grandfather filled the role of father, and filled that void that was left by my father. Until this day, I remember how much of a male role model he was to me. I can definitely say he helped me be the man I am today.

I finally met my father at the age of seven. I still remember that day and what I said when I first saw him. I remember whispering to my grandmother, "who is that man?" Like the [common] stories about how the men came back home with fancy trucks and fancy clothes, my father was no exception. He was a tall, muscular, very well dressed man showing signs as if he had struck it rich in the U.S. Not only did he come bearing lavish gifts, he also came bearing a new wife and new child. I was too overwhelmed by the gifts to even notice him, his new child and new wife. I thought, this man was rich! The next few weeks were spent vacationing. We spent days traveling, partying and building sandcastles on beaches. It was bliss! I would sometimes ask myself, "Is he real? Why after so many years of being absent, has he come back?" My father had another agenda for his visit. He came back to tell my mother that he wanted to take us with him to the U.S.

My mother broke the news about her agreement to let us migrate to the U.S. With the help of remittances, my mother was the sole provider for my sister and me. She was all we knew and cared for. For her to agree to let us go with a man we barely knew was devastating. We did not want to leave our mother, cousins, aunts, uncles, or grandparents. We would tell my mom that we did not want to leave. I remember crying and begging her not to let us go. I even went as far as telling her "it is because you don't want us anymore." We did not want to leave the only family we knew. Words could not express the disappointment, hurt and emptiness we felt.

My mother agreed to let us go with him to the U.S., because she knew we had better opportunities to advance than in Colombia. My father returned to the U.S. to start the immigration document process and four years later at the ages of 11 and 12, my sister and I found ourselves in the U.S. From this moment forward, our lives were going to change.

When we got to the U.S. it did not feel like those vacation days when my father came to Colombia, it was far from it. Besides the sadness, we felt as if we did not fit in or belong in this country. To make things worse, the language barrier only added to the fear and sadness. "We were just not meant to be here" I would tell my sister. There was very much adjusting we had to go through. A new school where English was the only language spoken by the teachers, a new stepmother and brother. We wanted nothing more desperately than to go back to our mother and our family. The feeling of emptiness, fear and not belonging would not go away very easily, not until years later.

Although I did not want to come to the United States, I am glad my father insisted and my mother allowed it. It took many years to adjust and finally realize that we came here for a good reason. As an immigrant that did not have much growing up, I can say that with the aid of my mother and the vision of my father I am where I am today. My father ended up being a great role model to me and is a great role model to my children. Because of the opportunities that are offered in the U.S., I was able to become a citizen and an officer in the United States Army. I do not take for granted what freedoms and privileges have been given to me and my family. My hope is to help my children understand that this land is full of opportunities and all they have to do is make an effort to reach them. (Juan, age thirty-eight, El Paso, Texas)

This case illustrates the effects of being left by one's father, only to later reunite with him abroad while having to leave one's mother behind. It also demonstrates how grandparents can act as role models and fill the role of a missing parent. Although this story has a happy ending, it illustrates the roller coaster of feelings that children of migrants experience in the process. It also shows the resilience that many migrants and their family members have, which allows them to survive and even thrive despite the difficulties of the migration process. This story has a happy ending, partly due to circumstances beyond the control of the child.

Grief and Unambiguous Loss

My shoes and clothes were the best among my friends in Mexico. My best friend would always try to wear my clothes, shoes, or caps because no one else had nice stuff like that. I would get a pair of shoes every four to five months compared to my friend who would get only a pair a year sometimes. I was very young at that moment to appreciate what my dad was doing for me by migrating to the United States for a better future. But I would definitively trade all that I got as a child for the simple joy to have my father in my life. After my father migrated, my mother had to assume the role of my father but was unsuccessful at some things such as talking to me about courting a girl. She had so much stress and depression from my father's departure that she hardly had time to focus on my personal life. . . .

After only two weeks and just a kiss, I experienced my first breakup. My first girlfriend had gotten tired of me avoiding her and decided to forget about me. I tried to imitate my dad by hoping that this girl was going to be with me no matter what, and that she would do the same as my mother was doing. I was obviously immature and was hoping that she would wait for me to see her again just like my mother was doing for my dad. I had no idea of what I was doing and no clue that I was indeed doing the wrong thing by thinking like that.

Among the many unintended consequences that I have experienced due to my father leaving to another country for a better future was the inability to connect with people. I became really shy and have kept most of my problems inside my mind.

After eleven years, I eventually moved to the United States to be reunited with my father. My mother and I finally came to live with him but this was very stressful for both of us. I was uncomfortable giving my father a good night hug and my mother had trouble sleeping with him on the same bed. It was like strangers forced to live as a family.

After only four months living in El Paso, my father was killed in Ciudad Juarez. The violence in Juarez was escalating at that moment and was getting worse with time. The day that I found that my father had been killed was very unemotional for me. I was confused because I knew that I had to be sad but was not feeling sad at all. The day of the burial was like another day for me. I was approached by several family members because they thought that I was holding my feelings inside because they did not see me cry. I felt nothing because the departure of my father when I was a little boy was the real funeral to me in my mind. I felt respect for what my father did but still wish he had stayed in Mexico living with us as a normal close family. The separation and the distance away from my father prepared me for his death. I do not know how I will react when my mother dies but I know it will not be the same because I have a closer relationship with my mother because we have always lived together. (Felix, age twenty-two, El Paso, Texas)

As this testimony demonstrates, for many children parental migration may be as drastic as death, and remittances are not enough to compensate for the distance and the lack of cohabitation they experience. They may become used to parental absence, to the point of not missing them at all. This phenomenon is clearly demonstrated in this case; Felix hardly grieved for his father, because his long absence had already created complete emotional separation. The phenomenon of grieving for a lost parent who is still alive creates many complex, conflicting thoughts and feelings in a child and can result, as in the case of Felix, in a child turning inward, becoming withdrawn, and concealing his or her problems.

Living across the Border: The Familial Costs of Illegality

My cousin Estela decided to illegally migrate with her husband to El Paso, Texas and left her son behind. Both my cousin and her husband were in their mid-twenties when they migrated. They had to send remittances to Ciudad Juarez since their baby son had stayed behind with his grandmother. Phone calls were not enough to develop a parent-son relationship. The family is separated by only a few miles and a river but this short distance has been enough to erode family ties. . . . Estela and her husband later had two more children born in El Paso, and the expenses of raising them resulted in a decrease in the amount of remittances sent to Juarez. The family tried to reunify by bringing their eldest son to El Paso when he was 6 years of age, but he refused to migrate and leave his grandmother behind

because he saw her as his "real mother." He therefore grew up without knowing his siblings. Today, technology has allowed the siblings to virtually reunite and remain in touch through social networking sites. Now that they are in their teens, the American children have also traveled to Juarez, and have fortunately had the opportunity to meet their brother and grandmother. Yet the "abandonment" felt by the eldest son resulted in a deep grudge against his parents that deepened when his grandmother passed away years later because Estela was not able to attend her mother's funeral because of her illegal status. . . . The grudge he holds towards my cousin and her husband is so strong that he does not talk to them and even less dares address them as "mother" or "father." While he did have great clothes, shoes, and toys bought with money from remittances which they sent, he does not understand the sacrifice his parents invested in order for him to have these items. He has graduated from high school but does not have plans to pursue further education. . . . Estela has also been suffering because of the separation from her son and because of the constant struggle to find a job due to the strict employment and immigration laws. She is in constant fear of deportation and the thought of being separated from her two younger children lingers in her mind. Her husband is also fearful, but they do not want to leave El Paso because they know their younger, teenage sons have better opportunities in the United States than in Mexico. Neither Estela nor her husband has been able to acquire legal status. They have therefore not been able to visit their respective families and have only kept contact through phone calls. It is evident that not only have their children been affected emotionally and psychologically, but that [Estela and her husband] have been as well. The feelings of regret and fear follow them everywhere they go. Even though their son and extended family live just across the border, their desire to provide a better future for their children kept them from returning. The distance that separated them might be short, but the burden of this separation is immense. (Juanita, age twenty-one, El Paso, Texas)

This case demonstrates how a family separation of even a few miles can be very significant when there is a policed political border in between. It also demonstrates how children can become so attached to their primary caregivers that they may later refuse to move in with their biological parents. Even after the death of the primary caregiver, the grandmother, the child left behind refused to join his biological parents and U.S.-born siblings. Juanita also reported that the extended family was very judgmental of Estela's decision to leave her son behind. In this case the feelings of estrangement and abandonment have lasted through the years, and there are few signs that they will diminish. We also see in this case that the son left behind in Mexico is not planning to pursue higher education, despite the goals and dreams of his migrating parents. It seems that the emotional and psychological effects of the parental separation may be linked to this decision.

Deportation and Family Separation

Ever since I could remember, seeing a police car meant feeling fear even if there was nothing to hide, nothing that I would consider illegal. Yet my parents are seen as illegal immigrants. . . . Along with my four siblings, I was given the best gift they could've given us, the opportunity to live in a country where an education is important. . . . This meant sacrifices for my parents. . . . The first sacrifice was risking their lives as they crossed into this so promising country. That was only the beginning of many other risks they would need to take to live here. Every day my dad had to go to work was not just another workday; it was another day of worrying and praying for him. . . . I would ask a higher power to protect them from the police and from the border patrol. Every single night and morning since, I have been praying for such things, not the ideal worrying a 6-year-old should be carrying with her. I would check the driveway everyday around 5:30 pm which was the time my dad would arrive from work, and would often look out the window to see if my dad's green van would drive up, fearing that was the day he would be deported. But our biggest fear would soon become our reality.

One Friday afternoon . . . my father had been at the wrong place at the wrong time; he was at a gas station and there were police officers looking for some individuals who had shoplifted and asking everyone who was outside for identification. We drove to where they had my father. It took about 15 minutes until the Border Patrol officer showed up and took him. As we stood there, all we could do was stare at the back of the police vehicle where my dad was handcuffed like a criminal. He stared at us with tears in his eyes and apologized at least 50 times. My father would end up in jail for I don't know how long and he would eventually get sent back to Mexico.

My life would change and my siblings would suffer along with my mother. Since my father was the only one working, my two older siblings and I immediately moved back to the house to take over the bills and be a helping hand for my mother. We went from helping our parents with some of their bills to taking over all the bills including the mortgage payment and everything the two little ones needed, plus my father's needs in jail, the cost of a lawyer, and traveling three hours every weekend to visit him.

How do you explain to the two little ones ages 7 and 13 that their father is now in jail because he is not allowed to live in the country they were born in? These two little boys were honor roll kids since they were in kindergarten, but they were now struggling with staying focused. My 13-year-old brother was having behavioral problems and was about to get expelled from his middle school. They had to see my mother miserable and terrified, always preoccupied with what is going to happen next. . . .

After serving 14 months in jail, my father was deported to Mexico with a recorded felony for entering the United States without permission. . . . My mother eventually followed him and moved to [Ciudad Juarez] Mexico after living for 25 years in El Paso, more than she had lived in Mexico. After my dad's deportation she is not the

same person anymore. She had always been so involved with our school and extracurricular activities. She will no longer be able to be a part of any of that, since she's back in Mexico. We were fortunate to have them in all our events, but my two little brothers will not. My sister's marriage was ruined; she was only married for a year, but her ex-husband couldn't live his life with her because she was no longer only preoccupied with their life as a married couple but she was financially and emotionally involved and drained in my parents' and younger siblings' lives and problems. We became parents to them from one day to the other.

As for myself, I was always making my parents proud with my great grades and volunteer work. But there is only so much I can do when I have been faced with working more than one full-time job since I was 16. My grades started dropping the moment I picked up a full time job along with a work-study job when I was a sophomore in high school. Since then, I have been working more than 60 hours a week and attending school full time. . . . I will never live a normal college life because even though I have the opportunity to leave and accomplish my dreams I have my family to worry about and my two little brothers who still need all our love and support along with our presence to attend their events as well as to be here when they are ill or simply in need of a doctor's checkup. Our lives from the youngest to the oldest, we have been affected emotionally, psychologically, and economically, and I wouldn't even consider us having a social life since our jobs and school do not allow us to. All of this to live the American Dream my parents had in mind. They are not living that dream but thanks to them, eventually and hopefully, we will. (Angela, age twenty-three, El Paso, Texas)

This case provides a typical presentation of the social and emotional sequelae following a deportation or extended family separation. The younger siblings needed someone who would make them their top priority; attend their school and sporting events; help with homework; and provide food, clothing, and shelter, along with constant, consistent supervision: the tasks completed by primary caregivers. And the older siblings, who were completing the psychological tasks involved at the young adulthood stage of life, such as finding spouses, completing higher education, and finding jobs, had to put some of these plans on hold to complete the parenting tasks for their younger siblings. Upon the deportation of her father and migration of her mother, the older married sibling immediately assumed the role of coparent for her younger siblings and in doing so ruined her marriage, as she deinvested time and attention from that relationship and devoted them to the one with her siblings.

Faced with the loss of their primary caregivers, the two younger children in this family demonstrate withdrawal of interest in school and activities and behavioral problems, two classic symptoms of depression in children, and rumination or excessive worry. It is appropriate for a thirteen-year-old to worry about academic or sporting performances, but worrying about the family's survival and about the future of the family is beyond the normal

expectations for this life stage. In a follow-up interview, Angela spoke about her thirteen-year-old brother:

> The separation from his parents [has] transformed a well-behaved top student full of energy and an amazing athlete to an individual we hardly recognize. He is now faced with being detained in the 8th grade since he has tried passing the reading STAAR [The State of Texas Assessments of Academic Readiness] Test but continues to fall short. His behavior is not helping the situation since he is now a very "angry" child, or so at least that's the word his teachers use to describe him. But in reality, he is not an angry child, he is the perfect example of the negative impact these Immigration laws have on children, innocent human beings. This "anger" people see in him is his way of crying for help.

She is correct in interpreting this young person's anger as a sign he needs help in coping with the enormous changes that have taken place in his life. Faced with threats to her or his emotional, social, or psychological safety, a child's only tool for response is usually seen in behavioral problems, which express the sadness, worry, and anger the child is feeling.

British psychologist John Bowlby is best known for his work with juvenile delinquents and homeless and orphaned children in post–World War II Europe, including children involved in the Kindertransport, the evacuation of Jewish refugee children from Nazi Germany to Great Britain in order to save their lives. It was his extensive work with children separated from their parents and his own separations from his mother (whom he saw for one hour a day), his nanny (his primary caregiver, who left the family when Bowlby was four years old) and his household (he was sent to boarding school at age seven) that led him to develop attachment theory (Bowlby 2004). This theory states that the bonds children form with their primary caregivers in the early years of their development have a tremendous impact on their emotional and social lives, during and long after childhood (see figure 7.2). For example, although children may be left with competent caregivers, they may view their parents' migration as abandonment and anticipate that other important figures in their lives may also abandon them; anticipating this, a child may hesitate to confide in or grow close to others, resulting in unfulfilling relationships. *Attachment* refers to the feelings of intense connectedness among people. The main function of attachment is survival; the caregiver provides care that ensures the survival of the young, and the young feel extreme feelings of longing for and love for their caregivers to ensure they stay close to the caregivers. As we have seen in these cases, removal of the caregivers or separations from the caregivers are experienced as psychological crises in the lives of young persons.

Figure 7.2
"Parents, where are you?" Young boy in Guerrero, Mexico, using binoculars to look at the second floor of his house, being built with remittances. (Castañeda © 2005)

TYPES AND STAGES OF FAMILY SEPARATION

As the preceding accounts illustrate, there are different types of transnational families (Castañeda and Buck 2011). Some common arrangements are shown in table 7.1.

These typologies are not exhaustive, but they indicate various patterns, each with specific characteristics and consequences. They could also indicate a possible chronology, since remitting may be a stage in family chain migration, sometimes called "split migration" or "delayed family migration" (Balán et al. 1973; Browning and Feindt 1971; Banerjee 1983; MacDonald and MacDonald 1964; all cited in Wilson 1993, 111).

Types IV and V indicate a steep decline or an end to remittances. When the family reunites abroad, the transnational family becomes a "traditional" immigrant household, living together under the same roof. Family reunification abroad means an end to or a significant reduction in remittances, which, unless new migration streams appear, can affect the inflow of remittances at the national level (Cortina and De la Garza 2004).

Table 7.1
Common Types of Transnational Families

Type I	One parent goes abroad; one parent takes care of the household.
Type II	Parent(s) go abroad, and children live with relatives or friends.
Type III	Parents depend on the remittances from their offspring abroad.
Type IV	A parent disappears (abandons the household, i.e., no longer remits and/or starts a new family or dies in the migration attempt or at the destination).
Type V	Family reunion happens either in Mexico or the United States, with extended family or new families on the opposite side of the border.
Type VI	U.S.-born children and some family members stay in the United States, while one or both undocumented parents are deported to their country of origin.

At the same time, under appropriate conditions, choosing to settle abroad permanently opens up the possibility of adaptation, assimilation, and upward mobility in the host society, ending symbolic residency in limbo and opening ways for empowering transnational activities. But deportations by migration authorities may also eventually divide the migrant families in terrible ways (Type VI). The situation is especially difficult for mixed-status families, composed of children or spouses who are citizens and other family members who are undocumented and who are therefore always at risk of deportation and may continuously live in fear and legal liminality (Menjívar 2006). Another extreme case is when parents are deported and their children are left behind for days or years, as occurred in the case of "Angela." Recently some hospital managers have also started extralegal deportations in order to avoid the costs incurred by an immigrant patient without health insurance.

For members of transnational families, many aspects of social life are "on hold," as they wait for the moment the migrant will return or for the time the family or children will migrate to join them. An innate instability often defines the experience of transnational households, since they may end up on either side of the border due to economic and political conditions beyond the control of the household.

The collective nature of the migration decision, along with the incomplete information and changing circumstances surrounding it, makes the planning of a life trajectory that involves migration very difficult (Castañeda 2013). The perceived imminent return to communities of origin may hinder migrants' integration and adaptation to the economic, social, and political systems in their destination countries. It is also important to note that while social networks facilitate immigration, they do not always help migrants in assimilating or advancing economically once they are in the United States,

because in some cases earlier-arrived immigrants prey on and make a living off newly arrived immigrants, overcharging for rent, charging for favors navigating U.S. institutions, or exploiting their labor (Mahler 1995; Menjívar 2000, 2006).

Causes of Migration and Family Separation

Most commonly, people move out of their places of birth for 1) economic reasons, in search of better jobs, education, and opportunities; 2) political reasons, such as religious, ethnic, or political persecution because of belonging to a despised out-group, causing them to become refugees, wherein migration is forced and in which situation return is impossible, at least in the short term; 3) widespread violence in the country of origin; 4) the search for new cultural experiences and opportunities; and 5) family reunification. Financial motives are the most common reason for migration and this in turn often leads to family reunification migration.

For over a century many Mexican migrants from the countryside have taken temporary agricultural jobs in the United States (Massey, Durand, and Malone 2002). Initially Mexicans left their lands in response to the continued offers and insistence of U.S. employers and their agents, who offered extraordinary working conditions and pay. This is what is known in the literature as the *enganche* or "hooking" period of labor recruitment (Durand 2007). These temporary transnational labor agreements by adult male sojourners became institutionalized in the binational Bracero Program, which lasted from 1942 to 1964. Germany, Switzerland, and France also actively recruited male guest workers after World War II. These workers were given papers documenting their employment, as well as legal permission to work and reside in their host countries. Implicit in guest worker programs was the provision that only young, healthy men could move north, that they be unaccompanied by family members, and that they would return home when their visa expired. Yet contrary to these stipulations, what was initially a temporary legal stay became a permanent move for some individuals.

Temporary work is sometimes actively encouraged and allowed by the state, while at other times it is sanctioned. Yet after guest worker programs have been implemented for years, working abroad in order to send remittances can become a tradition in many communities. Thus migration flows persisted after the end of the Bracero Program and other similar guest worker programs, driven by social networks, knowledge of labor markets abroad, and employers themselves (Massey et al. 1987). The end of formal guest worker agreements between the United States and Mexico meant moving from a legal to an illegal agricultural workforce, which made labor cheaper, more

flexible, faster to obtain, and also easier to abuse and discard when no longer needed. An illegal workforce also eliminates the need for an employer to contribute to the health care or retirement accounts of employees.

Undocumented migration also strengthens the premise among migrants themselves that their migration is temporary, that their foundational purpose is to earn foreign currency to remit, and that they will rejoin their nuclear families as soon as they reach their target-savings goal (Piore 1979). Yet in practice, migration has proven to be much more complicated. For example, many Algerian immigrants participated in guest worker programs and believed their stay in France to be temporary. Yet their "provisional status" would often last for decades, with their families remaining divided, until they would finally be reunited on one side of the Mediterranean or the other (Sayad 2006). This has certainly also been the case for Mexican migrants to the United States, especially after the increased difficulty in crossing the border since the 1990s (Massey, Durand, and Malone 2002) and more recently since the continued militarization of the border after the September 11 terrorist attacks in 2001.

Discussion of the Literature on Transnational Families

Traditionally, the literature on immigration and ethnic communities focuses on the experiences of workers and families who have moved into the global North and disregards their connections to the sending community. Though it is methodologically more difficult to study those families who are divided across borders, in the last decade a number of scholars have taken on this task, a movement partly inspired by the turn to transnationalism in immigration studies (Basch, Schiller, and Blanc 1994). However, transnationalism studies have largely understood divided households to be a necessary ill and have placed relatively little emphasis on the emotional effect that they have on migrants.

In countries that have guest worker programs or a large undocumented labor force, an important proportion of immigrants are those in their prime working age who leave children and elderly parents in their place of origin. Transnational household economies raise issues concerning the division of labor across borders—that is, child rearing and retirement occur in developing countries, whereas productive working years are spent in developed countries (Parreñas 2005; Wilson 1993). In remittance economies, labor and social reproduction are divided geographically. The migrant host nation reaps the benefits of a migrant workforce raised abroad (the host nation does not have to pay for its education, care, and health care costs of raising a worker), while the migrant-sending country exports workers in exchange for a remitted portion of the immigrants' wages, which families most often use to support children and elderly people left behind.

This international division of labor could be analyzed through a Marxist lens, as an extreme split between labor maintenance and labor reproduction (Burawoy 1976), or it could be understood from a neoclassical perspective as a development strategy (World Bank 2006). In any case, transnational parenting externalizes the cost of labor reproduction to the migrant-sending communities (Hondagneu-Sotelo and Avila 1997, 568). This creates distorted demographics, as towns are left with populations predominantly composed of children and the elderly, rendering both groups vulnerable as the result of what Arlie Hochschild calls a "care-drain" (Hochschild 2000; Lutz and Palenga-Möllenbeck 2012), meaning that many of the people whose most important function was to provide care have now left these communities.

The nuclear family model is often an ideal or typical conception that cannot be applied across every culture since, as Suárez-Orozco and colleagues (2002, 627) point out, "in communities where child fostering is widely practiced, no stigma is attached to its occurrence." For example, in Latin America it is not uncommon for grandmothers or the eldest daughter to care for children in large families, even in nontransnational contexts (Gill 1994 as cited in Hondagneu-Sotelo and Avila 1997, 57). Transnational mothering roles also do not align with traditional gender roles, in which biological mothers are expected to personally raise their own young children (Hondagneu-Sotelo and Avila 1997, 557). It is interesting to note that even within the nonmigrant populations, this traditional ideal is broken at both extremes of the class spectrum of both Latin America and Western nations. Poor mothers must work and leave child care to kin and neighbors, while wealthy or professional women delegate child care to nannies (Hondagneu-Sotelo 2001; Parreñas 2005). This creates a paradoxical phenomenon in which live-in nannies must leave their own children at home to care for the children of others (Hondagneu-Sotelo and Avila 1997; Hondagneu-Sotelo 2001; Parreñas 2005).

Spatially and temporarily separated families are not without historical precedent; for example, they were common among Polish, Jewish, and Italian immigrants to the United States at the turn of the twentieth century (Dreby 2006; Foner 2000; Thomas and Znaniecki 1918). As Parreñas (2005, 162) mentions, "illiberal" regimes in Asia and the Persian Gulf region have guest worker program agreements with, for example, the Philippines, that encourage family separation. Similar agreements are enacted in "liberal" regimes, as exemplified by the Bracero Program (1942–1964), which mandated divided families, since it provided men with temporary visas for agricultural work without any provisions for family unity (Dreby 2006; Hondagneu-Sotelo 1994; Hondagneu-Sotelo and Avila 1997). Nonetheless, by migrating with temporary visas, Braceros could live with their families for a number of months each year, avoiding prolonged family separations. On the other hand, in the case of

Puerto Rico, migrant workers could bring their children with them more easily because they and their children were legal U.S. citizens from an offshore territory. In the case of internal migration, exemplified by Mayans working in Cancun, Mexico, remittances can represent an increase in family income without taking such a drastic toll on social relations and parenting, due to the ease of travel and frequent visits by family members on weekends (Castellanos 2007). However, the effects of these short distance or temporary migrations cannot be generalized to international migration, especially for undocumented workers who cannot easily move back and forth across borders.

Distance does not necessarily erase contact, membership, and affection among family members, although the inability to gather physically often does make a difference. For example, immigrants often send clothes intended for children that are either too small or too large; this happens because they have not physically seen their children recently and find it difficult to keep up with their rate of growth (Dreby 2010). Falicov (2002) argues that transnational families remain virtually the same as traditional families since the absent members are always present in the memories, stories, and conversations of the family unit. Because family members keep in contact, especially by phone, they know the important aspects of what goes on in each other's lives (Falicov 2002). This can help ease the feeling of separation and make it less acute, depending on the particular individual. However, one cannot argue that "keeping in touch" is the same as cohabitation, especially for young children who recognize their primary caregiver as the person who feeds them, helps them get dressed, holds them, hugs them, and looks them in the eye.

Some of the most compelling data concerning the widespread incidence of family separation due to international migration comes from ethnographic studies in the Philippines and Mexico. Sociologist Rhacel Salazar Parreñas has written widely on the topic, focusing on the women who leave the Philippines to work in the United States, Japan, Europe, and the Arab Emirates in the Persian Gulf. She documents the reality of family separation for both family members who stay in the Philippines and emigrant women themselves, a separation which in most of her case studies lasts for more than ten years (Parreñas 2005). She analyzes the different standards that fathers and mothers face in regard to parenting and remitting, finding that while both fathers and mothers are expected to call and send gifts and remittances to family members, mothers face much higher expectations from their children regarding emotional support.

Due to its roots in agricultural guest worker programs that hired more men than women, Mexican migration was initially mostly male. However, as time abroad lengthened, many male workers brought their wives and children with them. More recently, as emigration has become more widespread, many women and children migrate on their own. Family life, role expectations, and

family members' input all shape who migrates and when (Massey et al. 1987). In turn, gender and age clearly affect the avenues and experience of migration (Boehm 2012; Hondagneu-Sotelo 1994).

Anthropologist Deborah A. Boehm (2012) describes in detail a number of transnational households located in Albuquerque, New Mexico, as well as in a "rancho" or small community in the state of San Luis Potosí in central Mexico. She corroborates the central role that family and community life play in migration and in the formation of transnational communities. She also describes how something as intimate as family life and cohabitation is deeply shaped by state policies that permit or ban certain types of migration. Boehm points to the paradox of the current immigration legal system's prioritization of the family reunification of adult U.S. citizens, while emphasizing the deportation of undocumented people, which often divides mixed-status families (those formed by U.S. citizen children by virtue of being born in the U.S. territory and undocumented parents who cannot regularize their status based on the citizenship of their minor children). Because of these laws, it is easier for undocumented workers to find work in the United States than it is for them to safely bring family members to join them, creating one of the foundational reasons for the development of transnational families.

In her superb ethnography of transnational families, Joanna Dreby takes a child-centered approach in discussing how children experience and frame parental emigration and family separation (Dreby 2006, 2007, 2010). She asks: "How do migrant parents and children manage living apart? What are the costs of such a sacrifice?" (2010, 3). She uses interviews with children to show us how they frame this separation. Included is a poignant transcript of an interview with ten-year-old Michael, whose mother and father both migrated, separately. Although there may be many particular circumstances involved in each and every case of family separation, in this one Michael states that he loves his mom "a little"; when asked if he feels that his mother loves him, he says, "That, I don't know" (2010, 104). While some of her cases support the thesis of this chapter—the often negative consequence of family separation on mental health—Dreby stops short of making this point explicitly.

Salazar Parreñas scrutinizes much of the public discourse that openly judges emigrant mothers. She discusses how talk shows, billboards, and churches—self-proclaimed moral authorities—harshly and without any empathy judge women who leave their children for the opportunity to make money to support them, and she calls for her readers and the sending societies not to condemn these emigrant mothers. A similar popular condemnation of migrating mothers occurs in Poland and Ukraine (Lutz and Palenga-Möllenbeck 2012). Catholic priests in sending communities in Latin

America can also be very vocal about their opposition to emigration, often citing family disintegration (Castañeda 2013; Fitzgerald 2009).

The authors discussed here are correct in countering criticisms of the morality of migrating women. Contrary to the attitudes expressed in public discourse, interviews with actual migrants show that migrant parents are not unloving. In-depth interviews conducted with migrant women and men by the authors of this chapter show that the rationale of migrating in order to send remittances home is most often founded on the love of their families and a desire for their well-being. As journalist Jason DeParle (2007) notes, "the one who leaves is the one who cares," meaning that the mothers who leave their children in the Philippines are viewed as the ones who really care about the future and material well-being of their children. Or as Boehm writes, people migrate "*por lo niños*"—for and because of their children. However, it is crucial to note that while this rationale existed and was cited again and again by the migrants whom the authors interviewed, this does not mean that children are able to cognitively understand this reasoning or have the emotional tools to deal with what, in their eyes and as described clearly in the case studies presented, appears to be a type of abandonment and/or is experienced as a lack of love on the part of their parents. Most authors, in their desire to protect, justify, and not judge emigrating parents, have neglected to objectively study the consequences that migration may have on the mental health of migrant parents and their children.

Heather Rae-Espinoza conducted ethnographic work in a small village in the Ecuadorean Andes that sends many emigrants to Italy. Her research addressed the meanings that children and parents give to family separation due to migration (Rae-Espinoza 2006). Despite describing many cases in which separation led to feelings of loss, sadness, depression, and distress, she dismisses attachment theory in explaining the psychological effects of family separation. Rae-Espinoza incorrectly claims that attachment theory is ethnocentric, because it values specific family formations and practices. In reality, attachment theory states that disruptions and instability between children and their primary caregiver(s) may result in difficulty forming new attachments with friends, partners, and children later in life (Castañeda and Buck 2011) and does not presuppose a specific type of family or parenting style. Attachment theory applies to the children of migrants whether they live in Latin America or North Africa. Children who perceive themselves as having been abandoned by their primary caregivers typically believe that others will also abandon them; to protect themselves from future emotional pain, they will often withdraw from others or form superficial relationships that do not nurture their social and emotional development. This can be observed across cultures and contexts.

Family, parenting, and attachment configurations are always context-specific and shaped by local culture. Rae-Espinoza also argues that in communities

where there is a culture of emigration, members do not see parental migration as abandonment but as part of parental sacrifice and providing for their children. While this is true for most adults, children do not necessarily have the cognitive and emotional capacity to understand this, as has already been stated. Furthermore, Rae-Espinoza herself documents schoolmates without migrating parents making fun of students whose parents have migrated, calling them "orphans" and the like. In her fieldwork Rae-Espinoza finds that the adults who stay behind highlight gifts and remittances sent by migrant parents to the children under their care, while they strongly avoid and actively stop conversations about sadness and disappointment due to parental absence. While children therefore learn not to talk about their feelings in relation to family separation due to migration, this repression of emotions does not mean that these children are coping well with the situation.

The case studies presented at the beginning of this chapter clearly point to how parental migration affected the children left behind, often keeping them from forming close, trusting relationships in their adult lives. As one of our interviewees stated, "To this day I still have the symptoms of abandonment because I do not or will never let anyone too close into my life. . . . I know that they won't [always] be around so I won't let myself worry about whether or not they will come back home or when I will see them again. It's just not worth it to me, at least from my perspective."

Not all scholars are silent about the extremely difficult choice that prospective emigrant parents face and the results of that choice. For example, sociologist of transnationalism Peggy Levitt told interviewers: "Mothers are making a deal with the devil. . . . They're able to support their kids, buy medicine and food and education they couldn't otherwise afford, but there's an emotional cost" (quoted in Bhatia and Braine 2005). Leah Schmalzbauer, who studied the stresses borne by Honduran women who left their children to work abroad, states: "The burden is even larger for a mother who has left young children behind and the kids don't understand why she left. . . . The worst case is when they stop remembering who their mothers are" (quoted in Bhatia and Braine 2005). According to Ellen Calmus, who works at a nonprofit for children left behind in Malinalco, outside of Mexico City, "These children see themselves as an economic burden. . . .Their grades plummet immediately after the parent leaves, tempting them to leave school and go to work. Their lives are on hold because they don't know whether their parent will come back or if they'll be asked to make the dangerous journey north themselves. The lack of family support has also led to the beginning of gang activity in recent years" (Bhatia and Braine 2005). Teachers are often the ones who bear witness to the consequences of the repressed and painful emotions of children about familial separation (see figure 7.3). Furthermore, family separation when one parent is abroad puts

Figure 7.3
Local teachers are often the ones who bear witness to the consequences of the repressed and painful emotions of children concerning familial separation. Public school in Huamuxtitlan, Guerrero, Mexico. (Castañeda © 2004)

much stress on the couple, and it allows for the creation of many stigmas, myths, and suspicions about increased drug use, alcoholism, infidelity, and so forth (Valodya 2013). These stressors for the parents left behind can further impact the quality of their parenting and thus negatively affect the children.

A few authors with experience in mental health and psychotherapy have written about the psychological effects of family separation due to migration based on their clinical samples. Artico (2003) explores the experiences, perceptions, and memories of Latino adolescents and young adults reunited with their biological parents after prolonged separation during childhood because of piecemeal immigration patterns. Some reported feeling that the loss could never be repaired, feeling distant or disconnected from others and doubtful about their own ability to feel love for others.

Clinical psychologist and immigration researcher Marcela Suarez-Orozco's research shows that there are observable negative effects accompanying family separation that may persist even after the family reunites in either country, and that catching up in terms of family time together is possible only when the family is conscious about this and is able to stop everything else to strengthen family

Figure 7.4
Children whose parents migrate may be forced to mature faster than those whose parents stay in the same household. (Castañeda © 2004)

relations. Unfortunately, most emigrants work long hours and thus can hardly afford themselves this opportunity. Carola Suárez-Orozco and colleagues (2002) show that the children left behind have increased incidence of depressive symptoms; in this way, the parents' departure turns them into relatively good providers of economic resources but relatively bad providers of emotional resources from the point of view of the children. The remitting parents see themselves as providing care and economic resources, but the children tend to dismiss the importance of remittances and may overlook the suffering that the parents also undergo due to the separation. This is partly due to the parents' conscious desire to appear strong in order to provide comfort and strength to their children. Given the competing claims between increased financial support and cohabitation potential, the hope of procuring positive long-term outcomes in both of these arenas seems doomed from the outset; parents are "damned if they leave, and damned if they stay." Children left behind are often forced to mature relatively fast to take care of younger siblings or themselves to compensate for some of the functions of the parent(s) who are away, but emotional maturity may not increase at a fast enough pace for them to understand the circumstances under which their family members had to emigrate (see figure 7.4).

CONCLUSION

This chapter has discussed how labor migration often creates transnational households, separating family members across long distances. Stress and fear related to migration are especially acute for families with undocumented individuals. Once abroad, the undocumented migrant cannot be sure how long he or she will be able to stay before facing deportation, or how long it will take to save enough money to be able to go back. Transnational families with undocumented members are in limbo, living in a state of fear and great anxiety that causes malaise and emotional stress in both adults and children. Unlike the emotional finality of death, children left behind often cannot grieve for missing parents, since they are not dead. However, because their return date is often unknown, feelings of loss can be provoked in the children. The social life of the transnational households thus created may be largely suspended, as family members wait to be reunited in either part of the transnational circuit. Furthermore, if and once they do reunite, they may feel as if they are living in a family of strangers, as was the case for Felix.

Our data demonstrate that remittances do not always compensate for the absence of parents in the lives of children of transnational families. The blame for separation and emotional stress is structural rather than individual. In the cases described, it is poverty and immigration laws that put families under stress, not lack of parental love. We have discussed some of the negative effects of a transnational family structure that under certain circumstances and in certain contexts may create emotional trauma and attachment problems and have other negative effects on mental health among both those who migrate and those who are left behind. We do not mean to imply that mental illness is the normal or even frequent outcome of migration, but it does occur and thus needs to be addressed in the migration literature. Social scientists should be concerned with the emotional and psychological costs to migrants and their children. Moreover, mental health professionals and service providers interacting with migrants and their children can have a larger positive effect on their mental health if they are aware of the issues raised in this chapter (Kennedy 2013). It is our hope that a more nuanced understanding of migration and its unintended consequences will increase the attention, concern, and benevolence extended to migrants and their families. Our intention is not to point fingers, criminalize, or judge the good intentions and love that migrant parents feel for their children, but rather to discuss sociologically the unintended consequences that family separation can sometimes have despite the best intentions of those involved.

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8

Sexuality Out-of-Status: Living as an LGBTQ Immigrant in the United States

Cymene Howe

Beatriz

Beatriz was in love. For the past ten months she had been a diligent student, taking graduate coursework in economics. She had come to the United States with a student visa and spent long nights poring over macroeconomic theories. While the climate in Georgia reminded her of her home country in the Caribbean, the island of Dominica, everything else was very different from her experience growing up in a small town. In her economics classes, Beatriz had learned a lot about how she might, one day, apply her considerable analytic skills to developing better economic opportunities for women in her home country. But Beatriz had also learned something more subtle and yet life-changing: she had fallen in love with an American woman, Emily. They met in a café, talked for hours, and found, over the weeks and the months, how alike they were despite their very different histories. It was not a relationship either of them had expected. Beatriz, for one, had never consciously considered having a relationship with a woman, ever. She had been raised in a very traditional, religious family where the topic of homosexuality was only mentioned in conjunction with sin and moral corruption. The laws of Dominica only bolstered this prejudice; the country had an anti-sodomy law that mandated up to ten years in prison for any person convicted of same-sex sexual activity. When she left Dominica, Beatriz had never considered the idea that she was a lesbian. Now, she was sure of it. In her relationship with Emily, Beatriz she was the happiest she had ever been.

They moved in together, time passed. And Beatriz's legal stay in the United States was coming quickly to an end with her student visa now expired. She could have gone back, she explained, but she didn't. She could have ended her love affair with Emily, but neither of them could bear the thought of it. They could have gone back to Dominica together, but they knew they couldn't, both because of the hostile legal conditions and the increasing difficulty of finding employment. And so this is how, from one day to the next, Beatriz became "illegal."[1]

IMPOSSIBLE SUBJECTS

In a sense the subject of this chapter is impossible, because it demands accounting for a group of people who often elude documentation. A recent survey by the Pew Hispanic Center (Passel and Cohn 2009) estimated that there are almost twelve million undocumented im/migrants in the United States, most of them from Latin America.[2] However, any statistician of migration will also confide that these calculations, while they use the most sophisticated methods possible, ultimately cannot be fully verifiable. Within the general estimate of the undocumented population in the United States, we can approximate how many of these persons would be considered "lesbian," "gay," "bisexual," "transgender," or "queer" (LGBTQ). A recent Gallup poll found that 3.4 percent of the U.S. population identifies as lesbian, gay, bisexual, or transgender (Gates and Newport 2012). However, this figure is not as transparent as it sounds, especially if we consider the parameters and boundaries of the terms used to define sexuality, identity, affect, and practice. How would we categorize those persons who are same-sex attracted but who may not identify as LGBTQ, or those who may not be able to come out of the closet, or those who have no interest in claiming a sexual identity as such?

The seeming impossibility of this subject, and these subjectivities, raises a number of questions. Are queer migrants changed by their experience of coming to the United States? Or conversely, and perhaps simultaneously, is the United States itself transformed by the arrival of LGBTQ undocumented migrants? What are the experiences of undocumented queer migrants before they journey to the United States? Has he, for example, lived an open life as a gay man, or has she suffered sexual abuse and discrimination because of her romantic relationships with other women? How does being same-gender loving, or LGBTQ, impact one's decision to migrate? Or, we might ask, is it really a decision at all; are there social forces and factors that make migration feel more mandatory than optional? I raise these questions in order to offer some provocations as this chapter unfolds, for the story of sexuality is never a simple

one, just as histories of migration, settlement, and accommodation are equally complex and contingent. Although undocumented LGBTQ im/migration may be impossible to fully reveal, it is also an opportunity to begin to think through the dynamics of undocumented queer migration and to consider the lived experiences of queer migrants.

Migration and sexuality—each involving practices and desires—must be understood as overlapping experiences.[3] Sexuality shapes, contextualizes, and conditions the dynamics of migration as well as the ways in which migrants become incorporated into communities in the United States (Cantú 2009; Cruz-Malavé and Manalansan 2002; Hondagneu-Sotelo 1994; Luibhéid 2002). Just as the identities and practices of LGBTQ migrants are impacted by structural conditions, cultural dynamics, and institutions, so too are im/migration and sexuality articulated phenomena. To address the multiple factors that compel or constrain the lives of LGBTQ migrants, this chapter first discusses migration and the status of being undocumented.[4] Second it takes up the question of sexuality, asking how it is that we can, or cannot, define the borders of homosexuality and LGBTQ subjectivity. To account for the multiple ways that law, economics, sexuality, subjectivity, and desire intersect, the chapter then turns to the theoretical and methodological potential of "sexual migration" as a way to account for these overlapping processes. Finally, we consider the complicated history of sexuality and migration in U.S. immigration law to see how particular legal regimes have been instituted and transformed over time.

Crossing Borders and Being Undocumented

Globalization has brought about many changes over the last several decades. One of its indisputable consequences has been an increase of im/migration—both legal and illegal—throughout the world. At the turn of the millennium an estimated 175 million transnational immigrants and refugees were living outside their homelands and their countries of origin (Suárez-Orozco 2005, 51). In the era of globalized transport, communication, and finance, im/migrants and the nation-states that "send" and "receive" them face an increasingly complex set of factors that impact migration across national borders. Economic growth and development in certain regions of the world and transnational flows of capital that accompany this development tend to encourage immigration (Sassen 1988). Globalized economies are also, by their very nature, structured to incorporate foreign workers, at different skill and educational levels, ranging from white-collar information workers to blue-collar factory production or work in the poorly paid service sector. Mass transportation has also become more ubiquitous

and more affordable, leading to the possibility of transnational migrants who maintain social networks and in some sense live within two (or more) societies at once (Basch, Glick Schiller, and Blanc-Szanton 1992).[5] The more widespread use of communication technologies, such as the Internet, also inspires new desires, tastes, and modes of consumption. These "mediascapes" and "technoscapes," as Arjun Appadurai (1996) has described them, offer new spaces for transnational communication about sexuality and identity in ways that were impossible before. Finally, globalization has produced uneven effects in many parts of the world. It has increased disparities in wealth and therefore, in addition to stimulating new wants and ways to acquire them, the globalized economy has rendered some people less able to achieve the prosperity that globalization seems to continually promise.[6] While globalization has impacted every person in the world, undocumented migrants are key indicators, in human form, of the changes that the globalized economy has generated, both positive and negative.

While the flow of capital, goods, technology, and information across borders has expanded, recent decades have also been a time of unprecedented controls and limitations on immigration. The intensification of globalization over the past two decades has resulted in the largest number of immigrants in the history of the United States (Suárez-Orozco 2005, 60). Particularly since the events of September 11, 2001, the United States has seen increased public attention and volatility around the issues of migration, ethnicity, nationality, and religion. Muslims (or those perceived to be from the Middle East or South Asian Muslim nations) have been targets of increased violence, discrimination, and xenophobia. While racisms and xenophobic sentiments have been leveled against Arab or Middle Eastern people, the post-9/11 environment has also included an intensification of public debate and often, heated controversy, about undocumented migration across the U.S.-Mexican border. Latin America sends more immigrants to the United States than any other region, and im/migrants from Latin America (particularly Mexico and Central America) comprise the highest percentage of undocumented migrants in the United States.[7] In the 1950s approximately 80 percent of immigrants were from Canada or Europe (Suárez-Orozco 2005, 60). It is estimated that today more than 50 percent of all immigrants in the United States are from Latin America, compared, for example, with 25 percent from Asia. Changes in the direction and flow of migration demonstrate how policies and economic conditions transform populations in both "sending" and "receiving" countries. These dynamics also highlight the contested spaces of borders and the nations for which they serve as boundaries, both symbolically and in very physical and material ways.

The Mexican-U.S. border has long been a place of surveillance and a source of anxiety about who is "in" and who is "alien." It is, as Lionel Cantú put it, "without a doubt, one of the most contradictory geopolitical lines in the world" (2009, 59). The border has also historically been an ambivalent sexual space. In midcentury "*zonas de tolerancia*" (or "red light districts") sprang up on both sides of the border. These *zonas* functioned to segregate certain kinds of social interaction, especially those marked as deviant, such as prostitution and homosexuality. These were spaces where putatively taboo practices could essentially be off-shored. Indeed, one could argue that spring break vacation destinations—such as Cancun, Acapulco, and Puerto Vallarta—serve a similar function in the present day (Cantú 2009; Carrillo 2004). What is clear is that the desire to cross the border has run in both directions for some time and for various reasons. In the past decade, however, the restrictions at the southern boundary of the United States have increased, and antipathy among some segments of the U.S. population, the Minutemen for example, has increased the level of danger for those attempting to cross the border illegally (Kun and Montezemol 2012). Policies such as NAFTA (the North American Free Trade Agreement), which have further integrated the economies of the United States, Canada, and Mexico, have not ended undocumented migration;[8] migrants continue to flow across a now highly militarized border, sometimes surviving and sometimes becoming victims (Rosas 2012). Constructed from a prohibitionary logic and simultaneously defined by the transport of goods, people, and finance, the border is often a fraught and dangerous place, or what Gloria Anzaldúa (1987) called an "open wound."

Crossing the border into the United States without documents is a dangerous proposition. However, for financial and other reasons, the flow of persons continues, sometimes en masse, sometimes more gradually. Whether they are from Latin America, Africa, or Asia, what awaits undocumented migrants on the other side of the U.S. border depends immensely on the kinds of networks and strategies of incorporation and survival that they are able to utilize. Leo Chavez, an anthropologist who developed an extensive study of undocumented migrants in San Diego, California, knew that this diverse and dispersed population would not be easy to locate or access. As he wrote, these were people who "would prefer to remain hidden" (1992, 2). Conducting over a decade of research with undocumented migrant men, Chavez ultimately came to understand "what it means to live without legal immigration documents" (1992, 2). Chavez worked with two distinct groups of undocumented migrants. One was composed of temporary farmworkers who did not regularly interact with U.S.

institutions or members of the larger population during relatively short stays in the country. His other interlocutors were families and individuals who had spent years (and even decades) in the United States. Although they might not have had legal documentation, they nonetheless felt that they were a part of U.S. society and culture. Chavez argued that the migratory experience of both of these groups was similar, in many respects, to a rite of passage.

For undocumented migrants this rite of passage or "territorial passage," as Chavez called it, was fundamental to their experience. Rites of passage consist of three phases. As Chavez astutely pointed out, the "liminal" and transition phase, for many undocumented persons, never ends.[9] There is never a clear resolution or absolute sense of incorporation or integration into the new social context of the United States. Undocumented migrants are always, from a legal point of view, and often in an affective and symbolic way, betwixt and between. For those who have come to the United States as adults or older teenagers, this sense of precariousness is a pervasive sensation. For LGBTQ im/migrants, this sense of liminality, precariousness, or lack of incorporation into the social body can be a very familiar feeling, a well-known state of being. For people who have not subscribed to heteronormativity in their home countries, a sense of precariousness can be doubled and compounded in the United States. LGBTQ undocumented migrants may find themselves separated from everything familiar that they had at "home," even if their home society may have been less than tolerant of their sexual difference. Because of their sexual difference, undocumented LGBTQ migrants may not easily incorporate themselves into mainstream, heteronormative U.S. society. Many non-LGBTQ im/migrants for instance, live in enclave communities where the majority of residents are from the same country, sometimes even the same village. However, these communities may not be receptive to LGBTQ migrants. Conversely, sexual migrants may find tolerance and acceptance among LGBTQ populations in the United States, even if they do not share national origins. Whether or not LGBTQ immigrants are able to enter into these social spaces of support and interaction is highly dependent on the contingencies of language, class status, and race. The experience of liminality, as an affective condition, operates in profound ways among LGBTQ undocumented migrants. They are often engaged in creating and re-creating their own "borderland" spaces (Acosta 2008; Anzaldúa 1987).

Lucy

Lucy, an undocumented lesbian living in the United States, explained that her involvement with the gay movement in Mexico had been an important part of her

experience and transition to the United States, and to her becoming a lesbian. "The year 2000 was a good experience because we worked for a political campaign. The second most powerful lesbian in Mexico [got us involved with the campaign] . . . because she worked for the party that supported the gay community. . . . That's where I met my first female partner." It was through the LGBT movement in Mexico that Lucy was able to create her own *ambiente,* "scene," or place of belonging. She met her first partner in Mexico and only moved to the United States when this relationship ended. After arriving in the United States Lucy joined a *lesbiana* support group for Latinas. Participating in the group allowed Lucy to meet other lesbians from Latin America and to establish a better sense of integration in the United States. But, even in this context, Lucy was not free from discrimination nor was she free from a certain kind of precariousness. She explained that she sometimes felt marginalized among other Latinas. "I have become aware that Mexican women are seen as different. As if we were the new ones, we are the 'little poor girls who do not speak English.' In the *lesbiana* groups this exists. It is not spoken, but when there are events, the Dominicans get together, the Colombians get together, and the Mexican and Ecuadorians are always drifting. There isn't that integration."[10]

Patricia Zavella (2011) has described being an im/migrant in the United States as involving perfecting one's "peripheral vision." This involves being able to "see," in a cultural sense as well as in a literal way, where you are going, where you have been, and of course who is around you. Liminality, the experience of being betwixt and between is possible in many settings, but LGBTQ persons may be especially astute in recognizing it because they have experienced a sense of "outsiderness" in their native countries. However, it is not always the case that LGBTQ migrants have been marginalized or unintegrated in their countries of origin, as is clear from Lucy's involvement with the gay movement in Mexico.[11] Although many undocumented LGBTQ migrants have fled their native countries to evade persecution and to find a more tolerant environment in the United States (Adam, Duyvendak, and Krouwel 1999) we cannot assume that all LGBTQ migration is motivated by a desire for sexual tolerance. As Marcelo Suárez-Orozco has rightly put it, "immigration, like sexuality is first and foremost about the structuring of desire" (2005, 51); this includes all of the complexity that desire entails: for acceptance, opportunity, and the possibilities afforded by new social environments.

Locating the Borders of Sexuality

Sexual identity can operate as a powerful force in a person's life, including as a motive to migrate, with or without documents. LGBTQ undocumented

im/migrants may hope to find more tolerance in the United States. They may hope to escape persecution in their home country, or they may simply want a sexual and affective life that was not possible in their country of origin. There are a range of reasons, motives, and desires surrounding the decision to migrate, including economic considerations. Sexual subjectivity and LGBTQ identity, both in the context of migration and in general, must be understood, then, as "bracketed" (Valentine 2004) by forces and factors that can change over time. Scholars who analyze the conjunction of sexuality and migration have understood that more capacious categories are necessary to truly account for the range of human affect and practice. Experiences are not always easily captured under the rubrics "gay," "lesbian," "bisexual," or "queer" (Butler 2004; Foucault 1979). Because terminology can be an imperfect tool to accurately describe the diversity of sexual subjectivity in places around the globe, we are sometimes left with (somewhat awkward) acronyms such as MSM (men who have sex with men) or the more rare WSW (women who have sex with women). This "logic of enumeration" (Boellstorff 2007) is recapitulated in the acronym LGBTQ, which can be extended to include I (intersex), T (travesti), T (transvestite), Q (questioning), A (asexual), A (queer ally), and so forth in a potentially infinite list of identity categories.

Queer theory has tested the limits of identity and posed difficult questions about the intelligibility of a universal gay and lesbian subject or identity. In part because of massive increase in movement that globalization has brought about, the categories of LGBTQ have been appropriated, tested, and at times reformulated in different social settings around the world. Like the flow of sexual identity categories, queer theoretical approaches have called for a fluid set of identities and a movement away from biological ascription and "essential" or innate sexual orientation (Sedgwick 1990). While the use of identity categories has been the subject of much critique in queer theory, its purpose has not been to eliminate these categories or identities altogether. Rather, it is to emphasize a critical engagement with their meaning and purpose. Taking these categories into consideration has meant uncovering whether, and how, these classifications of identity resonate outside of the global north. It has meant testing whether other forms of identification, perhaps with local origins, are more appropriate for people whose sexuality does not conform to socially normative standards. At the same time, identity politics have served as critical political leverage to guarantee rights for sexual minorities in different national contexts.[12] As Roderick Ferguson (2004) and others have

noted, sexual identity continues to engender a sense of community and shared experience, giving rise to coalitions and claims for equality and empowerment. Sexuality is a definitive identity for many people, just as it is a quality that takes different forms in distinct times, places, and persons.

For many LGBTQ undocumented migrants, claiming an identity and creating communities with other sexual minorities can be a transformative experience. In his work with Filipino queer men in New York City, Martin Manalansan found that they shared strong identifications with one another based on their common experiences of living in diaspora in the United States. As a whole, these men had experienced marginalization in the United States as queer, or as Filipinos, or as immigrants, or all of the above. Each of these subjective experiences conditioned how they saw themselves and their place in the world; it also allowed them to create alliances with one another. For, as one Filipino man put it, "[w]e know all too well that there are very few places where people like us can really feel at home" (Manalansan 2003, 146). Many of the men with whom Manalansan spoke were documented immigrants, but their experiences are similar to those of undocumented migrants. In his study of gay Mexican immigrants (both documented and not) in the United States, Lionel Cantú found that the majority of men in his study lived with other gay Latino immigrants. Shared household arrangements allowed immigrant men to expand their social and economic networks; they functioned, in other words, much like traditional immigrant households where resources, labor, and networks are pooled. The men with whom Cantú spoke shared household chores and each contributed financially to the general welfare of the household. Equally importantly, they were able to provide emotional support for each other. As Cantú put it, "perhaps more important than the longevity of these household arrangements are their very existence and the spaces they provide Mexican immigrant men to develop as gay men" (Cantú 2009, 18). Whether in the form of households, community groups, advocacy organizations, or social gathering sites (such as bars and clubs), these "landing pads" can serve as important safeguards against the corrosive effects of living in a context where you are without legal documentation and where you may be living in fear of deportation or detention.[13]

The sense of community that can be formed around sexual orientation serves an important role in the lives of many LGBTQ immigrants. While the men with whom Cantú and Manalansan worked showed a commitment to

their sexual identity as gay and queer men, these are but two examples of how sexuality can be construed. Although it would be impossible in the space available here to review the multiple forms of homoerotic desire and behavior around the globe, it is worth briefly considering some of the distinct ways in which homosexuality has been configured. Because so many undocumented im/migrants in the United States are from Latin America, the Latin American, or Mediterranean model (as it has often been called), is a particularly instructive example. The Mediterranean model is a form of male homoerotic behavior that has been relatively well studied, though not without controversy. Research on same-sex practices among Latin American men (Lancaster 1992; Murray 1995) has generally held that when a man takes a "passive" role in sexual relations (versus an "active" one) he will be stigmatized or marked as "homosexual"—or more likely by the derogatory terms *maricon, cochón, puto,* etc. (Carrier 1995; Lancaster 2005; Murray 1995). In this model of homosexual behavior the passive partner commits transgressions, both sexual and gendered, when he acts in a supposedly non-masculine way by allowing himself to be penetrated. Although each male partner is engaging in sex with someone of the same sex, the active partner evades stigma because he has maintained his masculinity in his dominant sexual role. The Mediterranean model emphasizes sexual "role" (based on behavior) rather than "sexual object choice" (based on the identity of the people involved). Although this model is precisely that, a model—not a universal truth about how sexual behaviors are actually and always transacted—it is nonetheless a useful example to uncover the many complexities of defining homosexuality or LGBTQ status. Sexual identity may be a quality that is clearly and definitively an element of one's experience, or it may not be. Definitions and working models of sexuality are also susceptible to change. Classifying precisely who is lesbian, gay, bisexual, or queer is not always a simple designation. It can be even more complicated and difficult when, as Leo Chavez noted, we are describing a population that may "prefer to remain hidden."

Dipesh

Being gay was something that he had simply never considered. It was not that he was homophobic, he said, it was just that it had literally never crossed his mind as a possibility of who he was or what he did. And yet, here he was again at a local gay bar where he would most certainly meet a man. Dipesh had had sexual encounters with men growing up in Calcutta, but at the time these seemed anomalies rather than indications. As a young man in an upper middle class household he was always secure in the knowledge that he would marry a woman from a good family, someone beautiful, kind and competent. With her, Dipesh foresaw that he would have his own family

and continue to be a success in his field as an engineer. He had married while in India, and since coming to the United States with a work visa for an elite engineering firm, he and his wife were now proud parents of two wonderful children. But his job had been terminated for budget reasons and now his status, and that of his wife, was in limbo. Having spent the last several years in the United States frequenting a handful of gay bars in Houston and having several clandestine affairs with men, Dipesh began to wonder if his sexuality wasn't "in limbo" too.[14]

Sexual identity, in the context of undocumented migration, has many distinct manifestations. It can serve as a powerful indicator of subjectivity and a way of creating networks and alliances. It can also be a more ephemeral status that eludes a precise definition. Joseph Carrier (1995) writes, for example, that in Mexico the "active/passive" model of sexual behavior is being rapidly transformed by another mode and model of male homosexuality called "*internacional.*" *Internacional* sexuality follows more closely the North American norm of sexual object choice (rather than emphasizing sexual role). The increased presence and proclivity for a mode of sexuality that is more *internacional* are in part based on increased migration between the United States and Mexico as well as increased global communications. Some have even described this as the "universalization" of a certain type of gay identity that closely approximates familiar understandings of sexuality in the global North (Altman 2002, 2004). Lisa Rofel (1999, 2007), who has studied the development of gay identity in China, warns, however, that men who claim an explicitly "gay" identity are not necessarily victims of globalization, Westernization, or homogenization. It is not that an unimpeded flow of Western categories of "gay" or "lesbian" identity has been absorbed into Chinese society unmodified or uncontested. Rather, Rofel writes, gay men in China actively question and consider Western (and other) "models" of gayness; in the process the categories themselves are transformed and retooled in the process.[15]

Homoerotic behaviors and identifications across the world are multiple and transforming. However, it is also important to note the limitations of these templates designed to codify sexuality. For instance, there has been remarkably little written about lesbians or same-gender-loving women in the global South. This means, with some exceptions (Dave 2012; Howe 2013; Sang 2003; Sinnott 2004; Wekker 2006; Wieringa, Blackwood, and Bhaiya 2007; Wilson 2004), that much of what we know about homosexuality globally is effectively generated from an androcentric point of view. Olivia Espín, whose work with Latina lesbian migrants in the United States is an exception to the androcentric bias, has found that homophobia, racism, sexism, language, and legal status all affect women's experiences. They find themselves, she writes, caught between "the racism of the dominant society and the sexist expectations of [their] own communit[ies]" (Espín 1997, 175).

For the Latinas with whom Espín worked, as well as countless others in the United States and elsewhere, coming out of the closet is not necessarily desirable. Many women and men who may be sexually active with same-gendered partners—and thus appear to fit the criteria of "lesbian" or "gay"—may not identify as such. They may fear persecution; they may prefer a more flexible and open category of recognition, such as queer. They may maintain "inside the closet" or "down low" sexualities (Boykin and Harris 2005). Many Latinos in the United States, for example, explain that while their sexuality is covertly recognized by family and friends, it is not necessarily explicitly articulated by themselves or others (Decena 2011). Ultimately there is a range of practices and personages that populate the category of LGBTQ, a category that is itself open to interpretation. Within the context of undocumented im/migration, the acronym itself is an approximation and a marker more than a definitive description of behaviors, sentiments, or lived experience.

Cynthia

Since coming to the United States from Peru four years ago, Cynthia has felt the need to keep certain things from her family, even though they are now living at a great distance. Her family knows that Cynthia is living in the U.S. without legal status, but they do not know she has been in a relationship with an Anglo woman, Mallory. Cynthia has not "come out" to her parents who still live in Peru, and this sometimes makes for awkward moments. She says, "[i]t's funny because all the time [my mother] was like 'Do you have a boyfriend? Do you have a date?' And I was always like 'NO, NO, NO.' And I think about one and a half years ago after I met Mallory I told my mom, 'Mom, please don't ask me if I have a boyfriend. I am happy. I have my friends and that's it. Please don't ask me any more questions.' Now she doesn't tell me or ask me anything about a boyfriend or a relationship, but she told me, 'You would make me more happy if you gave me a grandchild.' She didn't say anything about me getting married or anything. No, she's talking about kids right now." Cynthia had not had a relationship with a woman until after she came to the United States. Now, she manages several aspects of her identity. She must negotiate a racialized identity in the U.S. as well as the decline in social status that has been a consequence of her being undocumented. But Cynthia must also mediate the shifting status of her sexual identity across borders. She is in some sense, living a transnational sexual subjectivity.[16]

It is easy to stereotype particular countries or regions as "macho," "Catholic," "traditional," "fundamentalist," or "repressive" and in turn to assume that these places are wholly intolerant of LGBTQ people. However, this is a limited view. In Latin American countries, for example, there is a range of experiences, including vibrant gay and lesbian "scenes" (or "*ambientes*") in places such as Guadalajara, Mexico (Carrillo 2002) and Buenos Aires, Argentina (Cecconi, Ferraudi Curto, and Marqulis 2003). Equally true is that intolerance,

discrimination, and persecution exist in these same countries. There continue to be severe antisodomy laws in some nation-states, including the death penalty. Sexual minorities may also face threats of death or extreme bodily harm from common citizens; in each of these cases, whether the threat emerges from the antihomosexual stance of the state or the populace, LGBTQ persons are entitled to petition for asylum in the United States (an issue to which we will return). However, in countries where draconian antisodomy laws and rampant antihomosexual sentiment are not the norm, it is important to assess the relative level of tolerance. There is very often a range of contingencies and contexts. For example, some families may be welcoming to queer kin, whereas others are not. Some communities are receptive to non-normative sexualities; others are not. Urban and rural locations often vary in their degree of tolerance and acceptance of sexual diversity. And these are only a few of the potential social and cultural dynamics that affect the lives of same-gender-loving people in various places around the world. "Oppositional" notions of culture—particularly dramatically oppositional sexual cultures—are less useful, in other words, than a perspective that allows for a continuum of experience and cultural interpretations (Lancaster 1992; Murray 1995). For undocumented LGBTQ im/migrants in the United States, lived experiences, imagined futures, and current conditions all impact the ways in which sexual subjectivity is understood and in turn how this sexuality intersects with the many unknowns of being undocumented.

HISTORIES OF SEXUALITY AND MIGRATION

The history of U.S. immigration has been by definition a story of discrimination—a series of policies that determine who, and who will not, enter the country. LGBTQ im/migrants however, have been victims of a particularly profound "history of exclusion" (Luibhéid 2002, xi). "Regular" immigration to the United States—as distinct from asylum or refugee immigration—is predicated on the plenary power doctrine, which states that nation-states have the power and the right to control whether and how noncitizens enter their territory. In practice this has meant that certain kinds of immigrants are privileged over others according to the historical conditions and preferences of the time.[17] Exclusions based on sexuality did not begin with LGBTQ persons; rather, they were part of a longer trajectory of racial, gender, and sexual prohibitions in U.S. immigration law. The 1875 Page Law, for instance, prohibited the entry of all Asian women who were believed to be immigrating to the country for "lewd or immoral" reasons. Chinese women were particularly suspect during this period. They were believed to be coming to the United States to provide sexual services for male Chinese laborers.[18] The Page Law,

though specific in its mandates, also served to provide an ideological framework for other exclusions putatively based on sexual "deviance."

In many ways the borders of the United States have always been "sexualized" borders, at least from the 1870s to the present. The exclusion of lesbians and gay men specifically can be charted back to the period of the First World War. In 1917 persons deemed to be "constitutional psychopathic inferiors" were barred from entering the country. This category included a whole raft of persons thought to deviate from the norm, including "moral imbeciles, pathological liars, swindlers, defective delinquents, vagrants and cranks" (Loue 1990, 129 n. 11). This broad, highly interpretive categorization also included "persons with abnormal sexual instincts." A vast range of qualities that were considered non-normative became included in this nefariously flexible legal provision. Alejandra Velas is a case in point. Velas, who sought to enter the United States through Ellis Island in the 1910s, was described in the following way by the immigration authority who oversaw her application. At her time of entry, Velas was dressed in men's clothes. However, "she proved to be," the immigration authority wrote, "upon examination, despite her earlier insistence to the contrary, a young woman. Vehemently she insisted that her identity [had] not been questioned before. [When a medical doctor questioned her] about why she wore men's clothes, she answered that she would rather kill herself than wear women's clothes" (Corsi 1969, 81). Velas was denied entry on the grounds of cross-dressing, a practice that apparently fell within the scope of psychopathic inferiority.

Through the middle of the twentieth century U.S. immigration policy systematically pathologized LGBTQ individuals and prohibited their legal entry. In this sense, immigration policy reflected a series of social shifts in EuroAmerican culture that transformed "the sodomite" into "the homosexual." Homosexuality had come to be understood, over time, as an immutable quality of being; or following Michel Foucault, a "species" (Foucault 1979). Someone could be dubbed a homosexual if he or she engaged in homosexual acts or had homosexual desires and, according to the logic of the time, this was best determined through the science of psychiatry (Canaday 2009, 215). An already exclusionary attitude toward LGBTQ im/migrants was reinforced in 1952 with the McCarran-Walter Act, which banned all "psychopathic personalities" from entering the United States. The Public Health Service at the time had concluded that "aliens afflicted with psychopathic personality [include] homosexuals or sex perverts" (Revision 1952, 9). Legal records from the 1950s and 1960s show that these same grounds were used to exclude the legal immigration of lesbians and gay men (or those thought to harbor same-sex attraction). In 1965 further revisions were made to immigration law, and the banning of gay men and lesbians was specifically codified under the claim that they were "sexual deviants." While the emphasis on psychopathology

may be contrary to much of our contemporary thinking about sexuality, recall that the American Psychological Association only removed homosexuality from its roster of disorders in 1973.[19] In this context, it is unsurprising that homosexual men and women were targeted as having "disorders"; it does not, however, justify the prohibitions and exclusions exercised against queer persons throughout the history of U.S. immigration. What each of these provisions illustrates is the way in which borders have been policed under the logic of sexual difference. LGBTQ people, more so than their "straight" compatriots, have been subjected to very specific medico-sexual provisions that have banned their legal entry into the United States.

Individual stories of LGBTQ immigration exclusion are difficult to enumerate. Many, if not most, are lost to history. Restrictions against the legal migration of LGBTQ people may have encouraged more covert, undocumented entry into the United States, but there is no way to verify this. What immigration laws clearly indicate, however, is that the borders of the United States have been fraught spaces where the twin anxieties of sexuality and transgression meet. These border tensions tell us much more about U.S. legal and psychotherapeutic ideologies than they do about the lives of LGBTQ im/migrants, documented or not. These histories of exclusion, it is worth pointing out, have endured for a long time. Indeed, the ban on lesbian and gay immigrants was not lifted until 1990.

SEXUAL MIGRATION(S)

For most of the twentieth century immigration law barred lesbians and gay men from legally entering the United States. Ironically, however, the history of homosexuality in the United States is also a history of migration. In his seminal essay "Capitalism and Gay Identity," John D'Emilio concluded that modern gay identity was profoundly shaped by capitalist development and the internal migration of gays and lesbians to urban centers in the United States. After World War II military demobilization and new employment opportunities drew tens of thousands of lesbians and gay men to cities such as San Francisco, Los Angeles, Chicago, and New York (D'Emilio 1993 [1983]). These "great gay migrations" (Weston 1998, 41) resulted in the creation of urban communities where sexual identities became formed. Rural-to-urban migration facilitated the formation of quasi-ethnic gay communities or "gay ghettos," and these queer enclaves generated an economic niche that Gayle Rubin has called the "gay economy" (1992 [1984]). The economic "pull" of an independent, urban life and the persuasive "pull" to fulfill one's sexual self became merged through the process of internal migration. In the postwar period economic conditions in the United States

increasingly allowed people to support themselves through wage labor, independent from their nuclear families of origin. Ultimately, economic factors and urban clusters of "erotic minorities" (Rubin 1992 [1984]) became the basis for a burgeoning sense of sexual identity, one that would grow and thrive outside the confines of heterosexual normativity.

Social conditions both "pushed" and "pulled" lesbian and gay migrants to U.S. cities in the mid-twentieth century. However, scholarship that explicitly links sexuality and migration, defining the ways in which they are mutually constitutive, is a relatively new proposition (Hennessey 2000). "Sexual migration" (Cantú 2009; Parker 1997)—im/migration that is motivated entirely or in part by the sexuality of the person migrating—is a concept that begins to account for the multiple, overlapping motivations between migration and sexuality. Conceptually, sexual migration is not simply located in the mind (or heart) of the person engaged in migration; rather, it is rooted in a range of experiences, including the (perceived or actual) conditions in the receiving country; migrants' experiences en route; and/or the social, economic, or legal conditions in the "sending" country.[20] Sexual migration can be predicated on multiple factors, including pursuing a romantic relationship with a foreign partner, seeking new self-definitions of sexual identity, or fulfilling sexual desire. It may be an avenue to escape discrimination or oppression based on sexual difference, or it may be based on a search for greater sexual equality and rights (Carrillo 2002, 2004).

The growing body of studies regarding sexual migration departs significantly from much of the traditional scholarship on immigration. And yet the concept of sexual migration is indebted to prior research on migration as a social phenomenon. Immigration scholars such as Alejandro Portes and Ruben G. Rumbaut (1996), for example, have argued that immigration is not "an event" but rather "a process." Contemporary scholars of migration have also emphasized the role of race, gender, and class dynamics (Fernández-Kelly1983; Grasmuck and Pessar 1991; Hondagneu-Sotelo 1994; Pedraza 1991). These perspectives have been extended, more recently, to account for sexuality. However, the political economic frameworks that inform many studies of migration have for the most part presumed that migrants are heterosexual. This supposition in turn has influenced the ways that scholars view the role of migrant families and the support networks that they often provide. Moreover, more conventional, neoclassical approaches to migration have emphasized that migrants are individual, autonomous actors who make rational, calculated decisions following a kind of cost-benefit analysis. Neoclassical theories have also tended to emphasize assimilation as the ultimate result (or goal) of immigration.[21] These perspectives on im/migration, perhaps unsurprisingly, have generally ignored sexuality as an important motive in migration, whether as a

"pull" or a "push" factor. Sexual migration, on the other hand, encourages us to consider how systems of citizenship, national identity, and the politics of race intersect with im/migration (Espín 1997, 1999; Alexander 1994; Sanchez-Eppler and Patton 2000).

Prejudice and difficult economic conditions may compel many LGBTQ migrants to seek refuge and opportunity in the United States. However, crossing the border does not necessarily result in equality. Prejudice against sexual minorities, for example, may be less severe in the United States, but many LGBTQ migrants may instead face racial discrimination or linguistic prejudice in the United States. Being undocumented and being unable to acquire legitimate employment can add to a migrant's economic difficulties, poverty, and precariousness. Lionel Cantú stated, for example, that in "their attempts to escape from one form of bigotry [homophobia], most of the [immigrant] Mexican men I interviewed discovered that not only had they not entirely escaped it but they now faced another [racism]" (Cantú 2001, 66). Prejudice may shift rather than disappear altogether as LGBTQ migrants encounter "restructured" inequalities (Manalansan 2003). In 2010, for example, the *New York Times* reported on the proceedings of a murder trial in which two U.S.-born men were charged with brutally attacking two Ecuadorian brothers in Brooklyn. One of the brothers escaped with minor injuries, but the other was beaten to death with a baseball bat. Yelling anti-Latino and antigay epithets, the attackers assaulted the brothers both because they were Hispanic and because the attackers mistakenly believed that the brothers were gay. Indeed, cases such as this demonstrate how forms of bias and discrimination may operate in tandem against those perceived to be gay and Latino. Without discounting the fact that the United States may offer many opportunities to LGBTQ undocumented migrants in terms of employment and sexual tolerance, it is also important to remember that migration to the United States is not always a route from repression to unqualified "liberation" (Manalansan 2003, 13); these are not simple stories of assimilation and tolerance.

Becoming Documented: Asylum and Other Routes to Legal Status

Benita

Benita was born Abraham González. But Abraham had felt imprisoned in the sex assigned him at birth. He had always identified as a female, but growing up Abraham had no idea what a transgender individual was. Where he grew up in Mexico it was common knowledge that acting gay could invite harassment, ridicule, and violent retribution. Abraham's family earned a living from drug trafficking and particularly reviled *maricones* (faggots). Even after being raped by Mexican soldiers, beaten by

classmates, and harassed by the principal of his Catholic school Abraham told no one about his sexual desires or gender questioning. Growing up Abraham was unaware that sexual minorities existed, that they had legal rights, or that a person could change their physical appearance, live life with a different gender, and legitimately affirm a queer identity. After crossing the U.S./Mexican border alone, at the age of 16, Abraham made his way to San Francisco, California. There, a caseworker in a homeless shelter told him about legal and social services that were available for transgender youth. After finding both sanctuary and support for his gender transition, Abraham became Benita. Benita would apply for, and receive, asylum in the United States.[22]

Asylum is an important path for undocumented LGBTQ migrants to obtain legal status and citizenship in the United States.[23] It is also one of the few ways that undocumented LGBTQ migrants have been able to acquire legal standing while residing in the United States (Soloman 2005). While most immigration policies operate to protect the sovereignty of the nation-state and its borders, asylum and refugee immigration is informed by a very different logic (Luibhéid 2005, xvi).[24] Asylum and refugee provisions are structured by human rights paradigms and a commitment to upholding international human rights agreements. Refugee and asylum provisions in U.S. law were developed after World War II and codified in 1951 in the Convention on the Status of Refugees. Asylum and refugee requirements were instituted to provide sanctuary and refuge for people being persecuted in their home countries because of their race, nationality, religion, or political opinion. Asylum and refugee status can also be provided to those who have a well-founded fear of persecution because of their "membership in a particular social group." It was through this provision that sexual asylum was made possible in the United States. The first move toward legitimating LGBTQ persons as potential candidates for asylum came when a Houston-based immigration judge ruled that the Immigration and Naturalization Service could not deport a Cuban gay man, Fidel Armando Toboso-Alfonso, because he would face persecution due to his sexual orientation if he were returned to Cuba. In 1990 the Immigration and Naturalization Service appealed the Toboso-Alfonso case, but the appeals board upheld that gays were a "particular social group" deserving asylum. In 1993 an immigration judge in San Francisco granted asylum to a Brazilian man, Marcelo Tenorio, and in 1994 the INS, for the first time, granted asylum directly to a Mexican gay man. Later that year Attorney General Janet Reno elevated the Toboso-Alfonso case to the status of precedent, fully establishing that homosexuals (male or female) constituted a legitimate class of persons who could seek political asylum in the United States. The possibility of sexual asylum, especially given the history of immigration law, constitutes a dramatic shift for LGBTQ migrants, both documented and undocumented.

Each legal step toward creating a space for sexual refugees, however, has not been without controversy. Sexual asylum continues to be very difficult to obtain. In the early years of sexual asylum provisions, between 1994 and 1997, of the more than one thousand petitions that were filed by LGBTQ applicants, only sixty were granted. In 2011 of the 36,000 asylum claims that were approved in U.S. courts, 102 went to LGBTQ people seeking refuge from antigay persecution (Brydum 2012). Since the 1990s the courts have issued different, and sometimes contradictory, rulings on same-sex-attracted persons seeking asylum. Cases are difficult to win and require extensive legal advice and many hours of legal labor. The costs associated with the process, as well as the initial knowledge required to seek out and secure such assistance, mean that the asylum system overall continues to be most accessible to those who are male, heterosexual, economically privileged, and from particular racial and national origins. To successfully achieve sexual asylum, an applicant must convincingly establish that she or he is, in the first instance, a "member of a particular social group." In the second instance, the applicant must prove that membership in that group has been the source of her or his being persecuted in the past or will be the basis for persecution or acts of violence in the future.

For some LGBTQ migrants, including those who are undocumented, sexual asylum offers a means of escape from persecution in one's home country. It is for some, literally, life saving. It is also an indication of how far U.S. immigration law has come since the days of banning lesbians and gays as "sexual deviants." Keith Southam (2011) argued, for example, that while U.S. law is generally conservative about extending rights to LGBT persons, immigration courts addressing asylum claims have nonetheless recognized LGBT status as a basis for asylum. However, it is also important to point out that sexual asylum is politically and ideologically structured in particular ways. The case Matter of Acosta established the general framework for what constitutes membership in a particular social group. Specifically, it is those who share a "common immutable characteristic" that is either "innate" or "arises from past experience" (in Cantú, Luibhéid, and Stern 2005, 64). Successful asylum claims, therefore, require that the applicant prove that his or her being gay is an "immutable" characteristic; one's sexuality must be, in other words, a quality that is preprogrammed, certifiably unchangeable, and perhaps even biologically determined. This provision dovetails well with the argument that being gay or lesbian is not a "choice" or a "lifestyle," but rather a predetermined and innate quality. However, from the point of view of queer theorists and others who argue for a more flexible and fluid definition of sexuality, the "immutability" of sexuality as an unchanging and somehow "preprogrammed" quality is problematic.

Asylum claimants must also prove that they would invariably face persecution or violence if they were returned to their country of origin. Applicants and their attorneys must carefully detail how the applicant's home country is unsafe and intolerant of sexual minorities; this often entails accounting for several social dimensions, from family life to judicial systems. A portrait of the "country conditions," often established through expert testimony, is a critical aspect of an individual's asylum claim, allowing the judge to determine whether or not there is a clear and present danger of violence for the claimant. This legal requirement demands that the country of origin be demonstrably intolerant. The United States, on the other hand, may be portrayed as a land of unimpeachable liberty, a progressive haven. Through these kinds of logics, the country of origin must be the inverse: thoroughly entrenched in putatively primitive traditions and retrograde cultural practices. These sorts of arguments, unfortunately, involve some degree of cultural stereotyping that portrays sending countries as somehow "backward" or "unmodern." Whether a country is more repressive toward sexual minorities than the United States is an important legal and moral arbitration. However, it is also critical to recognize that sexual asylum deliberation may ultimately reproduce old colonial scripts of third world "backwardness" and first world "modernity." It is an imperfect legal apparatus, but nonetheless an important one. It also a process that is mediated by many layers of legal intervention, petitions, and expert testimony.

Rafael

Rafael's attorney and I have gone through several hours of testimony about the country conditions in Nicaragua. Both of us are working pro bono in the hopes that Rafael will be able to secure asylum in the United States. Rafael's petition for asylum details how he will face abuse, torture and possibly death because of his sexuality if he were deported back to his native Nicaragua. Part of my task as an expert witness is to establish that the Nicaraguan government is "unwilling or unable" to protect Rafael from the harms that he might face. Rafael's application details how he has suffered his entire life, as a "very feminine homosexual" in Nicaragua. He describes being raped at the age of six by a man who broke into the house where he and his mother lived. He testifies to being sexually assaulted several times by older male family members when he was shipped off to Managua at age eleven. He details how he was beaten and raped by a group of police officers when he was a high school student, and later, as a young man on the streets of the capital city. Rafael has not been in contact with his family for years and years. He does not know where any of them are, or whether they are alive or dead. Leaving Nicaragua for more tolerant conditions in Mexico, and finally to the United States, Rafael was ultimately apprehended and detained in the United States as an undocumented migrant.

Rafael has been incarcerated for the past year in a detention facility in Texas until his case is decided. Rafael's attorney will argue that he cannot be assured safety as a very

visible "member of a particular social group" (homosexuals) in Nicaragua. My testimony will support that position and add that because of his sexuality, his gender presentation, his lack of family networks, and the impossibility of his finding (legal) work in Nicaragua where there are few jobs for people dubbed "normal," Rafael will indeed be forced to return to street prostitution in Nicaragua, where he will assuredly face a great deal of harm.[25] Rafael's case will be heard by a judge who disapproves 75% of the asylum cases he adjudicates. After several weeks of deliberation, the judge ruled that Rafael should be deported to Nicaragua. Rafael's attorney, however, appealed the decision and won her bid to have him freed and granted asylum in the United States.[26]

Asylum is one route toward U.S. citizenship for undocumented LGBTQ im/migrants. However, for most immigrants the two most common ways to become a legal permanent resident (LPR) are through direct family ties (when one's spouse, parents, or children have legal status in the United States) or employer sponsorship. Until very recently, when the U.S. Congress overturned the Defense of Marriage Act (DOMA) and changed the face of same-sex immigration provisions, LGBTQ immigrants faced particular challenges in establishing legal residency in the country. Before turning to the radical transformation that took place with the demise of DOMA in 2013, it is worth considering the legacy of the prohibitions and specific difficulties for LGBTQ immigrant couples. According to a 2011 report by the Williams Institute (Gates and Newport 2012), there were at the time approximately 28,500 binational same-sex couples in the United States, and another 11,500 noncitizen couples, who were impacted by prohibitions against same-sex couples in U.S. immigration law.[27] In order to obtain legal status, many binational couples were compelled to engage in a series of costly legal interventions (if they could afford to do so). Or they might attempt to secure a student or work visa for the foreign-born partner. While binational same-sex marriages have been recognized in full legal terms by several countries (including Argentina, Canada, Portugal, and Sweden, among others) and legally sanctioned in several U.S. states (such as Connecticut, Iowa, Massachusetts, New York, and Washington), this legal recognition has only recently been extended to the federal level, where U.S. immigration policy is made. However, since the federal Defense of Marriage Act (DOMA) was approved in 1996, same-sex marriage for immigration purposes has been specifically excluded. The Congressional Hispanic Caucus had publicly condemned exclusions against same-sex couples for immigration purposes, calling for an immigration reform bill that "protects the unity and sanctity of the family, including the families of bi-national, same-sex couples, by reducing the family backlogs and keeping spouses, parents, and children together" (Foley 2012). However, after years of political pressure, DOMA and its ancillary

implications in immigration law led to profound changes in the status of LGBTQ binational couples. Immigration and lesbian and gay rights advocates alike leveraged pressure which, when coupled with popular opinion and judicial decree, brought about sweeping reforms that spelled the end of DOMA in 2013 and allowed same-sex binational couples to utilize, for the first time, family provisions that had long been available only to heterosexually married immigrants.

OVERCOMING IMPOSSIBILITIES

The intersection of queer sexuality and undocumented status may be an "impossible" subject to fully document. However, as many scholars, political commentators, activists, and average citizens have come to realize, the United States has undergone a sea change in how LGBTQ rights and immigration are collectively understood. Dramatic shifts in public opinion, with a majority of Americans now supporting same-sex marriage; the Supreme Court's overturning of DOMA; and the legal recognition of binational same-sex couples all appear to indicate a more hospitable political and social environment for LGBTQ im/migrants and their families. Political debate about immigration reform and border protection remains fraught and often fragmented. However, a recent series of campaigns to "come out of the shadows"—both as undocumented and as queer—demonstrate one way in which undocumented LGBTQ individuals have collectively organized for their rights to be recognized and respected (see Lerner 2012). Queer undocumented migrants are increasingly able to emerge from the covert existence that has characterized much of the history of "out-of-status" citizens and marginalized sexual subjects. New legal avenues, more tolerant public opinions, and the committed work of those who refuse their "impossibility" suggest that the future of queer undocumented communities is in fact more possible than at any other time in the history of the United States.

NOTES

1. This narrative is excerpted from a conversation with the author in a personal communication. All names have been changed to preserve confidentiality.

2. The Pew Hispanic Center determined that as of March 2008 a total of 11.9 million persons were in the United States without legal documentation (6.3 million men, 4.1 million women, and 1.5 million children under the age of eighteen). Approximately 7 million people within this total are from Mexico.

3. The intersection of sexuality and migration is not just pertinent to LGBTQ migrants, but to nonqueer migrants as well (González-López 2005; Hirsch 2003). As Gloria González-López has suggested, "heteronormative models of sexuality are [also] fluid and vulnerable to forces such as migration" (2005, 251).

4. "Migrant" is customarily understood as someone who comes to the United States (or another destination country) and then returns to her or his country of origin. A "settler" or "immigrant" is, conventionally, someone who settles in the receiving country, sometimes for years, sometimes forever. However, as these two distinctions demonstrate, the categories themselves are open to interpretation. When does a migrant become a settler? Can one start out hoping to be a settler and find that a migratory return home is necessary? Because the time horizons and experiences are diverse, throughout this chapter "migrant" or "immigrant" will be defined as anyone who has crossed an international border to reach another country of destination. Often the term "im/migrant" is used to emphasize this shifting status.

5. Transnational im/migration is also qualitatively different from previous models of migration, in which immigrants would depart their home country, assimilate to their destination country, and never return to their country of origin. See Basch, Glick Schiller, and Blanc-Szanton (1992, 1–2).

6. Immigration scholars working within a "world systems" framework take a broad perspective, arguing that labor migration (the "pull" to jobs and the "push" toward work that is created in a home country with few labor opportunities) is in fact not indicative of individual-level (or family-level) "decisions" to migrate. Rather, migration is a consequence of global restructuring and unequal wealth distribution worldwide, which foments a kind of "reserve army" of workers in developing world countries who are then inevitably drawn to the "core" countries where labor opportunities seem to exist (Sassen 1988).

7. Latin Americans also submit the majority of petitions for political asylum in the United States (Cantú 2009, 58).

8. Moreover, according to some scholars, "the logic of economic integration has inevitably increased rather than reduced [this] movement [in part] because U.S. employers continue to demand Mexican labor" (Andreas 1999, 46).

9. Rites of passage consist of three phases. First is a seperation from the socially familiar; second is a transition toward a new context (often called a "liminal" phase); and third is incorporation into the new group, society, or setting (1992, 4–5).

10. The case of "Lucy" is excerpted from Acosta (2008, 652), and rephrased, with direct quotes intact.

11. The last decade has been a time of increasing recognition, visibility, and tolerance for many LGBTQ people and communities in different regions. Mexico City, for example, legalized same-sex civil unions in 2006 and same-sex marriages performed in the capital have been recognized by all the states of the union since 2010. In December 2012, a precedent-setting case in the Mexican state of Oaxaca was poised to legalize same-sex marriage for the entire country, likely ahead of any similar national legislation in the United States (Feder 2012).

12. See, for example, regularly updated reports on countries around the world and details regarding the current legal standing and cases of persecution against LGBTQ persons, on the Web site of the International Gay and Lesbian Human Rights Commission, under "Information by Country."

13. Detention centers for undocumented migrants swelled in the early 1990s following congressional tightening of immigration policy; the construction of detention

centers for undocumented migrants has also fueled the boom in prison construction. See Soloman 2005.

14. This narrative is excerpted from a conversation with the author in a personal communication. "Dipesh" is a pseudonym to protect confidentiality.

15. Rofel writes that there is an "articulation between Chinese gay men's desires for cultural belonging in China and transcultural gay identifications, in which these men nonetheless continuously discern and imagine differences compelled by China's colonial and socialist political histories with other nations" (1999, 457).

16. The case of "Cynthia" is excerpted from Acosta (2008, 647) and rephrased, with direct quotes intact.

17. Or, as Lauren Berlant has described it, "immigration discourse is a central technology for the reproduction of patriotic nationalism" (Berlant 1997, 195).

18. Infamously, Chinese exclusion provisions became national law by 1882 and by the mid-1920s were extended to all Asians (with the exemption of Filipinos). See Hing (1993).

19. Indeed, it was only in 1952 that all formal racial barriers were removed from citizenship criteria that had been established in the 1790 naturalization law. See Haney Lopez (1996). Scholars have also argued that the twentieth century itself was a period of increasing heterosexualization and imperatives to enhance heteronormative values. See Phelan (2001).

20. The designation of "migrant" versus "tourist" is often mapped according to the socioeconomic class of individuals and/or the socioeconomic standing of their country or region. As Hector Carrillo has noted:

When American citizens travel for pleasure they are called tourists, and if they decide to stay more permanently in a foreign country they become expatriates, but they are rarely called migrants [whereas] middle-class and rich people from poor countries who visit the U.S. are called tourists, but if they decide to stay beyond the terms of their tourist visa they become migrants or immigrants, but not expatriates. If they are poor and came initially to visit family (and perhaps also to sight-see), and then decide to stay longer, they also become migrants (and perhaps also acquire the label of undocumented migrants), but they rarely are regarded as tourists. (2004, 66).

21. In neoclassical frameworks of migration, "micro" level theories focus on rational decision making by households or individuals, while "macro" level theories attribute migratory movements to the power of structural forces, including labor markets, trade relations, and economic interventions (in both sending and receiving countries).

22. Benita's story is excerpted from Susan Terrio's (n.d.) forthcoming book. Benita's case also illustrates that while homosexuality is now an accepted means of establishing membership in a social group for asylum purposes, the courts have not recognized claims of transgender or transsexual identity. Adjudicators often assume that a transgender person is necessarily gay or lesbian and therefore eligible for asylum. But this stance fails to recognize that transgender persons may not be same-gender attracted, or that the persecution they have faced may not be the result of sexual difference but rather of gender inconformity.

23. For helpful information on LGBTQ asylum, legal considerations, and activism, see the Web site of the International Lesbian and Gay Human Rights Commission.

24. Keith Southam (2011) argues that U.S. law is generally conservative about extending rights to LGBT persons; however, immigration courts addressing asylum claims regularly recognize LGBT status as a basis for asylum.

25. Andrew Reding (2000) has argued that class as well as gender presentation are the key indicators of mistreatment, ostracism, and persecution for homosexual men in Mexico. A similar dynamic also obtains in Nicaragua, where passive/active models of male same-sex behavior still resonate in some areas of the country and sectors of society.

26. The case of Rafael is excerpted from the final chapter of the author's book (Howe 2013).

27. Establishing legal status through marriage to an opposite sex U.S. citizen, an "immigration marriage," has also been a route toward obtaining legal status. But it is of course illegal for both parties to engage in a fraudulent marriage. It is impossible to know how many fraudulent immigration marriages exist in the United States, perhaps anywhere between 5 and 30 percent of binational marriages. Of these, the number of LGBTQ persons is again almost impossible to estimate (Weigel 2012). What is well known is that it is a time-consuming proposition, and ultimately the legitimacy of these marriages has been difficult to prove to immigration authorities. With the potential for criminal prosecution (deportation of the foreign national and up to five years' imprisonment for the U.S. citizen) and a $250,000 fine, engaging in a fraudulent marriage has been a risky endeavor for LGBTQ persons and other foreign nationals seeking legal status.

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9

Incorporation and Unauthorized Mexican Migration

Susan K. Brown
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Studying the mobility of immigrants has traditionally involved examining myriad individual-level characteristics, such as education, language ability, ethnoracial identity, intermarriage, earnings, socioeconomic status, and religion. By determining changes over time in these characteristics, as well as relevant social and economic contextual factors, researchers can assess the nature and degree of immigrant mobility. Such analyses reveal which characteristics and contexts enable some poor immigrants to progress further than others along various paths. But not only do those traditional factors affect immigrant mobility, so do such policy considerations as the laws and practices that combat discrimination, promote integration and protect civil rights, support inclusiveness and warmth of reception in destination countries, and affect the availability of opportunities to legalize and obtain citizenship (Alba and Nee 2003; Bean et al. 2012a; Bloemraad, Korteweg, and Yurdakul 2008; Reitz 1998). Especially now in the United States, a persistent lack of legal status, the most basic form of societal membership, seriously limits mobility prospects and thus incorporation among immigrants and their children (Yoshikawa 2011; Bean et al. 2013a; Greenman and Hall 2013).

This chapter seeks to assess the implications of unauthorized status for immigrants and their children, particularly those from Mexico. We examine

briefly the literature on how, and how much, unauthorized status deters social and economic mobility among immigrants, as well as how recent policies have affected the capabilities of immigrants, especially unauthorized immigrants, to access the resources they need for mobility. We then look at the implications of unauthorized status for the incorporation of immigrants. While the incorporation of immigrants is generally conceptualized as a two-way process that includes the effects of newcomers on their host societies (Alba and Nee 2003), we concentrate here on how unauthorized status is affecting the incorporation of immigrants, rather than on how immigrants are affecting the country, for two reasons. First, research covering the effects of immigrants on the labor market has generally found that less-skilled immigrants from Mexico compete relatively little with less-skilled natives, although they do compete with other earlier arriving, less-skilled immigrants (for reviews, see Holzer 2011; Bean et al. 2012b; Borjas and Katz 2007; Card and Lewis 2007; Ottaviano and Peri 2008). Second, the meager research that has been done on the effects of Mexican migration on the country suggests that the sociocultural effects that are occurring are often positive, for example in studies showing that recent U.S. immigration is leading to higher rates of ethnoracial intermarriage and the dissolution of ethnoracial boundaries (Kasinitz 2012; Lee and Bean 2010). We focus on incorporation mainly in terms of socioeconomic mobility instead of on its more subjective aspects, such as ethnic self-identification, even though evidence exists that unauthorized status can lead to psychological distress and foster multiple strategies for creating a sense of belonging (i.e., Coutin 2000; Menjívar 2006; Dreby 2010; Gonzales and Chavez 2012; Menjívar and Abrego 2009).

THEORETICAL MODELS AND THE CHANGING NATURE OF ASSIMILATION

Regardless of the legal status of immigrants, determining the degree of integration of today's immigrant groups is challenging. The latest wave of immigration to the United States has persisted for nearly a half-century, with no end in sight. This means that immigrant arrival cohorts and the number of generations that immigrant families have been in the destination country are conflated, with the consequence that cohort and generational effects can often be easily confused. Meanwhile, the replenishment of immigrant streams further complicates the study of evidence of integration, whether examined within or across generations of particular immigrant groups or examined as newer immigrant groups compared with natives whose ancestors have been in the United States for several generations (Alba, Jiménez, and Marrow 2014; Jiménez 2009). Added to these difficulties are the fluidity of modern

understandings of race and ethnicity and rapid growth in the numbers of people of mixed-race backgrounds, both of which make the prospect of assessing incorporation even more challenging (Lee and Bean 2010; Waters 1990). Layered atop these challenges is the substantial recent growth of unauthorized immigration, which has corresponded with the emergence of an important new social and legal cleavage between those with legal membership in the United States and those without. All of this suggests that the process of incorporation itself may be changing, although perhaps not for the better. To begin to understand this, we lay out the three major theoretical perspectives on immigrant and ethnic group integration and discuss how unauthorized migration fits within their conceptual frameworks of factors that affect integration. These are classic and new assimilation models, racial/ethnic disadvantage models, and segmented assimilation models.

Classic and New Assimilation Models

In part because classic assimilation is difficult to describe, it is often misconstrued as following a "straight-line" pathway (Kivisto and Faist 2010), a misrepresentation that easily achieves "straw man" status. Often the views of prominent assimilation theorists, such as Robert Park of the Chicago School, seem inconsistent because their ideas on integration emerge from different contexts considering different phenomena, such as cycles of race relations or immigrants as "marginal men" or the development of definitions of assimilation. The decline of human ecology in sociological studies has also deflected attention away from the work of Park and other members of the Chicago School, who placed considerable emphasis on spatial relationships of immigrant groups and how these affect incorporation. Despite this shift, it is interesting that the Chicago School's best-known conception of assimilation stresses culture over spatial or structural position, defining it as "a process of interpenetration and fusion in which persons and groups acquire the memories, sentiments, and attitudes of other persons or groups, and by sharing their experience and history, are incorporated with them in a common cultural life" (Park and Burgess 1969, 735). This focus on groups as well as persons represents a departure from previous perspectives, as does the explicit casting of the definition in sociological terms as opposed to ideological ones (Kivisto and Faist 2010).

Gordon (1964) argues that the classic perspective contains three major variants: a melting pot view, after the popular eponymous play of 1908; an Anglo-conformity view, ranging from mere promotion of the English language and middle-class cultural patterns to embracing discredited theories of racial superiority; and a cultural pluralism view emphasizing the maintenance

of origin-country culture and institutions despite economic and civic incorporation. Of these different strands, Gordon suggests that a moderate version of Anglo-conformity appears to predominate, although he personally does not promote this variant. The work that most emphasizes Anglo-conformity is that of Warner and Srole (1945), whose study covers multiple generations of European immigrant groups (as well as parents and children within these groups), thus permitting nuanced assessments of social mobility across time and multiple dimensions. Based on data from the first half of the 1930s, when the economic mobility of all groups (including natives) faced the headwinds of the Great Depression, and the economy still had a strong foundation in industry, their perspective sees each immigrant group as starting at the bottom of the social ladder and then gradually climbing upward, so that the oldest groups are highest on the ladder.

By the third generation, three outcomes are possible: full assimilation, assimilation still in progress, and what seems to be a sort of cultural pluralism consisting of some group members occupying "separate social worlds of their own" (Warner and Srole 1945, 3). As some group members climb the social ladder faster than others—often through joining mainstream churches and other associations—their differing outcomes gradually create schisms in ethnic group solidarity, as Warner and Srole (1945, 93) note pointedly in their distinction between "lace-curtain Irish" and "shanty Irish." Such a subdivision within a well-established ethnic group presaged the development of what Gordon two decades later would call the "ethclass" (Gordon 1964). Thus, while a group's average length of time in the country goes a long way in determining its overall relative group position early on, by later generations such within-group variations often surpass between-group differences (Alba and Nee 2003, 78). These kinds of dynamics complicate discussions of "straight-line assimilation."

In a final chapter, Warner and Srole speculate about the length of time necessary for immigrant and native groups of all races to assimilate. They gauge assimilation in terms of the time it takes an entire group to disappear, the proportion of group members who drop out in each generation, and the level of participation permitted group members in the host society. They see the persistence of cultural or racial subsystems as a function of the power of the church, the presence and control of separate schools, the political and economic unity of the group, and the number and power of ethnic or racial associations. They also predict that lighter-skinned racial groups will join the mainstream class hierarchy, thus replacing ethnicity with class. For some groups, this transition is expected to occur very quickly, but for others, such as the Portuguese or the Sicilians, it might need six or more generations. For Latin Americans and other Spanish-speaking people, they forecast slow assimilation, with no fixed timetable. They predict that lighter-skinned group

members will eventually become part of the mainstream class order, whereas darker-skinned ones may become semi-castes. For blacks, Warner and Srole predict very slow assimilation and the ultimate formation of a color caste. Their schema represents a breakthrough for its day, in that it combined racial and phenotypical characteristics with linguistic and religious ones, though Warner and Srole argue for the dominance of race. So while they are the theorists most often associated with "straight-line" assimilation into Anglo conformity, they explicitly emphasize that the steepness of assimilation's "straight line" varies by race, culture, skin color, and the strength of coethnic communities. In many ways their vision of assimilation was far more pluralist and segmented than is usually portrayed.

Now, from the perspective of nearly three generations later, spanning a postwar economic boom, rising education levels, a civil rights movement, rising secularization, another large wave of immigration, and leaps in technology, the flaws in the unyielding typologies of Warner and Srole become clear. What Richard Alba calls "the twilight of ethnicity" now characterizes even southern European groups (Alba 1985). A racial hierarchy persists, but not so powerfully as in the Jim Crow era, and its boundaries and strengths are the subject of vast discussion (for summaries of research, see Lee and Bean 2010; Massey and Sanchez R. 2010; and Song 2004). Many immigrants now arrive with levels of human capital that Warner and Srole would never have imagined. In short, the assimilation of European ethnic groups has proceeded faster than Warner and Srole anticipated. Nor did they expect Asians to achieve such high socioeconomic standing. Their prediction of divergent outcomes for Latinos, however, roughly parallels those of some recent observers (i.e., Alba and Nee 2003; Massey and Sanchez R. 2010). But it remains instructive to recall when discussing the second or third generation of a non-European immigrant group that Warner and Srole would have considered full assimilation at that point virtually impossible.

In 1964 Gordon delineated several stages of assimilation that he envisioned as following the acquisition of culture and language. First is the most important element, structural assimilation, which entails close social relations with the host society, though he did not specify the mechanisms for the creation of such relations. Structural assimilation is followed by large-scale intermarriage; ethnic identification with the host society; and the ending of prejudice, discrimination, and value conflict. In their "new assimilation theory," Alba and Nee (2003) supplement Gordon's account by arguing that institutions, bolstered by civil-rights law, can help to hasten assimilation, providing as an example the Jewish organizations that persuaded the New York City Council in 1946 to threaten the tax-exempt status of colleges or universities that discriminated on the basis of race or religion.

Later formulations of assimilation explicitly back away from both straight-line and Anglo-conformity models of assimilation. Uneven outcomes across generations may reflect a more "bumpy-line" than straight-line course, as Gans (1992a) described the process. Others stress that the incorporation of immigrant groups also involves change and acceptance by the mainstream. In fact, Alba and Nee (2003, 38) do not presume the inevitability of assimilation, which they define as "the attenuation of distinctions based on ethnic origin." Rather, they see the "mainstream" as becoming more economically, culturally, and demographically diverse, as has occurred before. The theoretical question for incorporation then arises as to how diverse a mainstream can be without compromising the common cultural understandings necessary for effective democratic governance.

Ethnic Advantage and Disadvantage Models

As the civil rights movement progressed, scholarly accounts began to challenge the paradigmatic assumptions of assimilation theory. The antithesis was ethnic resilience, which could provide both advantages and disadvantages to ethnic groups. In one of the first of these works, *Beyond the Melting Pot* (1963), Nathan Glazer and Daniel Patrick Moynihan concluded that for several groups in New York City, ethnicity could generally serve as a type of resource even as it could also hinder economic mobility for others. Providing empirical support to this perspective were various social, cultural, and political factors that nourished ethnic attachments or even created new ones, as in the rise of hyphenated American identities or even the development of pan-ethnic institutions and identities (Alba and Nee 2003; Mora 2014; Yancey, Ericksen, and Juliani 1976). One area where the mainstream became more accommodating of an ethnically pluralist approach was education. Whereas schoolchildren in the early twentieth century were forced to learn English and conform to American customs, by the late twentieth century schools offered widespread (though controversial) bilingual programs and often celebrated ethnic diversity (Foner 2001). The rise of symbolic ethnicity, that is, an optional form of ethnicity, permitted people to perpetuate the most joyful aspects of their traditions, such as holidays, while ignoring many old constrictions, such as those on gender roles (Waters 1990).

On the negative side, some perspectives argue that European immigrant groups may have adapted as best they could but never really assimilated outright (Bodnar 1985; Glazer and Moynihan 1963). Religious or phenotypical distinctiveness in particular appears to have hindered the assimilation of some groups, to the extent that other scholars have labeled such difficulties ethnic disadvantages. Also, members of ethnic groups may find themselves channeled

into ethnic economies, which provide jobs but generally at lower than prevailing wages (Sanders and Nee 1987; Nee, Sanders, and Sernau 1994). Until the latter part of the twentieth century, religion continued to matter for ethnic distinctiveness as well, with deep and widely noted cleavages occurring among Protestants, Catholics, and Jews (Kennedy 1944; Greeley 1977). For the latest wave of new immigrants from Asia, the Caribbean, and Latin America, disadvantages seem to center less on religion and more on phenotype or colonial history, with some scholars arguing that these immigrants are often racialized on the basis of social constructions harder to overcome than ethnicity (Barrera 1979; Omi and Winant 1994). Such racial disadvantage perspectives argue that new immigrant groups may be subject to discrimination in a manner similar to that of African Americans, although others argue that African Americans continue to constitute a singularly notable exception insofar as disadvantage is concerned (Bean, Lee, and Bachmeier 2013).

Segmented Assimilation Models

The segmented assimilation model represents a theoretical synthesis of the preceding models. It emphasizes variation in the assimilation process more than an alternative explanation. As Portes and DeWind (2004, 842) describe the matter: "In the North American context, the question is not whether assimilation will take place, but to what segment of American society will migrants assimilate." The original framework by Alejandro Portes and Min Zhou (1993) combines elements of straight-line assimilation, ethnic advantage, and racialized disadvantage perspectives (Bean and Stevens 2003). Immigrant groups with the most advantaged educational and ethnic backgrounds will assimilate relatively quickly, as most European groups did (Alba and Nee 2003). Minority group immigrants with high levels of family resources might draw on coethnic resources to buffer any effects of mainstream discrimination and to counteract deviant influences in their neighborhoods. Doing so would bolster ethnic identity; Portes and Zhou call this process "selective acculturation." Minority immigrant groups without many resources face long odds, with their children in danger of adopting oppositional cultures or becoming racialized. They risk of teenage pregnancy, dropping out, incarceration, and other behaviors that would stymie mobility. Portes and Zhou have called this process downward assimilation into an underclass. This latter outcome has generated considerable controversy and research, with scores of studies, using a multitude of indicators, both supporting and opposing it. Some of the most systematic work, using large representative data on adolescents and adults of the second generation, finds relatively little evidence of downward mobility (Hirschman 2005; Kasinitz et al. 2008; Bachmeier and Bean 2011).

However, as unauthorized migration began to increase during the 1990s and 2000s, theoretical elaborations of segmented assimilation have given little emphasis to unauthorized status, until recently. Two exceptions merit a brief mention: that because unauthorized status may bring on severe disadvantage, children with unauthorized parents face higher chances of downward assimilation (Portes and DeWind 2004), and the development of an explicit hypothesis that because of substantial unauthorized migration, Mexican Americans are likely to need more time to integrate than other groups (Bean and Stevens 2003). Until recently, it has often been argued, migration tended to be more cyclical than long term (Massey, Durand, and Malone 2002), so that legal status mattered less for families. But unauthorized status differs from other barriers to assimilation, and in cross-cutting ways. Legal status and its logical extension, citizenship, represent membership in a common body and thus a very early form of political incorporation (Hochschild and Mollenkopf 2009). Immigrants with legal status can naturalize once they have met the necessary requirements, while ethnoracial group membership often seems to function like ascriptive characteristics.

Immigrants without legal status have marginal membership at best and remain ineligible for many rights and benefits (Bean et al. 2013a; Massey and Pren 2012). Although this status can vary independently of socioeconomic status and ethnicity, often it does not. The well-off can afford immigration lawyers. Potential immigrants who would be ethnic or racial minorities in the United States often hold such precarious positions in their countries of origin that they are willing to accept the risks and indignities of unauthorized migration to try to find a better life. In the U.S. case, the history of circular Mexican labor migration combined with fears of labor competition helped to reinforce the notion of illegality early on (De Genova 2004). Such fears led to widespread repatriations in the Great Depression of legal residents and even citizens and to deportation campaigns such as Operation Wetback in 1954. The presence of unauthorized Mexicans appears to have led to more profiling of later generations of Mexican Americans in areas with more such migration (Jiménez 2009).

Motomura (2012) argues that citizens may feel genuinely conflicted about unauthorized migration because it represents a clash between two fundamental democratic ideals: the need for the regulation of admission to a nation-state as a way of ensuring civic solidarity and the welfare state and the need for individual dignity based on ideals of equality. Absent a strong unifying sense of nationalism based on citizenship, societies may fracture along lines of race, class, religion, and other primordial factors. Nonetheless, national immigration laws sometimes do not reflect such concerns as much as they do the interests of bureaucracies enforcing laws and politically powerful actors

seeking a ready supply of labor (Calavita 2010; De Genova 2002). As Sassen (1999, 155) argues, "migrations do not simply happen. They are produced . . . they are patterned, and they are embedded in specific historical phases."

Even if the ability to change such historical patterns lies beyond the reach of individual immigrants, the lack of legal status can make them profoundly vulnerable by limiting their ability to work, provide resources to family and friends, obtain loans, enroll in college, get a driver's license, fly on an airplane, live free of the fear of deportation, and exercise many rights that citizens and legal residents take for granted (Chavez 1992; Coutin 2000; Menjívar 2006, 2008; Arbona et al. 2010). Their level of discomfort can vary by state and era. Enforcement of federal and state immigration laws has long proven discretionary, and at the insistence of employers, nonenforcement has sometimes become part of the legislation itself. For example, the Texas Proviso to the 1952 immigration law exempted employment of migrants from a ban on "harboring" them (Bean and Lowell 2007; Motomura 2006). In 1986 the Immigration Reform and Control Act was rendered toothless because it did not require employers to check the validity of the documents presented by prospective employees, only to certify that they had been examined (Fix and Hill 1990).

While loopholes have allowed employers to skirt hiring laws, poor labor migrants have not necessarily been able to achieve legal status through similar loopholes. An unauthorized immigrant in the United States has limited civil and legal protections compared with a legal permanent resident, let alone a citizen, and thus is more subject to employment discrimination. If, as Alba and Nee (2003) argue, assimilation requires institutional protections backed by the force of law, unauthorized migrants almost by definition cannot assimilate. They must live in the shadows, often work in the informal economy, and rely for social support on one another; yet this reliance is spotty because of their mutual needs (Menjívar 2000; Mahler 1995). However, if an unauthorized immigrant can achieve legal status, salutary effects can be immediate (Semple 2013). This is evident in labor-market and labor-market-related outcomes like health insurance coverage. The unauthorized consistently fall below legal permanent residents on such measures, showing lower earnings levels and employer-provided health insurance (Hall, Greenman, and Farkas 2010; Bean et al. 2013a).

The difficulty of achieving legal status for the unauthorized, combined with the automatic citizenship granted by birth in the United States, means that mixed legal status characterizes most Mexican immigrant families (Passel 2006). Nearly half of all unauthorized families have minor children, and an estimated 8 percent of all babies born in the United States from 2009 to 2010 had unauthorized immigrant parents (Passel and Cohn 2011; Taylor et al. 2011).

When couples give birth in the United States, the birth of the U.S.-citizen child may encourage the couple to try to stay in the United States and spur at least one of the parents to pursue legalization so as to bring over legally any non-U.S.-born children (Motomura 2006; Dreby 2010).

Mixed-status families are concentrated among Mexicans, who disproportionately enter as unskilled labor migrants, seeking what they often think will be temporary employment to supplement family incomes in Mexico (Massey et al. 1987; Bean and Stevens 2003; Van Hook and Bean 2009). Other immigrant groups with higher skill levels tend to seek permanent employment in better jobs than they could find in their home countries (Skeldon 1992; Portes and Rumbaut 2006); these groups tend to arrive legally and pursue naturalization. For Mexicans, the path to legal status is often much steeper. Because young Mexican men disproportionately participate in the initial unauthorized flows, they in particular have motivation to try to find ways to obtain green cards, initially to facilitate circular migration and often later to enable spouses to join them (Massey, Goldring, and Durand 1994). But because so few avenues to legalization exist, many Mexican families spend years in liminal legal status; this status pervades their everyday routines and expectations and often forces families to live apart as well (Menjívar and Abrego 2009; Dreby 2010; Mangual Figueroa 2012).

THE IMPLICATIONS OF UNAUTHORIZED STATUS FOR THE EDUCATION OF CHILDREN

Classical assimilation theory paid scant attention to the education of immigrants' children, because at the time many good jobs did not require high levels of education. But by the end of the twentieth century, when high school graduation had become a norm and higher education commonplace (Fischer and Hout 2006; Goldin and Katz 2008), all theories of immigrant integration keyed on education as a critical—if not the most important—indicator of potential mobility (i.e. Alba and Nee 2003; Telles and Ortiz 2008; Hout 2012). This shift is worth noting, because educational attainment is set in youth and young adulthood. Whereas Warner and Srole examined occupational and residential attainment—outcomes that could change over the course of adulthood—assimilation theories now focus on an outcome that for most people is set by around age thirty. Thus, modern researchers examining immigration mobility through education are likely to pass judgment on the mobility of a generation at a much earlier age than immigration researchers examining different criteria. While education is strongly related to lifetime earnings, the upper tier of semiskilled jobs still commands respectable wages, suggesting that while education may be strongly related to income

across the entire income distribution, considerable earnings mobility among Mexicans may often occur within education levels (Hagan, Lowe, and Quingla 2011).

Furthermore, although differences in levels of schooling explain much of the difference in employment and earnings between whites and many ethnoracial groups, two groups remain notable exceptions: blacks and Mexican immigrants (although not native-born Mexican Americans) (Duncan, Hotz, and Trejo 2006; Smith and Edmonston 1997). Among Mexican immigrants, the differences in employment and earnings appear largely to stem from unauthorized status (Hall et al. 2010). This suggests that incorporation for Mexicans takes longer than for other groups, because so many Mexicans must find ways to legalize before they can take best advantage of employment opportunities (Bean and Stevens 2003; Bean et al. 2011).

But without question in today's economy, education remains the critical component of mobility, not only for wages but for exposure to broader facets of the culture altogether. For this reason, it is particularly important and useful to focus on the educational attainment of the adult children of Mexican immigrants, particularly the children of immigrants who are unauthorized. Even though the U.S. Supreme Court decision in *Plyler v. Doe* (1982) guarantees free secondary education to all children in the United States, the disadvantages of unauthorized status for parents are likely to handicap children's overall educational progress and to discourage them from pursuing education when it would not seem to lead to employment (Abrego 2006). Although many case studies illumine the severe hardships faced by the unauthorized and their children in navigating school and work (Gonzales and Chavez 2012; Dreby 2012; Gonzales 2011; Suárez-Orozco et al. 2011), little research has addressed the extent to which the unauthorized status of parents might stifle the education of their children and even their grandchildren. Because 70 percent of the 5.5 million children of unauthorized immigrants in the United States are estimated to have a Mexican-born parent (Passel and Cohn 2011), we summarize here the results of recent research for the Mexican case (Bean et al. 2013a, 2013b).

Examining incorporation requires comparing the immigrant group to some other group, and a crucial theoretical question is which one. Most comparisons involve the country of destination rather than the country of origin, because incorporation is framed in terms of integration into the destination country, even though immigrants themselves may compare their success with that of the people they left behind (Piore 1979). We follow the approach of using the destination country. The next question is which group in the destination country provides the best comparison: coethnics, all natives, or some subgroup of natives, such as those from majority groups or minority groups.

A classical assimilation perspective would compare immigrants to the majority group, for example, non-Hispanic whites. A perspective viewing assimilation as an intergenerational mobility process would examine later-generation members of the same immigrant group. The downward assimilation hypothesis of segmented assimilation, for example, suggests that some immigrants may become more like disadvantaged minority groups. We rely on both a classical assimilation and intergenerational mobility frame here, which means we compare generations *and* we compare the third generation with non-Hispanic whites.

Comparisons across generations involve certain problems. From the second to later generations, findings on the educational trajectory among the descendants of Mexican immigrants often yield varying results, depending on the kind of data used. Many cross-sectional studies show little difference in educational attainment between Mexican Americans of the second and third and later generations (often known as the third-plus generation) (Farley and Alba 2002; Grogger and Trejo 2002; McKeever and Klineberg 1999; Reed et al. 2005; Zsembik and Llanes 1996). Some studies even find notable and sometimes significantly *lower* educational attainment levels for third-plus generation Mexican Americans, or for Latinos compared with the second generation (Bean et al. 1994; Keller and Tillman 2007; Wojtkiewicz and Donato 1995). This sometimes is termed second-generation or third-and-higher-generation "decline" (Gans 1992b; Telles and Ortiz 2008) and is explained in terms of racial discrimination limiting attainment. However, it is also true at the same time that lower third-plus generation attainment also often emerges among groups that are non-Hispanic or white (Boyd 2002; Chiswick and DebBurman 2003; Glick and White 2004; Kao and Tienda 1995; Ramakrishnan 2004; Sassler 2006), suggesting that the phenomenon is widespread and perhaps may result from other forces.

Because the decline in education of the third-plus generation occurs for highly educated entry groups as well as lower ones, something besides racial or ethnic discrimination against the group may account for the pattern. Duncan and Trejo (2011) find considerable attrition among those identifying as Mexican, especially at higher generations, with this attrition substantially related to greater out-marriage of persons of higher socioeconomic status. If better-off people of any ethnicity out-marry at greater rates, and their children cease to identify with the group, the outcomes of those remaining in the group will be biased downward. Consistent with this, studies that examine education across parental cohorts and child cohorts, or education from longitudinal data comparing parents and children, much more consistently show evidence of assimilation than do cross-sectional studies. For example,

Smith (2003, 2006) finds that educational levels rose appreciably across three generations of men of Mexican origin. Telles and Ortiz (2008) find high school completion rising across the first three generations, though not in the fourth or fifth generations.

Ambiguity in results from cross-sectional studies may also hinge on the definition of the third-plus generation. Studies that define generation by asking where respondents' parents were born must of necessity aggregate the third, fourth, fifth, and later generations into one. Few studies can distinguish a true third generation (consisting of those with at least one Mexican-born grandparent) from later generations, whose grandparents were all born in the United States. Telles and Ortiz (2008) provide one notable exception. A second study that distinguishes a true third generation relies on data for the years 1972–2002 in the General Social Survey (Alba et al. 2011). Cross-sectional examination of these data yields only modest evidence of intergenerational educational mobility. But comparisons of parents to their own children show substantial mobility among Mexican Americans whose parents tend to have especially low levels of education. This same study also directly examines the generational difference in education using a "third-only" generation compared with a "third-plus" one. When this is done, the "third-only" group shows higher educational attainment. Still a third study, using data from the Immigration and Intergenerational Mobility in Metropolitan Los Angeles (IIMMLA) survey, finds that the educational level of Mexican Americans in the "third-only" generation exceeds that of the "third-plus" generation by 0.3 year for boys and 0.2 year for girls (Bean et al. 2013b).

Legal status can change over time, as immigrants admitted on lawful visas may overstay them or unauthorized entrants attain legal residency. The IIMMLA sample also allows assessment of the effects of unauthorized migration on education. Recent research suggests that such status can be reliably measured (Bachmeier, Van Hook, and Bean forthcoming). The IIMMLA data from second-generation respondents asked about the migration status of each parent when the parent first came to the United States, as well as about parents' legal and citizenship status at the time the respondent was interviewed, in 2004. The data thus permit comparison of migration status at the time of entry *and* time of interview (Bean et al. 2013b). These statuses of the parents often vary, since parents may not have arrived together in the United States. Although the IIMMLA data are restricted to greater Los Angeles, they include a large sample of second-generation respondents, ages twenty to forty, of Mexican origin, along with some who arrived in the United States before age fifteen (often called the 1.5 generation). Few of these respondents were themselves unauthorized, and their status does not affect the research results reported here.

In the IIMMLA data, 34.2 percent of the Mexican mothers and 32.8 percent of the Mexican fathers were unauthorized when they came to the United States. By the time their second-generation children were grown, only 4.2 percent of the mothers and 4.3 percent of the fathers remained unauthorized. The rest of the mothers were generally evenly split between legal permanent residency and naturalized citizenship. The fathers were slightly more likely than the mothers to have naturalized. The most influential factor affecting the educational attainment of the second generation was the legal status of the mother. Second-generation Mexican Americans whose mothers legalized got 2.04 more years of education than those whose mothers remained unauthorized (Bean et al. 2011). Controlling statistically for the characteristics of the respondent and the parents reduces this gross difference to 1.51 years, a statistically significant difference. The educational advantage from mothers who have legal status does not appear to stem from gender, language spoken at home, an intact family, parents' education, parents' occupation in the origin country, origins in west central Mexico, or parents' circular migration. However, the relationship between mothers' legalization and children's education could still result from some unobserved characteristic, such as parents' industriousness or drive. To account for this, Bean and colleagues (2011) used an instrumental variables approach that took advantage of the fact that many parents had the opportunity to legalize through the Immigration Reform and Control Act of 1986; they found that this control attenuated the education premium for the mother's legal status only slightly, to 1.24 years. Thus, mothers' legalization is associated with an educational premium of nearly one and a quarter years of schooling among their children.

How does educational attainment vary across generations? Although the IIMMLA data allow the construction of a fourth-plus generation, findings for fourth-plus respondents are not meaningful because of all the potential distortions discussed previously. As table 9.1 shows for three generations, the educational level of respondents keeps going up, both across generations and between same-sex parents and children. The gains from parent to child are even greater than are the aggregate gains across generations. The gains for women are even higher than for men, reflecting the secular trend noted among whites of higher levels of education for women over time. For instance, third-only women of Mexican origin show almost two more years of education than their mothers, a gain twice that of non-Hispanic whites.

These results thus indicate evidence of incorporation. But despite this mobility, the levels show a considerable gap remaining between the third generation and whites, 1.1 years of schooling for men and 1.3 years for women. Part of that gap stems from where the data come from, Los Angeles. Whites and Mexicans have a higher education gap there than in the rest of the country, in part because of selective migration into and out of the region,

Table 9.1
Years of Schooling Among Mexican-Origin Respondents and Their Parents, by Generation, with Adjustments for Unauthorized Parental Status

	Males			Females		
Generation of respondent	Father's average education	R's average education	R's average education, adjusted	Mother's average education	R's average education	R's average education, adjusted
No migration	5.7	N/A		4.7	N/A	
1st	7.4	9.6	9.6	6.6	8.5	8.5
2nd	11.7	12.9	13.2	11.2	12.8	13.1
3rd only	N/A	13.4	13.7	N/A	13.6	13.9
3rd plus non-Hispanic whites	14.6	14.5		14.0	14.9	
3rd-only deficit relative to schooling of whites		−1.1	−0.8		−1.3	−1.0
Approximate period of high school attendance	1950–1980	1980–2000	1980–2000	1950–1980	1980–2000	1980–2000

Source: Adapted from Bean et al. 2013a.

especially in the case of high-education whites moving into the city. But a much bigger effect comes from the legacy of having unauthorized parents. When the researchers estimate what schooling levels might look like without the dampening effects of unauthorized migration by parents, they find that the schooling level of the second generation rises by 0.3 year, to 13.2 years for sons and 13.1 years for daughters, and for the third-only group, it rises to 13.7 years for sons and 13.9 years for daughters. These represent the estimated level of attainment we would expect were there no adverse legacy effects of unauthorized parents and grandparents on their children's and children's children's education. It gives an indication of how much educational disadvantage is transmitted across generations.

DISCUSSION AND CONCLUSIONS

Unauthorized parents live in "shadows" (Chavez 1988) that are difficult to escape, particularly when language skills are poor. They cannot get driver's licenses and have to worry about transportation. To get affordable housing, they have to live in crowded housing or move far from their jobs and then endure long commutes, often by public transportation. They often work long, irregular hours, with poor pay. This causes stress among the parents, but also discouragement among the children (Abrego 2006), especially those children who may themselves be unauthorized and who may not be getting much support at school. The parents may be less able to help with homework, attend school conferences, or speak up for their children. More subtly, very low income reinforces a "social insurance" orientation to the labor market (Van Hook and Bean 2009). That is, to provide for their families, parents seek work: any work, not necessarily optimal work. Their reservation wage, or the wage level at which they are willing to accept a job, is probably lower than for legal immigrants or native-born Mexican Americans. This may explain why lack of legal status rather than differences in education largely explains the lower wages and slower wage growth for unauthorized Mexican immigrants compared to legal ones (Hall et al. 2010, Greenman, and Farkas 2010). The low reservation wage means that many families may need more earners just to get by. Children may be encouraged to work or feel obligated to work as young as possible, unless they show unusual academic promise (Bachmeier and Bean 2011). Boys in particular may tend toward "role specialization," since they would feel more pressure to work.

While these patterns of findings cannot rule out ethnic discrimination against Mexican Americans as explaining the differences between the third generation and whites, they may indicate a different kind of discrimination, toward unauthorized migrants and their children. The legacy of unauthorized

status does not explain the entire gap between later generation Mexican Americans and whites, but it explains a substantial part. Teachers may assume that English-language learners are likely to come from unauthorized families and may treat the children accordingly. The fact that wage differences between unauthorized and legal immigrations are not altogether explained by legal status or education suggests some kind of discriminatory mechanism (Hall et al. 2010, Greenman, and Farkas 2010). But for native-born Mexican Americans, education and experience fully explain wage differences, and this convergence also suggests that whatever discrimination is occurring falls off after the first generation.

These empirical findings reinforce the importance of unauthorized status to the children of immigrants. Both systematic quantitative research and ethnographic studies are showing over and over the harm done to the children by their parents' unauthorized status. This multigenerational transmission of disadvantage is only beginning to be accounted for in incorporation theories, in part because the severity of the problem has only grown in the last two decades, mostly since the mid-1990s. Unauthorized status of parents need not lead their children into reckless or deviant behaviors so often associated with downward assimilation. But it clearly hinders education, which has become the first and arguably foremost marker of mobility among not only immigrants but the native-born population as well.

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10

Youth Adaptation: Journeys in and out of Membership for Undocumented Immigrant Youth

Alexis M. Silver

INTRODUCTION

On June 15, 2012, President Barack Obama announced that the United States would no longer be deporting otherwise law-abiding undocumented immigrants under the age of thirty-one who had arrived in the United States before the age of sixteen, had graduated from or were currently enrolled in school, had earned GEDs or served in the military, and met certain criminal background checks. The news of the memorandum of prosecutorial discretion was largely met with disbelief on the part of undocumented youths. After having waited for so long for the passage of the DREAM Act[1] or any other policy that would have given undocumented youths a pathway to legal residence, many had given up hope. Obama's 2012 announcement came as a shock to the approximately 1.8 million undocumented youths who had felt the crushing defeat of the DREAM Act in Congress in 2010. The deferred action policy was a game changer, to be sure, but the youths who would benefit from the policy were guarded in their enthusiasm for Deferred Action for Childhood Arrivals (DACA). They had seen their hopes for political inclusion shattered many times before, and they were unwilling to put too much trust in a temporary policy that they felt could be reversed without notice.

This chapter examines the life trajectories of undocumented youths coming of age in North Carolina. It is based on four years of ethnographic work between 2007 and 2011, and two rounds of follow-up interviews in May 2012 and January 2013. All of the undocumented young adults in the study were aware of DACA, and while most were quick to apply, others who lacked the financial means or the institutional connections to schools or churches were slower to take action. Even for those who did apply, financial constraints impeded their educational aspirations, and state policies continued to threaten their security and mobility. Youths noted that state policies limiting their access to institutions of higher education and distinguishing their driver's licenses to highlight their lack of legal status marked their lack of legal status marked them as marginalized outsiders within their communities.

The Latino youths in this study played a role in changing the demographic statistics of their state. North Carolina led the nation in the rate of population growth for Hispanics between 1990 and 2000 and remained in the top ten states for Hispanic growth rates in the subsequent decade (Fortuny 2010). With 42,702 potential DACA beneficiaries, North Carolina was also among the top ten states with the largest populations of youths and young adults poised to take advantage of deferred action (Immigration Policy Center 2012). For the immigrant youths who had grown up in North Carolina, the announcement of deferred action marked the first time that many had seen policies addressing immigrants shift toward inclusion.

In the years leading up to the 2012 announcement, a variety of anti-immigration policies had emerged throughout the Southeast as the region responded to its swelling immigrant population. As police checkpoints sprang up in migrant neighborhoods and community colleges and public universities shut their doors to undocumented immigrants, the anti-immigrant climate of the region clearly demarcated immigrant populations as different and unwelcome. Although youth populations in general are often excluded from political participation, for undocumented youths political exclusion was palpable, and it encroached upon their social incorporation as they aged into adulthood. The experiences of the undocumented youths stood out in stark relief against the experiences of their documented peers. For some of the undocumented youths who had seen their peers go on to college or successful job trajectories, the announcement of DACA marked a glimmer of hope that they would be able to take similar strides. Others, however, had taken divergent roads, and they struggled to redirect the pathways that they had already established.

This chapter uses an extended case study to illustrate strategies in youth adaptation to constantly shifting legal policies. It examines how undocumented youths navigated their transitions to adulthood and takes a closer

look at how their trajectories shifted in response to the 2012 announcement of deferred action. Focusing a comparative lens on two high-achieving youths, the chapter illustrates the substantial influences of both state and federal policies on the experiences of documented and undocumented youths. For undocumented youths, their transitions to adulthood were plagued by constantly shifting policies that alternately barred or allowed them to access youth-centered institutions, such as schools, and rites of passage, such as driver's license acquisition. Although piecemeal policies including DACA offered youths a stepping stone toward inclusion, without the security of comprehensive immigration reform and the promise of citizenship, undocumented youths remained vulnerable and largely excluded from full membership in the United States.

BELONGING, MEMBERSHIP, AND THE ROLE OF THE STATE

International immigration is a fixture of advanced postindustrial nations and is a natural outgrowth of economic interdependence and human rights commitments of liberal democratic states (Hollifield 2004, 2008). Despite increasing tendencies toward liberalized economic practices, however, migration policies have tightened in recent years as global recessions and security threats have resulted in efforts to increase border security (Chavez 2007; Hollifield 2004, 2008). As immigration policies have become increasingly hostile toward undocumented immigrants, researchers have noted that immigrants become further marginalized and barred from full inclusion in receiving countries (Chavez 2007; Laubenthal 2007; Schuck 1998; Tormey 2007; Willen 2007). Conversely, legalization and regularization policies, such as the 1986 Immigration Reform and Control Act (IRCA), have been found to provide undocumented immigrants with avenues toward inclusion and membership (Chavez 1998; Hagan 1994).

The emergence of national, state-level, or local policies hostile to immigrants in essence defines undocumented immigrants as outsiders who live alongside people who belong. Chavez argues that as immigration throughout the world has increased in recent years, countries have tried to "re-affirm the privileges of citizenship through increased enforcement of national borders, increased surveillance and expedited deportations of extra-national populations, and restrictions on government sponsored–services for non-citizens" (Chavez 2007, 194). As citizens feel their jobs, culture, and neighborhoods threatened by immigration, nation-states respond to political pressure by increasing restrictions on undocumented immigrants. Nationalist policies have even marginalized documented immigrants, thereby leading to a "revaluation of citizenship" (Schuck 1998). Although theories examining the

influence of state policies on immigrant incorporation have advanced our knowledge about immigrant incorporation and exclusion, they have largely neglected youth populations.

For undocumented immigrant youths, the influence of the state over their unique experiences tends to become more pronounced as they age out of the secondary school system and into the early stages of adulthood. Their early experiences of inclusion, however, are precisely the reason that exclusionary policies become so disruptive in the lives of undocumented youths and young adults. Distinctions between citizens and noncitizens are not as defined or clear-cut as the labels might suggest, and immigrants often receive many of the benefits of membership even without having citizenship status (Bosniak 2006; Geddes and Favell 1999; Schuck 1998).

In her exploration of membership in contemporary liberal democracies, legal scholar Linda Bosniak argues that citizenship is multifaceted and can incorporate legal status, rights, political engagement, and identity (Bosniak 2006). Although legal status is the most easily identifiable of the four facets of citizenship, residents with temporary protected status or temporary work visas fall into liminally legal categories in which they encounter much of the same exclusion and uncertainty as undocumented immigrants (Menjívar 2006). Regarding rights, undocumented youths in particular are afforded many of the same rights as their citizen peers, including the right to attend primary and secondary school (*Plyler v. Doe* 1982). Undocumented youths may also be active in lobbying for their own political rights, such as the right to in-state tuition or immigration reform (Abrego 2006; Gonzales 2008). Finally, growing up alongside their documented peers, undocumented youths may identify as full-fledged members in their communities and schools.

As liberal states with strong commitments to human rights and civil liberties, all residents within nationally bounded receiving states are entitled to basic liberties. Many liberal democracies have moved beyond providing basic rights and have codified into law the rights of noncitizens living within their borders. In the case of the youth population, the 1982 *Plyler v. Doe* decision was informed by the opinion that undocumented youths were likely to become permanent residents within the United States and deserved equal protection under the law by virtue of their residence and personhood. The *Plyler v. Doe* decision argued that undocumented children who were already "disadvantaged as a result of poverty, lack of English-speaking ability, and undeniable racial prejudices . . . [would] become permanently locked into the lowest socio-economic class."[2] Through the *Plyler v. Doe* decision, the court acknowledged undocumented youths as social members of U.S. society and accommodated for their long-term settlement.

In essence the *Plyler v. Doe* decision marked a political incorporation of youths, which paralleled their social incorporation in schools. Upon high school completion, however, the presence of undocumented youths in the United States would become delegitimized. Although many undocumented youths have witnessed their parents' struggles with incorporation and legal insecurity, it is only after leaving the protective walls of high school that most of them must confront their own social and political exclusion. For undocumented adolescent immigrants, simultaneous processes of inclusion and exclusion in American institutions can make life feel chaotic and unstable.

As the United States actively incorporates undocumented youths in the largest youth-targeted institutions, the question arises as to whether as a liberal democracy, it has an obligation to continue its commitment to these youths after they graduate from high school. If noncitizen youths are already performing many of the same roles as their citizen peers, many scholars argue that the host society has a moral obligation to grant noncitizen societal members full legal membership (Carens 2008; Walzer 1983). In a political climate that has trended toward implementing more restrictive policies against undocumented residents, however, young undocumented adults may feel more excluded than included in the society they know best.

UNDOCUMENTED STATUS, EDUCATIONAL INCORPORATION, AND UPWARD MOBILITY

Because undocumented youths are often well integrated in their schools, they may not feel the impact of their undocumented status until they are on the brink of high school graduation. On the other hand, many undocumented students know that their opportunities for higher education and work are limited by financial and legal constraints, and they may already disinvest in their academic careers while in high school or middle school. Indeed, feelings of uncertainty about life after high school can influence the emotional well-being and incorporation patterns of undocumented youths even while they are in high school (Abrego 2006, 2008; Gonzales 2008). Some undocumented youths report being afraid to talk to teachers and feeling uncomfortable in school (Suárez-Orozco and Suárez-Orozco 2001), and others form adversarial identities and preemptively reject institutions such as schools before the schools have a chance to reject them (Portes and Rumbaut 2001). Regardless of how undocumented youths deal with their legal exclusion from American society, they are all susceptible to feelings of fear, frustration, and powerlessness as they near the end of high school and transition to adulthood.

National statistics indicate that undocumented status has a large impact on the educational outcomes of young adults, as 40 percent of undocumented youths do not graduate from high school, compared to 15 percent of legal immigrants and 8 percent of U.S.-born citizens (Passel and Cohn 2009). Furthermore, among the 60 percent of undocumented high school graduates, only 49 percent go on to college, compared to 76 percent of legal immigrant graduates and 71 percent of U.S.-born citizen graduates (Passel and Cohn 2009). National statistics, however, mask important community- and regional-level differences. Smaller and more supportive school and community contexts may increase graduation rates for youths in suburbs and small towns, as opposed to large urban schools.

Even in states where undocumented students have access to in-state tuition, financial and informational barriers can obstruct access to college. Studies have shown that even above-average students in large urban schools struggle to obtain information about the college application process, and some do not know about laws granting them access to in-state tuition (Gonzales 2011). Lack of knowledge about policies and funding opportunities has severely limiting consequences for undocumented youths, and several researchers have documented the importance of close connections to informed mentors in facilitating access to educational institutions and upward mobility (Gonzales 2011; Perez 2009; Peréz Huber 2009; Portes and Fernández-Kelly 2009; Silver 2012). Certainly these relationships can develop in urban areas, but they may be far more frequent in small, diverse towns with dense social networks and very little privacy.

National statistics, which include large populations of urban immigrants in traditional migrant-receiving states, may be poor indicators of incorporation processes in new destinations. Studies have found that Latino students in the South may benefit from being exposed to the English language and cultural practices of their U.S.-born non-Latino peers, in contrast to being isolated in highly segregated urban schools (Clotfelter, Ladd and Vigdor 2010; Perreira, Fuligni and Potochnick 2010). Increased interaction with youths of different ethnic, linguistic, and racial backgrounds may benefit Latino youths by augmenting their social and cultural capital.

Establishing trust and close connections with teachers is important, because students can leverage these relationships as forms of social support, which may help them gain access to jobs or academic opportunities later in life. If students feel isolated, alienated, and misunderstood, they will be unlikely to reap the benefits of their education and may be more likely to form oppositional cultures (Fordham and Ogbu 1986; Portes and Rumbaut 2001). Small school settings may better facilitate connections to teachers if students feel recognized as individuals instead of lost in a mass of students

(Crosnoe, Johnson, and Elder 2004; Finn and Achilles 1990; Finn et al. 2001; Nye, Hedges, and Konstantopoulos 1999). When teachers recognize and engage students' cultural backgrounds in the classroom, moreover, they will be far more successful in engaging their students in positive educational exchanges (Cortina 2008; Gibson et al. 2004; López 2003; Valenzuela 1999).

Immigrants in new destinations often attend schools in nonurban areas where immigrant populations moved to fill expanding labor opportunities (Kandel and Cromartie 2004; Kandel and Parrado 2006). Many of these schools are small enough in size for students to not feel overwhelmed or lost. How these new areas and new destination schools influence the incorporation of new immigrant and second-generation student populations is an empirical question in need of further investigation. Preliminary research suggests some positive outcomes for Latino students (Marrow 2011; Perreira, Fulgini, and Potochnick 2010), but there is scant research examining how school and community atmospheres interact with documentation status to influence educational attainment and social mobility outcomes.

Coming of age in supportive atmospheres at the school and community levels and hostile environments at the state level creates disjointed incorporation experiences for youths. Social support from teachers and mentors helps create environments in which young adults excel and strive to better their life circumstances. Once they graduate from high school, however, undocumented youths increasingly confront state and federal policies that bar their full societal incorporation. For young undocumented immigrants, movement from a location of inclusion and membership to one of exclusion and uncertainty often characterizes their transition to adulthood.

Research Site

The bulk of this research took place in Allen Creek,[3] North Carolina, over a four-year period between 2007 and 2011. After the conclusion of the initial study period, I returned to North Carolina twice to conduct follow-up interviews with a subsample of the original interviewees. I first returned in May 2012, before the announcement of DACA, and again in January 2013, after eligible individuals could apply for deferred action status.

During the research period North Carolina, along with many other southern states, was implementing aggressive anti-immigrant policies. The region was experiencing rapid immigration growth, and North Carolina's Latino population grew by 508 percent between 1990 and 2008, to 800,000, or 8.4 percent of the total population (Fortuny 2010). Although North Carolina was relatively late in implementing a 2006 law requiring Social Security numbers for driver's licenses, it emerged as a national leader in other

anti-immigrant policies. North Carolina was at the forefront of implementing the 287(g) program, allowing local law enforcement officers throughout the state to begin deportation proceedings for undocumented immigrants arrested on unrelated crimes, including traffic violations. With eight memorandums of agreement for 287(g), the state was second in the country in its ability to train local law officers to enforce immigration law and begin deportation proceedings (Weissman, Headen, and Parker 2009). Specifically targeting undocumented immigrant youths, the state community college board passed a resolution barring undocumented immigrants from attending community colleges in 2008. Responding to political pressure from civil rights groups and immigrant advocacy organizations, the North Carolina Community College System (NCCCS) reversed the ban on undocumented students in 2009 (Gonzales 2009). Although the new policy allowed undocumented students to enroll in community colleges, it specifically stated that undocumented students were required to pay out-of-state tuition and could not supplant legal residents in overcrowded classes. The reversal of the ban marked the fifth time that the policy on undocumented students in the North Carolina Community College System had changed since 2000.

The reversal of the NCCCS ban, however, did not mark the end of the debate surrounding undocumented students and higher education. In March 2013 North Carolina House Representatives George Cleveland and Chris Whitmire introduced a bill to bar undocumented immigrants from attending the state's community colleges and universities.[4] If the bill had passed, North Carolina would have become the fourth state, after South Carolina, Georgia, and Alabama, to officially enact a law prohibiting college admission to undocumented immigrants.[5]

Even after the announcement of DACA, newly authorized youths and eligible DACA candidates continued to struggle with the capricious nature of state- and local-level policies. Despite hopes that DACA status would result in in-state tuition for previously undocumented immigrants, North Carolina maintained that these students would continue to pay out-of-state tuition. Moreover, after some DACA status immigrants received driver's licenses, the North Carolina Division of Motor Vehicles stated that those licenses were mistakenly issued and that driving privileges would be revoked for DACA-status individuals. Approximately one week after the announcement banning driver's licenses for DACA recipients, the North Carolina Attorney General's office offered an opinion that DACA recipients were now "legally present in the United States and entitled to a driver's license of limited duration" (Blythe and Siceloff 2013). The DMV responded by saying that they would take this opinion into consideration and eventually rescinded the ban on driver's licenses for DACA status individuals. The licenses issued to these

individuals, however, were distinct from driver's licenses for all other individuals and included the words "no lawful status." Politics surrounding immigration in the state of North Carolina were contentious, and state policies that had initially emerged in response to a lack of comprehensive immigration reform at the federal level were threatening to pop up again in an effort to protest federal action deemed an overreach by many at the state level (Vock 2012).

Allen Creek

One of many towns throughout North Carolina transformed by immigration, Allen Creek's residents witnessed the political arguments at the state level play out on a local stage. Located in a rural county in central North Carolina, the town of Allen Creek attracted many Latin American immigrants during the 1990s because of its proximity to several poultry processing plants, textile mills, and plastics manufacturing plants. As labor opportunities in manufacturing were constricting in other areas of the United States, the expanding labor opportunities of Allen Creek were typical of the job opportunities drawing migrants to the Southeast during the 1990s (Griffith 2008; Kochhar, Suro and Tafoya 2006; Mohl 2003). In Allen Creek over 50 percent of the town's approximately eight thousand residents were Latino, and approximately 75 percent of Allen Creek's Hispanic population was foreign born (American Community Survey 2005–2009). Prior to 1990, the town was populated almost exclusively by black and white residents.

At the time of this study the public high school in Allen Creek had approximately eight hundred students, of whom about 41 percent were Latino. White students made up approximately 34 percent of the population, and black students made up the remaining 25 percent. In 2010 approximately 75 percent of the Allen Creek High School student body beginning in ninth grade graduated in four years. Although dropout rates were highest among Latinos, graduation rates increased approximately eight percentage points between 2005 and 2010 for graduates who completed high school in four years, and over ten percentage points in the same time frame for graduates who completed high school within five years.

The school attempted to combat dropout rates by implementing a support group for teenage mothers and expectant mothers (implemented in 2010), a support group for students experiencing emotional problems and troubled home lives (implemented in 2010), and an AVID[6] (Advancement via Individual Determination) program for students in need of more academic mentoring (implemented in 2006). Of the school's approximately eight hundred students, about one hundred were enrolled in the AVID program. In addition, the school had two culturally specific clubs targeting

the Latino student population. The AIM club offered Latino youths experience in the community tutoring and helping translate during parent-teacher conferences at the elementary schools. The Latino Achievement Club (LAC) helped college-hopeful Latinos prepare for college through a mentorship program that helped students train for the academic climate of college, navigate the college application process, and secure funding for college. LAC enrolled approximately twenty students per grade in the tenth, eleventh, and twelfth grades.

Approximately one-half of all students enrolled in Allen Creek High School received free or reduced-price lunch. According to American Community Survey estimates for 2005–2009, Allen Creek had a median household income of about $30,000, which was considerably lower than the North Carolina state median income of $45,069. Approximately 21 percent of families in Allen Creek lived below the poverty line, and about half of the population had a high school degree or higher.

Research Design and Sample

I began conducting ethnographic field research in April 2007 by attending after-school events, such as soccer games and practices, teaching salsa lessons to teenagers in the community, and volunteering in the Latino Outreach Center in the community. I started in-depth interviews in April 2008. In the fall of 2009 I began to volunteer as a tutor in an AVID class twice a week. I observed one AVID class closely over the course of my study, and I occasionally visited other classes. By drawing on contacts from the school, the soccer teams, and the Latino Outreach Center, I accessed a diverse sample of research participants. From these initial contacts, I used snowball sampling to diversify the sample and gain more respondents.

The youth interview sample comprised thirty-eight Latina/o young adults (twenty undocumented and eighteen documented), eleven African American young adults, and thirteen white young adults. All of the young adult interviews were conducted with individuals who were between the ages of sixteen and twenty-five at the time of the initial interview. In-depth semistructured interviews lasted between forty-five minutes and two and a half hours, with most lasting approximately one hour. After the initial interview, I followed up with my respondents through visits, "informal interviews" (Lofland et al. 2006), e-mail correspondence, and formal follow-up interviews with ten individuals in 2012 and 2013. Thus I was able to follow the trajectories of the youths as they moved through institutions of higher education, got various jobs, and in some cases got married and had children.

Luz and Eduardo and the Power of Papers

A comparative examination of two individuals, Luz and Eduardo, illustrates how immigration status influences the life trajectories of children of immigrants as they move through institutions of higher education and the early stages of their careers. I met both Luz and Eduardo while they were seniors in high school, and both struck me as incredibly driven, mature, well spoken, and excited for college. Certainly they were both prepared academically for the rigors of higher education. Their vastly different experiences navigating the transition to college can be attributed squarely to their different documentation status. Eduardo lacked legal immigration status, and Luz was a U.S.-born citizen.

Luz spoke about her family's decision to migrate from California to North Carolina in 1991 while describing the gang violence of her Los Angeles neighborhood. When a job opportunity arose for her mother in North Carolina, it was an easy decision for the family to move. As soon as they arrived in North Carolina, Luz's mother began working in a food truck that catered to migrant workers in the surrounding poultry plants. Luz's family's migration, however, was not just another labor migration facilitated by social network connections. For Luz's parents, the safety of their children was a primary factor motivating their decision to leave California.

As she grew up in East Los Angeles, gang violence was all too familiar to Luz. She saw police officers murdered just outside her apartment complex and personally fell victim to gang violence more than once while walking home from school. Moving to North Carolina at the age of nine was a major life change for Luz. She found herself surrounded with English-speaking black and white peers, and she was forced to speak English. She relied on the support of caring teachers to learn the language and began to flourish academically.

Luz graduated from high school and earned a full scholarship to a prestigious four-year university. As an international studies major, she thrived in college and held leadership positions in several student organizations. She was awarded two competitive summer fellowships and two awards for academic excellence, and she worked in a paid internship position at a policy center. Once she graduated from college, she continued to work at a university-affiliated nonprofit center, helping to coordinate global outreach programs.

When I asked Luz if she thought her life would have turned out differently had she remained in California, she responded that she was sure it would have been different, but she was unsure how. She pointed out that because there were so many more Latinos in California, she would probably have met or at

least seen more successful Latinos than she had been exposed to in North Carolina. She also recounted her experiences with the Latino gangs in her California neighborhood and admitted that she would have been exposed to more "bad Latinos" as well. After pausing to think about it, she told me that she thought her strict upbringing was primarily responsible for her success. She credited her parents for ensuring that she and her siblings did well in school and strove toward prestigious and upwardly mobile careers.

Indeed, it is highly likely that Luz's work ethic, as well as her parents' high expectations, would have propelled her toward academic achievement regardless of where she grew up, but there is no doubt that her experience in the small community of Allen Creek facilitated connections to teachers and clubs that helped her navigate her journey through high school and college. When she was in high school, her family members pressured her to work to contribute to the household income. Through a teacher, she learned that the local elementary school was seeking someone to oversee afterschool activities, assist in translation, and speak with parents about school involvement. Because the woman in charge of hiring for the position remembered Luz as a hard-working and likable fourth-grade student, she immediately accepted her for the job when Luz expressed interest. In her after-school job Luz gained valuable skills in leadership, communication, and both verbal and written translation.

Attending a four-year university was not a foregone conclusion for Luz. She developed ambitions to attend college early on in high school, but she always assumed that she would go to community college like her older sisters. Despite her parents' high academic expectations, they did not discuss four-year university as a feasible or affordable option for their five children. When Luz joined the Latino Achievement Club in her sophomore year of high school, she learned about scholarship opportunities and began to dream for the first time about attending a university. She spoke at length about LAC:

> LAC helped give me that structure, and helped me look for scholarships and everything. Because I knew that my mom could not afford to send me to college. LAC really instilled in me that I could go to a four-year college, and I started to see that it was possible. My mentor guided me through that process. A lot of us in the Latino community don't have that support because a lot of our parents haven't gone to college. (Luz, age twenty-one)

Lacking the guidance of her parents, Luz relied on the support of her mentor in LAC along with several of her high school teachers to help her prepare and apply for college.

Although her parents did not initially understand why she was involved in the program, which often met after school and on weekends, the leaders of LAC helped Luz convince her parents of its academic merits. Once her parents understood that Luz was not staying out of the house simply to spend time with friends or a boyfriend, they supported her engagement with the club. When she was applying for college, she relied on the help of her LAC mentor as well as teachers unaffiliated with LAC to read over her application essays. With the help of her teachers and mentors, Luz did incredibly well in high school and earned a full scholarship to a four-year university. She excelled in college and had an easy time maintaining her GPA and her scholarship.

Luz is very smart, ambitious, and responsible, and she may well have experienced a similar life trajectory had she remained in Los Angeles. Her experience in North Carolina, however, offered her several opportunities that she had not had living in the large urban environment where she grew up. First and foremost, Luz was finally living in a community in which she did not experience or witness violence regularly. Second, she learned English out of necessity and with the help of caring teachers who helped nurture and support her. Third, she capitalized on her personal connections to teachers to get her first job and to get help with the college application process. Finally, she had the structural support of LAC, which helped her in the college application process and encouraged her to link her ethnicity to a culture of achievement. All of these factors contributed to an environment in which Luz was able to excel as she transitioned into the early stages of adulthood. With access to scholarships and financial aid available to citizens, moreover, financing college was never an insurmountable obstacle. Although Luz was exceptionally intelligent and driven, the elements that facilitated her upward mobility were common to the experiences of many of the Latino students in Allen Creek High School.

Eduardo's high school experience in many ways mirrored Luz's. His childhood and postsecondary experiences, however, were markedly different. Eduardo arrived from Mexico with his sister and brother when he was seven. His aunt drove them to the border, where his uncle picked them up and drove them into the United States. From the border, Eduardo's uncle drove the children to North Carolina, where they reunited with their mother, who had moved six months earlier, and their father, who had been living in North Carolina for two years.

Eduardo recalls the move as easy. He noticed that the houses looked different, but he recognized the farmlands as similar to land that he had left behind in Mexico. He learned English quickly in elementary school and was tracked into honors classes in high school. He played soccer and says he made most of his closest friends on the field. Unlike Luz, Eduardo did not work in high

school, even when money became tight. After the state voted to require Social Security numbers for driver's licenses in 2006, Eduardo's father felt uncomfortable driving far distances to his construction job, and the family had to cut back on expenses. Eduardo bashfully admits that he did not contribute to the household income while in high school: "My parents didn't want me to work. They thought if I started working that I might lose my ambition to go to college." Eduardo's parents stressed the importance of college as a means for their son to achieve, and he wholeheartedly embraced their dreams as his own.

Eduardo's athletic abilities and academic achievements, along with his family's very low income level, would have made him an easy candidate for scholarships. His documentation status, however, severely limited the opportunities available to him. Nonetheless, his soccer coach was a strong advocate for him and managed to connect him with a soccer coach at a community college. Between scholarship money secured by the soccer program at the community college and additional funds garnered through scholarships provided by LAC, Eduardo pieced together the money to fund his tuition. Eduardo's high school soccer coach had taken him to visit the school, and he was excited to enroll in the soccer program at the two-year college before transferring to a four-year college.

Eduardo's carefully made plans, however, came crashing down in 2008 when the NCCCB passed a resolution barring undocumented immigrants from attending community colleges. Eduardo's parents remained steadfast that their son would be the first in their family to attend college, and they considered sending Eduardo back to Mexico for his education. After speaking to Eduardo's high school soccer coach, however, they arrived at a plan to allow Eduardo to remain in the United States and attend a four-year technical college close to his hometown. Eduardo did not want to go back to a country he could scarcely remember, and he did not want to be separated from his family. He described his desire to remain in North Carolina:

> I would [like to stay in North Carolina] because that's where I grew up. . . . Even though we're Mexican and Hispanic. . . . [W]e have nothing to do in our country 'cause this country is the country that's given us everything; food, shelter, education, everything. You don't have anything there. It's like [motions with his hands spread wide apart] here's your life, here's where you were born. You got nothing to do with Mexico. . . . You have everything to stay, but you can't stay here because you're not legally here. You're no one here. You're just transparent. They don't see you. (Eduardo, age seventeen)

Eduardo's experience of being barred from community college was extremely difficult. Although his undocumented status had already prevented

him from obtaining a driver's license, his rejection from community college was the first time he had ever earned something and subsequently had it taken away from him as a result of his undocumented status. The experience hit him hard, and it served as a catalyst for his emotional transition into living as an undocumented individual without any sense of membership or belonging. Most striking in this personality transition was Eduardo's enduring unwillingness to make any life plans.

When I asked Eduardo, at the age of seventeen, what he imagined he would be doing in five years, he responded: "We can't even be certain about what's gonna happen in the next month! . . . Like me going to [community college], like that [policy] came up and we just had to deal with it. Look for alternatives." Luckily for Eduardo, his strong network of social support allowed him to come up with an alternative plan, in which his soccer coach was able to capitalize on his connections at a nearby technical college. Eduardo was admitted after the deadline, and he was able to access funds through the scholarship program set up by LAC. Although the college did not have a soccer team, he appreciated his education and worked hard in his classes. He was grateful to be able to remain in North Carolina near his friends, but his struggles with his status followed him through college.

Attending a historically black university, Eduardo felt alienated from the school environment, where he was one of only a handful of Latino students. He gradually found a social network, however, by attending events at the multicultural students' center. He also benefited from having access to the multicultural student advisor, who helped him secure funds and ensure that he was registering properly. His college trajectory was derailed, however, when she was let go. He explains how he took a semester off when he realized that he was too late to apply for a tuition payment plan:

> They just kind of shut the doors. I went to the registrar and they sent me to my advisor, and my advisor was very hard to schedule a meeting with, so finally I met with her and then after that I met with the Dean, and she basically said that it was my fault for not being on top of things. And I felt like if I weren't on top of things then I wouldn't be there [at the dean's office]. I would have just waited until next semester instead of trying so hard to fix things. (Eduardo, age twenty-one)

Without the assistance of his trusted advisor, who had helped him throughout his first three years of college, Eduardo fell through the cracks. He ended up taking the semester off, during which he helped his parents pay the bills at their home in North Carolina while they went to work in Alabama.

Being out of school and working full time served as a powerful reminder to Eduardo of the benefits of an education, yet he struggled to

convince himself of the rewards of staying in school given the uncertainty of his opportunities after college. He saw some of his undocumented friends graduate from college and continue to work the same low-wage and insecure jobs that his undocumented friends without college educations worked. Eduardo was putting off graduation in the hopes of not having to face the disappointment of seeing little to no payoff for all of his hard work. He thought about his eventual graduation:

> I mean, I'm going to be happy. Obviously, I'm going to be happy, but I feel like . . . why should I finish if I'm just going to be working the same job when I'm through. There's no point in wasting time, and wasting people's money. I just feel like it's a waste of time because I'm going to be doing the same landscaping or construction job that I was doing before, even though I have a four-year degree and I have really good English. I really want to finish and be educated. That's my goal. But I do question the point. It's very frustrating. (Eduardo, age twenty-one)

Being in school gave Eduardo a place to belong and a goal to work toward, but the uncertain payoff at the end caused him anguish. He watched his citizen peers graduate and acquire upwardly mobile jobs, but he knew that those doors were closed to him. He directly compared himself to them: "You work as hard as they do and at the end, you just get tossed aside." Speaking almost metaphorically, Eduardo made large distinctions between his own life circumstances and those of his documented peers: "I really don't like working outside. I'd rather be inside, without having to get all sunburned and get my hands dirty." The distinction between inside and outside work was not only about the hard working conditions. Eduardo knew that he was working outside because there was no place for him to work inside without papers. He was an outsider without papers. While he remained in school, he at least had a place to belong on the inside.

When I asked Eduardo at age twenty-one what he thought he would be doing in five years, the same question I had asked him at age seventeen, we were both surprised that his answer was nearly the same. He told me that he didn't remember what he had answered then and was sure that his answer would be different now. He hesitated as he stammered through his response: "I really don't know. I have no idea. I'll hopefully be graduated. I have no idea. I really, I have no plans. That's the thing. I can't make a plan. There's no such thing as a plan. I just have to go with it. Whatever." I reminded him of his very similar answer four years before, and he thought back to the time when he had received the news that he could no longer play soccer at community college. He responded immediately and emotionally:

There you go. It hasn't changed. It sucks, not knowing. That community college policy, that's the thing that really changed my mind. I was going to go and play soccer and do what I wanted to do. And that just got taken away from me. And that just really sucked. It hurt. It hurt a lot, and then after that I just felt like, I'm not going to plan anything. That really sucked. Because that was a plan. It was such a perfect plan. And it just disappeared. (Eduardo, age twenty-one)

For Eduardo, the community college ban and subsequent derailment of his college plan served as a turning point in his life. This was when he differentiated himself as undocumented and felt the sting of his immigration status.

When President Obama announced the policy of deferred action, Eduardo was in a state of disbelief. Although he was cautious in his celebration of the policy, he was finally able to envision a pathway toward a sense of security and belonging. He immediately set to work securing a lawyer and gathering all of his school records and materials so he could apply as soon as he was able. He described how it would change his life after college:

I'll be able to work. If I were to graduate with a four-year degree, and not be able to work, I just . . . [he pauses and changes course]. Now I can actually take advantage of my education. It's a great opportunity but it's not permanent. The policy is not there forever, so just as soon as it comes in, it could go away. If they take the permit away, I'll just have to deal with it. (Eduardo, age twenty-one)

Eduardo immediately seized the opportunity to apply for deferred action status, and he saw all of the opportunities that he had previously identified as just out of reach come into view. He knew his life had changed, but he had seen opportunities be taken from him before, and he was extremely guarded in his enthusiasm. He had very little trust in the policy, but for the first time since high school he dared to make a plan. He told me that he had already spoken to a contractor, with whom he played pick-up soccer every Sunday, about hiring him for a drafting position. As a computer-assisted design major in the engineering department at his college, he would be able to directly apply his education to his job. He would also be able to work inside.

DISCUSSION AND CONCLUSION: PATHWAYS OF INCORPORATION

Luz and Eduardo had very similar high school experiences. Their parents both pushed them toward college, but had little knowledge of how to guide them through the process themselves. Luckily they both had ties to LAC and the active support of close mentors in the form of involved teachers and

coaches to help them with the application process. In the case of Eduardo, his connections to his soccer coach helped him respond to policy shifts that derailed his initial college plans. Both Luz and Eduardo excelled in high school and college academically, but Luz faced none of the uncertainty that Eduardo faced. Luz knew that her funding and her place in college were secure, and she knew that she would be able to plan a career path after college. Eduardo, on the other hand, battled emotional stress induced by his immigration status and only began to plan both for and beyond graduation upon the announcement of DACA. Eduardo's stresses about funding for school and eventual employment were echoed by other undocumented immigrants in similar positions.

Incorporation and membership were elusive concepts for the undocumented youths in this study. Although they all adapted to the best of their abilities out of necessity, most lacked a sense of security or membership. When I asked each of them if they considered themselves American, identified with their country of origin, or identified as both or neither, most answered neither, while a few latched onto hyphenated labels of Mexican- or Guatemalan-American. One said he identified himself as a "global citizen." They all admitted that they incorporated elements of both countries into their daily routines and personalities, but most felt decidedly without a national identity.

All of the undocumented youths in this study had grown up in a very nurturing small school environment, and they could all name at least one very close mentor whom they trusted. These "very significant others" (Portes and Fernández-Kelly 2008) often took on very active roles for the students in this community, offering up their homes to them and essentially serving as alternate parents to youths in need. As the youths aged into early adulthood, however, they felt less inclined to approach these mentors and instead felt it was their responsibility to solve their own problems. Aging out of educational institutions, some undocumented young adults began to isolate themselves from their former networks of support and instead found meaning and purpose through connections with other undocumented friends or newly formed families.

Having been denied entry into community college, several undocumented youths gave up on their dreams of obtaining higher education, at least in the United States. Two had children well before they had any plans to do so and devoted themselves to their new families, while largely isolating themselves from their former classmates and friends. They expressed profound love for their children, but also admitted to the difficulties of delaying or giving up on their educational and professional goals.

Some youths who saw community colleges shut their doors to them or four-year college scholarships slip away from them remained determined to

finish their degrees slowly while they delayed having to come to terms with their identities as undocumented immigrant adults. Others came to accept their status and found ways to work under false documents in jobs that gave them a sense of normalcy and accomplishment. They all struggled with the transition to adulthood, as it in many ways signaled a change from a life of membership as an insider within a school and community to a life as an outsider without a national identity or place of membership. Their experiences echoed the experiences of their urban counterparts who had "learned to be illegal" during the transition to adulthood (Gonzales 2011). Emerging out of a nurturing, small-town school and community, however, the transition to an "illegal" identity was arguably even more jarring for these small-town youths.

The passage of DACA offered undocumented young adults a glimpse at a pathway to incorporation. This pathway seemed particularly accessible to the young adults who had strived to maintain the lives that they had planned out as teenagers with the help of teachers, coaches, and community mentors. Growing up in a small town was incredibly beneficial for many of the youths, who had managed, against the odds, to make the leap from high school to college. Others, however, had given up on school and were therefore in worse positions to take advantage of DACA to augment their human capital. For these youths, the policy might have come too late, at least in their eyes, to place them on pathways of upward mobility.

Despite receiving considerable support and guidance from teachers, many undocumented and noncitizen youths became discouraged once they realized the restrictions facing them after high school graduation. Without access to federal financial aid or public scholarships, undocumented youths began to doubt the feasibility of college access. Even after President Obama announced the policy of deferred action, undocumented youths remained skeptical. As one nineteen-year-old college student explained:

> Well, it would have been even better if we could get in-state tuition. It's extremely hard for me to get funding for my second year because LAC only gave us $7,000 for the whole year. Unless I get more money, then I don't know if I'm going to be coming back. (Krisaly, age nineteen)

Krisaly had earned a partial scholarship to a private college, but the out-of-state tuition made it very difficult for her to continue her education even with a matching scholarship from LAC. Although she was quick to apply for DACA, she remained notably guarded in her enthusiasm for the policy. It did not help her to secure a scholarship, and she was financially unable to continue at the four-year college where she had started. At the time of

writing, she was working and hoping to resume classes at a community college in the fall.

Even students who found ways to surmount the considerable financial obstacles had to confront constantly shifting policies, which intermittently barred or allowed their entrance into community college. As of 2013 undocumented students were allowed entrance into community colleges and universities at out-of-state rates, but proposals to close the academic doors to these students were introduced in the North Carolina General Assembly in 2011 and 2013, and had passed in other southern states. Policies restricting educational opportunities for undocumented youths categorized them as outsiders in the states that they consider the only homes they have ever known. Even with DACA status, financial barriers to college remained in place, and driver's licenses reminded youths of their "unlawful status." Although DACA was certainly a step toward inclusion, the policy placed the previously undocumented youths in "liminally legal" statuses wherein many of the resources provided to citizen youths and young adults remained difficult to access.

Prior to the passage of DACA, imagining a life beyond college was nearly impossible for undocumented youths, who witnessed state and local policies becoming increasingly hostile, while federal policy remained inert. The passage of the deferred action policy marked a reversal in the trends that had become so familiar to the young adults in this study. They celebrated the policy with cautious optimism, but were hesitant to put too much faith in a policy that they felt could be overturned as suddenly as it had been implemented. They also voiced their frustration that North Carolina state policy did not respond to DACA by offering in-state tuition. Without the financial benefits of in-state tuition, the educational benefits of deferred action status remained limited.

As the youths aged through the secondary school system, they became more aware of the policies restricting their opportunities beyond high school. Many undocumented youths lost hope, and many more expressed extreme frustration at the crippling impacts of their documentation status. Going through the small and supportive school system in Allen Creek offered these youths a feeling of membership and security as they grew up. Confronting increasingly hostile local and state immigration policies, however, undocumented and noncitizen youths began to experience feelings of exclusion, depression, and crippling uncertainty as they traversed the early stages of adulthood. For many, the passage of DACA was a tenuous step toward a feeling of incorporation and membership. Without a more permanent federal immigration reform, however, many of the undocumented young adults in this study continued to feel at least partially excluded and vulnerable. With the announcement in 2013 of an anticipated bipartisan

immigration reform, the youths were hopeful that their opportunities would continue to expand. They knew, however, that they would remain in liminally legal positions for many years to come as they navigated the journey to (hopefully) eventual citizenship.

NOTES

1. The Development, Relief, and Education for Alien Minors (DREAM) Act, a bill to allow conditional legal residency for youths and young adults meeting various educational, moral, and residency requirements, was first proposed by Senators Durbin and Hatch in 2001. Twelve years after its initial introduction, it still had not passed.

2. *Plyler v. Doe,* quoting from 458 F. Supp. 569, 577 (E.D. Tex 1982).

3. All proper names of towns and individuals are pseudonyms.

4. An Act Prohibiting Illegal Aliens (2013). A version of this bill, NC HB 11, was also introduced in January 2011.

5. See Brown (2010) and Yablon-Zug and Holley-Walker (2009). Although North Carolina, Alabama, and Virginia have all had policies restricting admission to institutions of higher education for undocumented students, South Carolina and Georgia are the only states to have passed legislation to legally bar undocumented students from attendance.

6. AVID is an educational program designed to propel students in the academic middle toward four-year college. For more information on the program, which is available at schools in forty-five states, see www.avid.org.

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11

Factors That Impact the Academic Success and Civic Engagement of Undocumented College Students

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Undocumented students dress and speak English in ways that make them largely indistinguishable from their U.S.-born peers. Since they do not conform to social assumptions about undocumented immigrants, they are often able to avoid questions about their legal status until they reach early adulthood, when they first begin to confront various limitations caused by their legal status. The challenges are particularly salient for those who want to pursue higher education. What does it mean for undocumented youths to grow up acculturating to the norms of a country that eventually puts legal limitations on their potential? How do families, schools, and community institutions mediate the effects of the law? In our previous work we examined the academic achievement, civic engagement, and higher education access of undocumented college students (Perez 2009, 2012; Perez and Cortes 2011; Perez et al. 2009, 2010). We found that they demonstrate high levels of achievement, motivation, resilience, and civic engagement. They contribute in a variety of ways to the civic vitality of their communities and school campuses. Undocumented students are both supported and constrained by educational institutions, individual educators, and nonprofit community-based organizations. Some faculty and staff are very helpful and supportive, whereas others limit or prevent educational access.

In this chapter we address the following questions: What is the context of higher education for undocumented students? What motivates these marginalized young adults to excel academically and become civically engaged in their schools and communities? What are the implications of investing time and resources to nurture their talents, only to have them reach early adulthood with virtually no possibilities to fully realize their potential, become fully integrated into American society, and contribute to its civic and economic vitality?

Over the last thirty years ineffective immigration policies as well as economic factors have led to an increase in the undocumented population in the United States, to approximately 11.2 million in 2011 (Chavez 1998; Gonzalez and Fernandez 2003). The undocumented population includes approximately 3.2 million children and young adults under the age of twenty-four who were brought to the U.S. by their parents when they were very young, often before schooling age (Hoefer, Rytina, and Baker 2009). Beginning in 1975, various school districts across the country tried to bar undocumented children from attending public schools. In 1982 the U.S. Supreme Court ruled in the case of *Plyler v. Doe* that undocumented children must be provided access to a public education. Presently, however, court-mandated equal access to education ends for approximately 65,000 to 80,000 undocumented students every year when they graduate from high school (Fortuny, Capps, and Passel 2007).

About three-quarters of the undocumented immigrant population are from Latin America, and more than half are from Mexico. Other significant sources of undocumented immigrants include Central and South America and Asia (Passel and Cohn 2011). Most undocumented immigrants have the lowest levels of educational attainment among the foreign-born, are often confined to the lowest end of the socioeconomic spectrum, and face additional struggles with institutional and socioeconomic barriers (De Genova 2004; Gandara and Contreras 2009).

ACCESS TO HIGHER EDUCATION

Because they were raised in the United States during their formative years, undocumented students view themselves as Americans (Perez 2009). Most know no other culture other than that of the United States, as their ties with their native countries were severed long ago. Students often do not even become aware of their undocumented status until their final years of high school. Upon graduating, pursuing higher education becomes a difficult endeavor. Under current law they are not eligible to receive state or federal financial aid to pursue higher education. In most states undocumented high

school graduates are required to pay higher international student tuition rates, despite having received all their schooling in the U.S. As a result of these and other barriers, undocumented students are far less likely than their native-born peers to graduate from high school or go on to college (Passel and Cohn 2009).

The greatest challenge in the pursuit of higher education for undocumented students is the limited access to financial support to pay for it (Chavez, Soriano, and Oliverez 2007; Contreras 2009). They are not eligible for federal financial aid or government-subsidized student loans and can only apply for a few private scholarships that do not require legal resident status (Olivas 1995, 2004). Most have to pay their own way, but in order to do so they have to take on extra jobs and work long hours, leaving little time for studying or forcing them to take time off from school to save money (Hernandez et al. 2010).

To address the lack of access to higher education for a growing number of undocumented high school graduates, starting in 2001 Texas, followed by California, Illinois, Kansas, New Mexico, Nebraska, New York, Oklahoma, Utah, Washington, Wisconsin, Maryland, Connecticut, Colorado, Oregon, Minnesota, and New Jersey, passed laws that allow undocumented students to pay in-state tuition rates at public colleges and universities (Batalova and McHugh 2010). Texas, New Mexico, California, Illinois, and Minnesota also make students eligible for various grants under their state financial aid programs. In-state tuition laws have a significant positive impact on whether undocumented students enroll in a postsecondary institution. They are more likely to enroll in college if they reside in a state that offers in-state tuition (Flores 2010).

Institutional Contexts

As undocumented students become more represented on college campuses, there is a growing concern among higher education practitioners about their responses to the needs of these students, who are less likely to know the process of applying to college due to their lack of familiarity with the U.S. educational system (Gildersleeve and Ranero 2010; Jauregui, Slate and Brown 2008). Studies suggest that faculty and staff often hold prejudiced views about undocumented students (Jauregui and Slate 2009; Perez and Cortes 2011). In states with in-state tuition policies, higher education staff who disagree with the policy refuse to help students, while others are often unaware of the law (Contreras 2009). Administrative procedures often stigmatize students and further alienate them. As a result, many students end up relying on their peer networks for information on how to navigate the college process. Those lucky enough to have friends with the right information are able to persevere,

whereas others get misinformation or lack enough information to continue (Enriquez 2011; Pérez Huber and Malagon 2007).

As the number of undocumented students enrolled in public colleges and universities has increased over the years, they have begun to develop their own support networks to fund-raise, advocate for students' rights, and increase their access to resources (Herrera and Chen 2010). In addition, private colleges, foundations, and other nonprofit organizations have greatly reduced students' financial concerns through scholarships and partial or full tuition assistance. The schools that provide full-tuition assistance include most of the Ivy League schools and many of the most selective and prestigious liberal arts colleges in the nation. On the one hand, through their policies these schools exhibit an exemplary commitment to undocumented students by recognizing and nurturing their talents. On the other hand, because of concerns about negative publicity or backlash from conservative alumni, their "don't ask, don't tell" approach to helping students misses the opportunity to inspire similar institutions to follow their example, and the general public fails to realize the widespread support for undocumented students.

Previous studies suggest that community colleges play a key role for undocumented students (Dozier 2001; Perez and Cortes 2011). Lower tuition costs facilitate enrollment. For a significant number of students, however, attending community college is not their first choice. Many are initially admitted to top four-year schools, but are forced to decline due to financial constraints. Despite the promise of community colleges as the gateway to higher education for undocumented students, those who enroll in them often encounter academic and emotional challenges that frequently go unaddressed (Gildersleeve, Rumann, and Mondragón 2010; Hernandez et al. 2010). Whereas some are high academic achievers and more motivated to succeed than students who were U.S. citizens, others struggle academically. Undocumented students also arrive at the community college with varying academic preparation and differing levels of English proficiency (Jauregui, Slate, and Brown 2008). Fearful undocumented students unwilling to self-disclose their status create a challenge for college staff in assisting them (Perez and Cortes 2011). Some students benefit greatly from devoted educators who go above and beyond their official roles to support and advocate for students. Unfortunately, educational success for undocumented students is often at the mercy of chance and circumstance (Enriquez 2011). Even after completing their general requirements, some students still cannot afford to transfer to a four-year school.

Academic Success and Resilience

In recent years several studies have chronicled the daunting odds overcome by undocumented students who enter and graduate from college

(De Leon 2005; Munoz 2008; Perez 2009, 2012). Compared with documented adolescents, undocumented youths are at greater risk of anxiety and depressive symptoms (Potochnick and Perreira 2010). Emotional concerns of undocumented students include fear of deportation, loneliness, and depression. They are often reluctant to develop close, emotional relationships with others for fear of their undocumented status being discovered (De Leon 2005; Dozier 1993). They also are more likely to grow up in neighborhoods where they regularly experience or witness incidents of violence and to attend low-performing and poorly funded schools with extremely low college-going rates (Abrego 2006; Oliverez 2006).

Despite various risk factors, undocumented students who have high levels of personal and environmental protective factors such as supportive parents, friends, and participation in school activities report higher levels of academic success than students with similar risk factors but lower levels of personal and environmental resources (Perez 2009; Perez et al. 2009). Teachers, counselors, and other educators are important sources of information and guidance for undocumented students who grow up in low socioeconomic conditions, single-parent households, or with parents who speak little or no English and have low levels of education (Diaz-Strong and Meiners 2007). Interventions come in a variety of forms, such as recommending students for the honors track or encouraging them to apply to highly selective universities that provide full scholarships (Gonzalez et al. 2003). Relationships with school counselors and teachers can also be a source of negative treatment. Educators, particularly school counselors, often act as gatekeepers by questioning their academic abilities and/or refusing to place them in academically rigorous courses (Gonzales 2010).

Support networks help college-going undocumented students navigate the process of higher education. Support from faculty and staff plays a key role in maintaining high levels of optimism and perseverance (Munoz 2008; Perez and Cortes 2011). Getting involved on campus in extracurricular activities gives them a sense of belonging (Rogers et al. 2008). In spite of their parents' limited education and familiarity with the U.S. educational system, undocumented college students often report that their parents' hard work and sacrifices motivate them to pursue higher education (Perez 2012). Furthermore, although students are often frustrated by the numerous restrictions they encounter due to their undocumented status, several studies note that many college students dedicate their efforts to mentor or help other undocumented students and/or become involved in activism and develop a sense of empowerment (Morales, Herrera and Murry 2000; Perez 2010). Some colleges have supportive student groups for undocumented students that provide in-depth information about how to navigate through college, fund-raise, and raise awareness for other students on campus (Chavez, Soriano, and Oliverez 2007; Herrera and Chen 2010).

Although there is a growing body of research on undocumented student achievement among those in higher education, we know virtually nothing about most undocumented young adults, the estimated 1.6 million between the ages of eighteen and twenty-four who either did not graduate from high school or did not pursue higher education after earning a high school diploma (Gonzales 2010). They represent 74 percent of all undocumented young adults in that age group (Passel and Cohn 2009). Although they account for the vast majority of undocumented young adults, they remain invisible because they are not academically successful, like the undocumented valedictorian accepted into Harvard with a full scholarship who is profiled in the news or the heroic undocumented activist who risks everything by engaging in an act of civil disobedience to compel politicians to support the Dream Act or to protest immigration policies. Another important reason that we don't know much about them is that they are a highly vulnerable population, very difficult to recruit for research studies. They are often absent from the places where researchers recruit participants, such as educational settings. Nevertheless, without comprehensive research studies that examine their educational experiences, our knowledge about educational access for undocumented youths will remain extremely limited.

UNDOCUMENTED STUDENT CIVIC ENGAGEMENT AND ACTIVISM

In our research we have found high levels of civic participation among undocumented college students, with 90 percent of participants reporting civic engagement in the form of providing social services, working for a cause/political activism, tutoring, and functionary work (Perez 2012; Perez et al. 2010). By virtue of the extensive civic development efforts of schools, both formal and informal, undocumented students adopt an American social and political identity, prompting them to act and behave according to the democratic and civic ideals they learn in schools. Their adherence to American democratic values has been nurtured for years by teachers, extracurricular activities, and peers.

Because they are legally always at risk of being deported, the law plays an explicit and palpable role in the lives of undocumented students. Undocumented student activists interpret the rights granted to them by in-state tuition laws as a formal recognition of their merits, giving them a sense of legitimacy to invoke the law to demand additional rights. Previous studies suggest that both pro- and anti-immigrant legislation can transform social identities and encourage political mobilization (Abrego 2008; Seif 2004; S.I.N. Collective 2007). Laws like California's AB 540 and the proposed Dream Act have

provided student activists with new and nonstigmatized social labels, since the terms "illegal" and "undocumented" conflict with their perceptions of themselves as upstanding and productive members of society. After the passage of AB 540, undocumented students in California began to refer to themselves as "AB 540 students." Most recently, students across the country have adopted the label "DREAMers." These new labels and political identities help students not only conceal their stigmatized status but also reinforce their merits as students through their activism. Under these new labels, students organize, recruit others, and share resources. Unintentionally, AB540 and the DREAM Act have shaped the political identities of undocumented student activists. To them, these laws not only represent access to higher education and legal status, but they are also a formal recognition of their earned belonging in society and signal support for their endeavors (Abrego 2008; Contreras 2009; Diaz-Strong and Meiners 2007; Drachman 2006; Seif 2004; S.I.N. Collective 2007).

Through participation in school-based extracurricular activities, civically engaged undocumented youths develop important organizational skills and an awareness of community issues. For many the transition to postsecondary education is linked to a growing politicization. Unable to secure financial aid for school and uncertain about their futures, they also turn to immigrant rights activities to advocate for themselves and their families (Perez et al. 2010; Rogers et al. 2008). In efforts to claim rights and a political voice, undocumented student activists speak at press conferences; organize petitions; send letters to elected officials with their personal stories; testify in favor of in-state tuition laws before legislative committees; and stage public actions such as fasting, vigils, and civil disobedience that have received broad media coverage (Abrego 2008; Gonzales 2007; Seif 2004; S.I.N. Collective 2007). Despite the dangers involved in speaking out publicly, many students have become frustrated by the limitations of their status and find strength and courage in numbers (Abrego 2008; Gonzales 2008; Perez 2012; Seif 2004). As a result, there are growing numbers of identified undocumented student groups across the U.S. The student organizations meet with college chancellors, provosts, deans, scholarship providers, legislators, community leaders, community organizations, counselors, parents, and other students to increase awareness of policies like in-state tuition laws that help improve access to resources and opportunities (Rincon 2008; Seif 2004).

Social networking sites have nurtured the growth of these student activist groups and have become a powerful tool for undocumented youth activism. Over the last few years, social media have facilitated undocumented student efforts to affect higher education and immigration policy by contacting legislators, mobilizing, and staging public actions such as fasting and vigils, which have received broad media coverage.

What can be expected in the future for undocumented youths who demonstrate high levels of civic engagement as young adults, if they were to become legalized? Research consistently shows that young adults who are civically involved continue to be so as adults (Fendrich 1993; Hanks and Eckland 1978; McAdam 1988; Verba, Schlozman, and Brady 1995). Undocumented student activists will most likely continue to assume leadership positions in their community and remain civically active throughout their lives (Hart et al. 2007; Ladewig and Thomas 1987; Youniss and Yates 1997). The extent of that involvement and the long-term civic benefit to American society, however, remain uncertain as long as their legal status remains so. These potential citizens linger in the shadows, with few prospects to fully realize their potential as civic leaders. Recent studies highlight the wide array of civic participation of undocumented students and challenge simplistic characterizations of them as "lawbreakers" by demonstrating the various ways they make important contributions to civic life (Gonzales 2008; Perez 2012).

Despite the lack of legal status of undocumented students and college graduates, some progress has been made. In many ways 2012 was a landmark year for undocumented students. It was the thirtieth anniversary of *Plyler v. Doe,* the Supreme Court decision that to this day protects access to K–12 education for undocumented children. In 2012 California also implemented the California Dream Act, the tuition assistance bill that, along with the in-state tuition law known as AB 540, greatly increases access to higher education for undocumented students in California. The passage of the bill has generated momentum in other states to pass their own tuition-assistance bills. As of 2012, seventeen states had passed in-state tuition laws. Among these, a total of five have also passed tuition assistance laws. Although there have been many legal challenges and efforts to repeal these laws, they have only been successful in two instances: the rescinding of tuition assistance in Oklahoma and the repeal of Wisconsin's in-state tuition law.

The year 2012 witnessed undocumented student activists becoming a political force in the national discourse about immigration. Their efforts led to the signing of the DACA (Deferred Action for Childhood Arrivals) policy by President Barack Obama in June 2012. Although it is not the Dream Act or comprehensive immigration legislation, this new federal policy potentially stands to benefit almost two million undocumented students. These are remarkable developments that further highlight the need to expand our understanding of how undocumented status affects not only higher education access and youth activism, but also human development, achievement motivation, and psychological well-being. Even after the Dream Act and/or comprehensive immigration reform are passed into law, the lasting effects of undocumented status on students and families will need to be studied.

FUTURE DIRECTIONS

DACA will undoubtedly impact the undocumented student experience in significant ways. Although an estimated two million young adults may be eligible for it, many will not be able to benefit because of past legal troubles that disqualify them, or will not apply for fear of deportation or lack of financial resources. Already there are efforts under way to provide financial assistance in the form of grants or scholarships to help students with the application fees, but the financial need is so great that many may be left out.

For institutions of higher education, DACA may increase the need for campus support for undocumented students. Although enrollments might rise, particularly at the community colleges, those eligible for DACA still do not qualify for federal financial aid or student loans, a key resource for low-income students. The challenging school-work balance may remain the same. Students may still have to postpone higher education to help support their families financially. Schools may need to make decisions about how they are going to allocate campus resources for undocumented students between those with DACA and those without. DACA may not eliminate a student's sense of alienation on campus.

In the past few years there has been increased interest in children of immigrants who are either U.S.-born or legal residents but whose parents or other family members are undocumented (Suárez-Orozco et al. 2011). Even though they number about 4.5 million, we know virtually nothing about students in mixed-status families and how that status affects college persistence (Passel and Cohn 2009). We need to expand the body of research that examines the relationship between undocumented status and higher education access and broaden these efforts to include all children and youths who grow up in families in which at least one family member is undocumented.

Recent studies suggest that above and beyond the relative disadvantage of undocumented parents due to lower levels of education, a range of everyday experiences—from interactions with authorities to characteristics of their social networks and work conditions—excludes these parents from obtaining resources to help their children's development (Yoshikawa, Godfrey and Rivera 2008; Yoshikawa and Kalil 2011). The threat of deportation results in lower levels of enrollment of citizen children in programs they are eligible for, including child-care subsidies, public preschool, and food stamps, as well as lowered interactions and engagement with public institutions such as schools. Without recourse to unions or to public safeguards, their work conditions are not only poor but chronic, with harmful influences on their children's development through increased economic hardship and psychological distress (Yoshikawa 2011). Among second-generation Latino children, those with

undocumented parents fare worse on emergent reading and math skills assessments at school entry than those from groups with lower proportions of undocumented immigrants. Moreover, such disparities are evident as early as twenty-four months of age (Yoshikawa, Godfrey, and Rivera 2008). Children of undocumented immigrants average eleven years of education, compared with about thirteen years for those whose parents are legal residents. But once undocumented immigrants find ways to adjust their status, their children's educational levels rise substantially (Bean et al. 2011). To understand the relationship between undocumented status and access to higher education, it is not enough to study undocumented students in educational settings; our analyses must include undocumented youths pushed out by the educational system as well as undocumented families.

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Debating "Medical Citizenship": Policies Shaping Undocumented Immigrants' Learned Avoidance of the U.S. Health Care System

Sarah Horton

Elisabeta, an immigrant from Guanajuato, Mexico, has been in the United States since 1980. She is married, with five U.S.-born children. Although Emergency Medicaid—a program that covers the labor, deliveries, and acute care of undocumented immigrants—has since paid for four of her five births, she and her husband made sure to pay for the birth of their first child out of pocket. "My husband still has a bill of $7,000, but the boy is now 18. He says he could have bought a car by now," she says with a soft chuckle. She would have refused the state's payment for the birth of her eldest daughter as well, but the baby infant had to be kept for nine days in the hospital on a respirator due to a side effect of the medication Elisabeta had been given to induce labor. "They gave me a medicine to provoke contractions and they said it affected her lungs. So she couldn't breathe and they said it was their fault. So I got MediCal for the birth and the time she was in the hospital. But nothing more than that," she says firmly.

It was not only Elisabeta and her husband who avoided receiving publicly funded health care; the couple had only dared to enroll her U.S.-born children in Medicaid in 2001, when her eldest was already fourteen years old. The boy, she remembers, had had frequent ear infections and sore throats as a child. Elisabeta would pay $50 for an appointment at the community health

clinic and $100 for the antibiotics each time he got sick. Lab exams for strep throat were an additional $100. "We had to pay for everything in payments. When they got sick, sometimes we'd pay for the doctor's appointment. Other times we'd just pay for the medicines and not get the appointment," she says.

Elisabeta's citizen children weren't denied Medicaid due to federal income requirements; she and her husband earn about $18,000 a year working in the fields in California's Central Valley. Rather, she and her husband were afraid that accepting Medicaid for their U.S.-born children would label Elisabeta a "public charge" and interfere with her ability to adjust her legal status. As a result, they had waited to utilize Medicaid until Elisabeta had become a legal permanent resident, in 2001. Elisabeta's caution, while perhaps extreme, was well founded. Until the federal government issued a clarification of its "public charge" policy in 1999, immigrants who had relied upon federally funded benefits for their births or for their citizen children were sometimes prevented from becoming legal permanent residents due to their perceived likelihood of becoming "wards of the state" (Fix and Zimmerman 1999; Park et al. 2000).

Elisabeta's story of avoidance of hospitals—and fear of relying on public health care benefits—presents a different perspective on the relationship between undocumented immigrants and the U.S. health care system than that usually shown by the U.S. media. It shows that federal and state policies have taught undocumented immigrants like Elisabeta that they should avoid the U.S. health care system as much as possible, for complex reasons that include the fear that it will embroil them in trouble with immigration authorities. And as in Elisabeta's case, the perverse incentives that federal and state policies have established for undocumented immigrants to underutilize health care leave collateral damage, affecting even their citizen children. The "hidden costs" of labor migrations like undocumented migrations to the United States (Schenker 2010) include the uncalculated and incalculable physical toll that disparities in health care take on undocumented immigrants, their families, and their offspring.

Anthropologists use the concept of "medical citizenship" to discuss the way that federal and state policies—and their interpretation by myriad actors—shape immigrants' perceptions of their rights and responsibilities related to health care. This chapter examines the relationship between undocumented immigrants and the U.S. health care system through the lens of "medical citizenship." First I examine the kinds of federal policies that affect access to care for undocumented immigrants and their children, including the objective and subjective barriers to care such policies create. I discuss the few sources of health care for undocumented immigrants that are available, given federal policies that increasingly prohibit all publicly funded discounted or free care to such immigrants other than emergency care. Then I consider the impact of

such policies on undocumented immigrants' health care-seeking behaviors, comparing the myths about undocumented immigrants' health care usage with the realities of their health care expenditures and patterns of utilization. I conclude with a discussion of policies that promise to improve the health of immigrant families by extending coverage at the local level.

UNDOCUMENTED IMMIGRANTS IN THE UNITED STATES: A STATISTICAL PORTRAIT

To understand the relevant features of undocumented immigrants' patterns of health utilization, we first need to review the relevant demographic features of the group. As of March 2011 there were 11.1 million undocumented immigrants living in the United States (Passel and Cohn 2012; Pew Hispanic Center 2013). They comprise nearly one third—28 percent—of the nation's foreign-born population (Passel and Cohn 2012, 9). The vast majority of undocumented immigrants in the United States—nearly 60%—are from Mexico (Taylor et al. 2011). Immigrants from Latin America comprise another 23 percent, with 11 percent from Central America, 7 percent from South America, and 4 percent from the Caribbean. Eleven percent are from Asia, with smaller regional concentrations from Europe, Africa, and the Middle East (Taylor et al. 2011; Passel and Cohn 2009).

An understanding of undocumented immigrants' demographic characteristics, family patterns, and labor participation helps explain relevant patterns of health care use. Undocumented immigrants tend to be much younger than legal immigrants and native-born citizens; the median age of undocumented immigrant adults in 2009 was more than a decade younger than of members of both categories (Passel and Taylor 2010). Because they are more likely than legal immigrants and citizens to be in their childbearing years, undocumented immigrants are more likely to be parents of children under age eighteen. In 2010 nearly half—46 percent—of undocumented immigrants were parents of minor children (Taylor et al. 2011). This means that a substantial proportion of immigrants in the United States live in a "mixed-status" family—a family in which at least one parent is undocumented and at least one child is a citizen. As of 2008 more than nine million people lived in mixed-status families, and 37 percent of all adult undocumented immigrants had at least one citizen child (Passel and Cohn 2009).

It should not be surprising, then, that although unauthorized immigrants comprise only slightly more than 4 percent of the adult population in the United States, their children are overrepresented among children in the United States. Children of undocumented immigrants comprise 8 percent of the newborn population and 7 percent of the child population in the

United States (Passel and Taylor 2010, 1). A growing share of the children of undocumented immigrants—nearly four-fifths (79%) in 2009—were born in the United States, and therefore they are U.S. citizens. As of 2009 there were four million U.S.-born children who had undocumented parents (Passel and Taylor 2010). An additional 1.1 million children in families with undocumented parents were themselves undocumented (Taylor et al. 2011).

A final note, about undocumented immigrants' participation in the U.S. workforce, is in order. Because they are primarily labor migrants, undocumented immigrants are overrepresented in the nation's labor force; they comprise only 3.7 percent of the nation's population but 5.2 percent of its labor force (Passel and Cohn 2011). They are primarily concentrated in low-wage jobs and in contingent and informal work in which they lack formal contracts and are paid on a daily basis. Farmwork, groundskeeping and maintenance, construction work, and food preparation and serving all feature high percentages of undocumented immigrants (Passel and Cohn 2009). Adult undocumented immigrants are more likely to be poorly educated; 47 percent of undocumented adults between the ages of twenty-five and sixty-four lack a high school education. They are disproportionately poor and are more likely to stay poor despite their length of residence; the 2007 median household income for undocumented immigrants was $36,000, compared to a national median for U.S.-born citizens of $50,000. Finally, a fifth of adult undocumented immigrants and a third of the children of undocumented immigrants live in poverty, nearly double the poverty rate for U.S.-born adults and their children (Passel and Cohn 2009).

STATE AND FEDERAL POLICIES SHAPING HEALTH CARE ACCESS

Over the past decade anthropologists have discussed the ways that federal and state policies—as well as the myriad social service workers, medical professionals, and clerical workers who interpret such policies—help construct the "medical citizenship" of different groups of immigrants. The concept of "medical citizenship" refers to popular ideas of the "deservingness" of immigrants of health care benefits based on a variety of factors, drawing attention to the way that "citizenship" is not constructed solely by the state (Goldade 2009; Horton 2004; Nichter 2008, 183). In the case of undocumented immigrants, the concept highlights ongoing contention over whether such immigrants should be entitled to federal health care benefits, as well as the debate over the scope of the kinds of care that should be publicly provided to them. It also demonstrates that—as Elisabeta's case suggests—such policies themselves have the effect of instilling desired normative behaviors in

immigrants, effectively "teaching" immigrants their proper place in society (see Horton 2004). In the following discussion I show that a lack of definitive guidance at the federal level has led to conflicting and competing definitions of undocumented immigrants' "medical citizenship" at the local and state levels. Then in the following main section I examine the effects of such policies on undocumented immigrants' own health care-seeking behaviors.

Concerns about undocumented immigrants' perceived overreliance on federally funded public benefits such as Medicaid distort the realities of the policy climate. Over the past three decades federal legislation has excluded undocumented immigrants from all publicly funded health care apart from emergency care. Since the mid-1990s federal and state policies have turned to restricting health care for the undocumented as a tool of immigration control, attempting to reduce the potential for federal benefits to serve as a "magnet" attracting undocumented immigration. In fact, Newton and Adams (2009) characterize the contemporary federal policy climate toward undocumented immigrants' use of health care as so "decidedly hostile" that it allows states and localities "little leeway" to remedy immigrants' exclusion. In the following section I examine how such federal restrictions on care lead to confusion at the state and local levels and create a fragmented and variable health care safety net.

Uncertainty surrounds the implications of recent federal legislation for the provision of health care to the undocumented at the local level, leading to variable policies among county safety net hospitals (Kullgren 2003). Due to lack of definitive guidance, state officials and county eligibility workers sometimes misinterpret new regulations and apply them in overly restrictive ways (see Fix and Zimmerman 1999). Finally, local, state, and federal officials continue to spar over the implications of recent legislation as well as the scope of services that should be covered under emergency care. The net result of the uneven application of such policies is an increasingly fragmented health care safety net for the undocumented and a state of "legal and administrative uncertainty" for those who continue to care for them (Kullgren 2003, 1631).

Currently, undocumented immigrants are eligible for three main sources of free or discounted health care in the United States: 1) Emergency Medicaid, a joint federal- and state-financed program that covers care for acute conditions; 2) means-tested discounted care through local safety net clinics; and 3) means-tested discounted care through county indigent health insurance programs at safety net hospitals (though this is uneven). In 1996 the federal government passed two major legislative changes to attempt to reduce immigrants' enrollment in publicly funded health programs: the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).

This next section examines PRWORA's and IIRIRA's effects on the provision of and use of public health care benefits at the state and local levels, showing that they sparked continuing debates over defining undocumented immigrants' "medical citizenship."

Using Health Care as a Tool for Immigration Control: PRWORA and IIRIRA

Although it is often referred to as a "welfare reform," PRWORA contained such specific provisions to limit health care for undocumented immigrants that it was initially conceptualized as an immigration policy (Fairchild 2004). It explicitly positions the restriction of access to health care as a tool of immigration control. The act reads: "It is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits" (1996). It should be noted, however, that restricting public benefits is unlikely to reduce undocumented migrant flows. Undocumented immigrants are primarily labor migrants; they do not make decisions about desirable destinations based on the package of public benefits they provide but rather on social ties and the availability of jobs (Berk et al. 2000).

The act restricted immigrants' access to care in two main ways. First, in order to reduce the potential for health care and welfare benefits attracting undocumented immigrants, PRWORA imposed a five-year ban on legal permanent residents' receipt of federally funded public benefits such as Medicaid unless states passed overriding legislation. Second, it rendered undocumented immigrants ineligible for publicly funded health care benefits provided by state or local governments apart from emergency care, immunizations, or testing and treatment for communicable diseases (Kullgren 2003). It allowed states to enact legislation that "affirmatively provides for such eligibility," and many states indeed opted to do so in order to provide prenatal care for pregnant undocumented immigrants. However, PRWORA has led to great confusion surrounding the legality of county hospitals' provision of care to undocumented immigrants through their discounted programs for the medically indigent, traditionally a staple source of health care for low-income uninsured individuals in the United States.

Amid the lack of a comprehensive health insurance system in the United States and a fragmented health care safety net, county hospitals have long served as a safety net for the uninsured. In the twentieth century the county's obligation to its residents was guaranteed by state statutes; these statutes contained no mention of citizenship status (Hoffman 2009). In order to be eligible for discounted care provided by county hospitals, residents have to provide proof of county residency and proof of income eligibility. County hospitals

are funded through a variety of means: county property taxes, federal funding for "disproportionate share hospitals"—that is, hospitals that serve a disproportionate share of the uninsured—and philanthropic donations. PRWORA has generated great confusion about whether county hospitals are legally obligated to cease providing discounted health care to undocumented immigrants, as well as what repercussions such hospitals would face should they continue to do so. For example, in the wake of PRWORA, administrators at the Harris County Hospital District—which includes the city of Houston—sought guidance from Attorney General John Cornyn about whether the district violated PRWORA in continuing to offer discounted care to undocumented residents. Cornyn's legal opinion stated that the district's actions were indeed in violation of PRWORA and warned that it could face legal consequences and potentially forfeit federal funding (Kullgren 2003).

In the wake of PRWORA and Attorney General Cornyn's opinion, county hospitals have interpreted its injunction against using public funds for care to undocumented immigrants in different ways. Some county hospitals—including hospitals in San Diego, Albuquerque, and Houston—have redefined their mandate of serving the county's "residents" to exclude the undocumented. Thus undocumented residents who had long received discounted care through the largest public hospital in New Mexico soon found that they were being charged full price, often with half of a procedure charged up-front (Horton 2004). Hospitals in adjacent counties had divergent policies; for example, a public hospital in Fort Worth began denying discounted care to the unauthorized in 2005, while a neighboring safety net hospital in Dallas continues to provide such care (Preston 2006, A1). In Harris County, the local district attorney initiated a criminal investigation of the hospital district for violating PRWORA, and public hospitals in neighboring Nueces County opted to limit care to the undocumented rather than expose themselves to a similar lawsuit (Kullgren 2003). The net result of PRWORA and its variable interpretation, then, was to make a fragmented safety net for the undocumented even more disjointed.

Meanwhile, the passage of IIRIRA that same year led to confusion over whether the receipt of federally funded Medicaid benefits—whether by an undocumented immigrant or her citizen children—would prevent the immigrant from adjusting her legal status. IIRIRA strengthened the "public charge" provisions of immigration law—that is, the legal consequences of an undocumented immigrant's being deemed likely to become dependent on the federal government for support. IIRIRA imposed a legally binding requirement on immigrants' sponsors—that is, those who petition on behalf of a prospective immigrant—to financially support such immigrants until the latter had worked for ten years or became citizens. It also made such sponsors liable for repayment

of federally funded means-tested benefits that had been used during that time. Coinciding with growing publicity regarding the INS's efforts to make immigrants reentering the United States repay any Medicaid benefits they or their families had received, the provision was initially interpreted as precluding those who rely upon federally funded public benefits from reentering the country after a departure or from adjusting their legal status (Fix and Zimmerman 1999).

Since 1994 the Immigration and Naturalization Service and California Department of Health Service officials have made public charge determinations based solely on immigrants' use of means-tested health care benefits, including Medicaid (Park et al. 2000, 9) In addition, California's Port of Entry Detection Program—later disbanded as a result of a class action lawsuit—allowed INS officials to ask immigrants to repay the value of Medicaid benefits they had received or risk jeopardizing the adjustment of their legal status. It was only in 1999 that the federal government clarified that the receipt of noncash benefits—such as Medicaid and food stamps—would not make an undocumented immigrant a "public charge."

Policies such as IIRIRA appear to have led to an "overbroad application of the public charge provisions." For example, Los Angeles County experienced a 52 percent decline in approval of the applications of noncitizen-headed families for welfare and MediCal between January 1996 and January 1998, even though the eligibility rules remained consistent. The approval rate for applications by citizen-headed families remained the same (Fix and Zimmerman 1999, 6). Not only were IIRIRA's "public charge" provisions potentially misapplied, but researchers credit both IIRIRA and PRWORA for a "chilling" of the use of public assistance among mixed-status families despite their eligibility (Fix and Zimmerman 1999; Hagan et al. 2003; Park et al. 2000). As Park and colleagues state, these policies—along with the Port of Entry Detection Program that accompanied them—sent a clear message to immigrants that "using MediCal is dangerous" (2000, 11). Thus changes in federal legislation in the 1990s have created both objective and subjective barriers to care for undocumented immigrants, amplifying their uncertainty about the repercussions of seeking necessary care.

Emergency Medicaid

We have seen that PRWORA and IIRIRA left undocumented immigrants and health care providers uncertain about the scope of federal policies. It should be noted that even the question of what care should be covered through Emergency Medicaid is subject to debate. Emergency Medicaid services are available only to certain classes of Medicaid-eligible populations, who are excluded from regular Medicaid due to their legal status. Such Medicaid-eligible populations

include children, pregnant women, families with dependent children, and elderly or disabled people who meet specific income and residency requirements. Emergency Medicaid only covers acute care in the hospital, yet the definition of "emergency treatment" and the scope of services provided by Medicaid are sometimes the subject of dispute among state and federal officials.

The federal statute that defines an emergency under Medicaid is broad, leaving to state discretion what services should be covered by Emergency Medicaid. While some states have defined as an "emergency" a condition for which a patient is unable to schedule an appointment, others have defined it more broadly as any condition that could become an emergency or lead to death without treatment (Kershaw 2007). Thus whereas New York State officials have agreed that hospitals may cover chemotherapy and radiation treatment for undocumented cancer patients through Emergency Medicaid, other states—such as California and North Carolina—use Emergency Medicaid to provide outpatient dialysis to undocumented patients (Gusmano 2012). However, in 1997 federal officials informed New York State that they would not provide matching funds for cancer treatment for undocumented immigrants, redefining such care as not an "emergency" (Kershaw 2007).

The majority of Emergency Medicaid funds are spent on prenatal care for undocumented women and their labor and deliveries rather than on cancer treatment and dialysis. Moreover, Emergency Medicaid itself comprises a relatively small proportion of state Medicaid budgets. For example, a recent study of emergency Medicaid expenditures in North Carolina between 2001 and 2004 found that over 80 percent of the program's health care expenditures were related to childbirth. Of the remaining amount, about one-third was spent on acute care for injuries. While program expenses increased by 28 percent over that period, they still accounted for less than 1 percent of the state's total Medicaid expenditures (DuBard and Massing 2007).

In short, the politicization of undocumented immigrants' health care access makes access variable and contradictory across states and localities. These varying degrees of access reflect divergent definitions of such immigrants' "medical citizenship," in turn instilling in immigrants particular normative health behaviors. As we turn from health care policies to patterns of insurance, expenditures, and utilization, the impact of such policies will become clear.

UNDOCUMENTED IMMIGRANT HEALTH CARE ACCESS: METHODOLOGICAL AND ETHICAL ISSUES

A number of methodological and ethical difficulties cloud the effort to provide a clear picture of undocumented immigrants' health care access and utilization. Major epidemiological and demographic surveys do not inquire

directly about undocumented status, making measurements of the population imprecise. Because of its methods of ethnographic immersion and long-term fieldwork in a particular community, ethnography enables a rapport with interviewees that allows for the discussion of more sensitive topics and therefore a greater validity of measurement (Horton and Stewart 2012). The drawback of ethnographic studies is that participants are typically recruited through the snowball method, which prevents a representative sample and makes generalization difficult. Studies of marginal populations can guarantee the confidentiality of interviewees by obtaining a Certificate of Confidentiality from the National Institutes of Health or the Department of Health and Human Services, preventing the forcible disclosure of identities in the case of subpoena (see Carter-Pokras and Zambrana 2006; Heyman, Núñez, and Talavera 2009). Nevertheless, there is an inevitable tension in studies of marginal populations between making a deliberately "hidden" population more visible and "giving voice" to the particular health difficulties members face (Núñez and Heyman 2007).

A brief examination of the way epidemiological studies ascertain legal status is instructive. Because major epidemiological surveys do not inquire directly about undocumented status, their measurements of legal status are often not precise. Instead, "foreign-born" status and "noncitizen" status are often used as a proxy for lack of legal status. For example, the Los Angeles Family and Neighborhood Survey defines undocumented status as a residual category left by successive negative answers to a series of more narrow questions. The survey asks respondents five questions about the following: U.S. citizenship, legal permanent residency, refugee status, nonimmigrant status (i.e., tourist, student or temporary work visas), and the validity of respondents' documents (Carter-Pokras and Zambrana 2006). A negative answer to all five questions identifies a respondent as "undocumented." Meanwhile, the California Health Interview Survey (CHIS) is less rigorous about determining undocumented status; it only contains one question on U.S. citizenship and one on legal permanent residency. As a result, studies using CHIS data sets classify as "undocumented" "all foreign-born individuals from Mexico who are not US citizens or green card holders," as the authors of one CHIS-based study concede (Vargas Bustamante et al. 2012). Meanwhile, nationally representative studies of medical expenditures typically link to data about nativity and citizenship status gathered from the National Health Interview Survey, allowing researchers to hazard even less fine-grained distinctions between the "native-born," "naturalized citizens," and "noncitizen immigrants" (Stimpson, Wilson, and Eschbach 2010).

Despite these limitations in measurement, a number of general patterns regarding undocumented immigrants' health care access emerge. I divide the

section on health care access into the following subsections: health insurance rates among the undocumented and U.S. citizens; health care expenditures among "noncitizens" and the "foreign-born" versus naturalized citizens and the U.S.-born; health care utilization rates among undocumented and documented Mexican immigrants; and implications for mixed-status families. Finally, given the mounting evidence that undocumented immigrants use less health care than their documented and citizen counterparts, I examine potential unmet health needs among this population.

Health Care Insurance, Expenditures, Utilization, and Unmet Health Needs

Health Insurance

There is a common perception that undocumented immigrants and their families—because of their high rates of poverty and their concentration in sectors of the economy that typically do not offer insurance benefits—tend to be overreliant on public insurance. Indeed, studies show that undocumented immigrants' rates of using private insurance are extremely low (Chavez, Flores, and Lopez-Garza 1992). In an analysis of the Los Angeles Family and Neighborhood Survey—based on a stratified random sample of sixty-five census tracts in Los Angeles County—Goldman, Smith, and Sood (2005) examined differences in uninsurance rates between native-born citizens and undocumented foreign-born residents. They found that only 20 percent of the undocumented residents had employer-based coverage, and virtually none purchased private insurance independently. Rates of uninsurance for the undocumented were as high as 68 percent, compared to 23 percent for naturalized citizens. Not surprisingly, Goldman and colleagues found that most of the disparities in insurance between the foreign-born and native-born could be explained by traditional socioeconomic factors such as education, assets, income, and industry of employment.

Yet more surprisingly, the authors found that even after controlling for such variables, a disparity of close to 16 percentage points in insurance rates for the undocumented remained unexplained. This "unexplained remainder" is mostly attributable to undocumented immigrants' disproportionate lack of access to public coverage (Emergency Medicaid) for which they were in fact eligible. Echoing the findings of previous research (Carrasquillo, Carrasquillo, and Shea 2000), the authors conclude that undocumented status itself works to discourage reliance on public programs for which such immigrants would otherwise be eligible. As they state: "The unexplained disparities in public insurance rates are especially important for the undocumented. Whether real

barriers to access . . . or perceived barriers by the immigrants themselves . . . is an area for more research" (Goldman, Smith, and Sood 2005, 1647).

Health Care Expenditures

A great deal of negative attention is directed toward undocumented immigrants' perceived overutilization of the health care system and generation of high and yet uncompensated public health care expenses. For over a decade, public hospitals along the U.S.-Mexico border have pled with the federal government for additional funds to compensate them for the costs of treating undocumented immigrants—costs that are increasingly not reimbursed by federal, local, or state sources. Because undocumented immigrants are believed to incur disproportionate health care charges and to use health care irresponsibly—as seen in the reported use of the emergency department (ED) as a source of routine care—some even blame such immigrants for the rising cost of health care in general.

Nevertheless, studies have repeatedly shown that undocumented immigrants use less health care than documented immigrants and native-born citizens, and that their health care expenses are consistently lower. One study of nationally representative data on medical expenditures in 1998, for example, found that per capita total health care expenditures for the foreign born were 55 percent lower than those for the U.S.-born (Mohanty et al. 2005). In its assessment of expenditures, this study included expenses for ED visits, office-based visits, hospital-based outpatient visits, inpatient visits, and prescription drugs. In order to capture the issue of "bad debt" and "free care"—or uncompensated care dispensed by private health care facilities that is not captured by the data set on expenditures—the authors performed a separate analysis of total *charges* as well. They found that including bad debt and free care in their analysis did not change their results, suggesting no relationship between a state's burden of uncompensated health care costs and its share of noncitizen immigrants.

The findings of consistently lower health care expenditures among foreign-born residents than among U.S. citizens have been replicated by other studies using recently updated versions of the same data set to more accurately capture undocumented status. For example, in an analysis of medical expenditures over the years 1999–2006, Stimpson, Wilson, and Eschbach found that average per capita health care expenditures for noncitizens were about 50 percent smaller than for U.S. natives each year (2010, 3). Even as medical expenditures increased among all groups over this time period due to health care inflation, health care spending among the native-born and naturalized citizens fast outpaced that of noncitizens—by more than 30 percent. Echoing the findings of previous researchers, Stimpson, Wilson,

and Eschbach conclude that noncitizens appear not to be "disproportionately contributing to high health care costs in the United States" (2010, 5).

Stimpson, Wilson, and Eschbach (2010) acknowledge that the lower health care expenditures among noncitizens may be a reflection of their exclusion from public health insurance programs such as Medicaid. To account for this possibility, they examined health care expenditures in northeastern states that have specifically included legal permanent immigrants in their Medicaid programs. They found that even when such immigrants had access to Medicaid, their average public per capita expenditures were still proportionally lower than those of naturalized citizens and U.S. natives. Therefore, noncitizens' disproportionately low health expenditures cannot be explained by their exclusion from public insurance alone; instead, other factors clearly depressed immigrants' utilization of the public health care system.

Health Care Utilization

The cited studies illustrate a consistent pattern of undocumented immigrants' underutilization of the health care system and disproportionately lower health care expenses than legal immigrants and citizens. How, then, do patterns of utilization of the health care system differ by legal status? Vargas Bustamante and colleagues (2012) analyzed the 2007 California Health Interview Survey (CHIS) to identify differences in health utilization among Mexican immigrants by legal status. They found that Mexican immigrants with legal documentation were more likely to report at least one doctor visit in the previous year (76%) than those without (56%). Documented immigrants were also significantly more likely to have a usual place of care (68%) than undocumented immigrants (47%). While the majority of these differences were accounted for by demographic factors and socioeconomic status, they found that even controlling for these differences left 12–13 percent of the disparity due to what they call "unobserved heterogeneity" (146). Thus like the studies of health care expenditures, studies of actual patterns of health utilization among undocumented immigrants demonstrate that their utilization does not covary precisely with rates of insurance, income, assets, and education levels. Instead, other factors—whether "real . . . or perceived barriers to access" (Goldman 2005, 1647)—clearly depress undocumented immigrants' health care utilization.

Health Care Utilization—Explaining the Unexplained Remainder

How do researchers explain this "unexplained remainder"? Epidemiological studies point to a variety of ways that "immigrant status" leads to fear and

anxiety, which itself depresses health utilization rates among undocumented immigrants. Berk and Schur (2001), for example, used representative in-person surveys of undocumented Latinos in three southwestern cities to examine the effect of the anti-immigrant climate in the mid-1990s on undocumented immigrants' patterns of health utilization. They found that 39 percent of undocumented adult immigrants expressed fear about receiving medical services because of their lack of legal status. Those immigrants who reported fear were also more likely to report their inability to acquire medical and dental care, prescription drugs, and eyeglasses. Similarly, Asch, Leake, and Gelberg (1994) conducted a survey of patients who sought care for active tuberculosis at clinics, at least 20 percent of whom lacked legal documents. Although only 6 percent of patients feared that seeking medical care would embroil them in trouble with immigration authorities, this group was almost four times as likely to delay seeking care for more than two months. Thus clearly a concern about immigrant status—and a fear of deportation—leads some undocumented immigrants to avoid the health care system.

While epidemiologists are able to capture observable patterns of health care behaviors, qualitative researchers are well-positioned to capture the subjective factors that shape health care utilization and avoidance. Concern about "immigrant status" may manifest itself in a variety of ways other than a fear of arrest and deportation due to presenting for care at a clinic. Undocumented immigrants in areas heavily patrolled by Immigration and Customs Enforcement roadblocks may fear arrest while traveling to access health care services (Hagan et al. 2003; Núñez and Heyman 2007). Moreover, undocumented immigrants who use medical services may also fear that being labeled a "public charge" will interfere with their ability to adjust their legal status—a fear that was particularly rampant after the passage of PRWORA and IIRIRA (Hagan et al. 2003; Park et al. 2000).

Additional qualitative studies identify not only specific fears about immigrant status, but also undocumented immigrants' perception of their low status in the social hierarchy as a reason for their "learned avoidance" of the health care system (Heyman, Núñez, and Talavera 2009, 13). In a study of fifty-two qualitative interviews with undocumented immigrants in El Paso County, Heyman, Núñez, and Talavera (2009) isolate barriers specific to undocumented status that affect immigrants' health care access. They find a variety of not only direct but indirect barriers, such as immigration law enforcement preventing travel to access care, concern about immigrant "deportability," and an internalized "low position in the social hierarchy." They underscore the way that undocumented immigrants' perceptions of their interactions with the health care system themselves *teach* such immigrants to avoid such institutions. Perceived disparate treatment is often interpreted "as a

form of immigration-based hierarchical treatment that discourages them from seeking further care," they argue (17). This perception of discrimination due to undocumented status appears to pose a particular barrier to preventive, diagnostic, and chronic care as opposed to emergency care (Heyman, Núñez, and Talavera 2009, 18).

Similarly, a study of the effects of an Albuquerque public hospital's reclassification of undocumented immigrants as "undeserving" of the discounted care provided the county indigent in the wake of PRWORA suggests similar ways that perceived discrimination on the basis of legal status teaches undocumented immigrants to avoid public hospitals. In the wake of PRWORA, hospital officials excluded undocumented immigrants from their discounted program for the county indigent, portraying such immigrants as a "drain" on public resources. Some undocumented Mexican immigrants responded by asserting a Honduran national origin, hoping to gain the legitimacy associated with refugees from Hurricane Mitch. Yet for the most part, undocumented immigrants began avoiding the hospital—previously one of their main sources of care—and staff reported a pattern of delayed care, leading to immigrants' development of more serious and expensive urgent conditions (Horton 2004).

Clearly, then, undocumented status poses a barrier to health care utilization that cannot be reduced to objective measurements of rates of insurance, income, education, and employment sector alone. Instead, as Elisabeta's case illustrates, undocumented status in and of itself teaches immigrants without legal status to avoid the health care system. Moreover, myriad factors associated with undocumented immigrants' legal status, immigrant status, and low socioeconomic status interact to create a "web of effects" (Heyman, Núñez, and Talavera 2009) that constrain access in tandem more powerfully than each factor acting alone.

Implications for Mixed-Status Families

One of the important implications of undocumented immigrants' learned avoidance of health care insurance and institutions is its effect on their children. As we have seen, most undocumented parents live in mixed-status families; nearly 80 percent of the children of undocumented immigrants are citizens (Passel and Cohn 2009). Thus undocumented immigrants' fear of utilizing health care institutions leads to disparities in access to care for their children—the majority of whom are U.S. citizens.

Many scholars point to the passage of PRWORA and IIRIRA as leading to a decline in the public insurance rates of the children of undocumented immigrants. Coming after publicity regarding the Immigration and Naturalization

Service's (INS) efforts to apply the "public charge" provision to Medicaid—that is, asking immigrants to repay the value of Medicaid benefits received or risk jeopardizing the adjustment of their legal status—PRWORA signaled a shift in the social contract. Although PRWORA only rendered a small number of recent immigrants ineligible for Medicaid, it had a "chilling effect" on undocumented immigrants' reliance on public health care programs—even for their citizen children (Ku and Matani 2001; Park et al. 2000).

Epidemiological studies confirm this "chilling effect." While immigrant children tend to have lower health insurance rates than U.S.-born children, having noncitizen parents in particular exacerbates the lack of coverage. Overall, 45 percent of children born to undocumented immigrant parents lack health insurance. This percentage includes U.S.-born children, of whom 25 percent lack health insurance even though they are likely to qualify for public insurance through Medicaid or the Children's Health Insurance Program (Passel and Cohn 2009). By contrast, only 8 percent of U.S.-born children with U.S.-born parents lack health insurance (Urban Institute 2011). In other words, children born in the United States whose parents are undocumented are three times more likely to be uninsured than are other children born in the United States.

In an analysis of 2001 CHIS data, for example, Kincheloe, Frates, and Brown (2007) found that having a noncitizen parent significantly decreased the likelihood of a child being enrolled in Medicaid. Similarly, in an analysis of the 1999 National Survey of American Families (NSAF) that examined the effect of parent noncitizen status on children's insurance rates, Huang, Yu, and Ledsky (2006) found that among U.S.-born children, having noncitizen parents increases a child's odds of being uninsured three to four times (see also Ku and Matani 2001). They found that more than a quarter of the foreign-born children of noncitizen parents did not have a usual source of care, as compared to 18 percent of the citizen children of noncitizen parents and only 12 percent and 6 percent, respectively, of foreign-born naturalized children of naturalized citizen parents and U.S.-born children of native-born parents. Moreover, nearly half the foreign-born children of noncitizen parents—and one-third of the undocumented children of noncitizen parents—had had no dental or medical visits within the previous year. Rates of ED visits in the past year were almost twice as low among these two groups as among children with citizen parents.

A study by Mohanty and colleagues (2005) reveals the way that lower health care utilization among immigrant children may translate into unmet health needs and higher health care expenses in the long term. They found that even as the mean number of ED visits for foreign-born children was lower than for U.S.-born children, their ED expenditures were more than three times higher.

They conclude that this pattern may indicate that "immigrant children may be sicker when they arrive at the emergency department" (Mohanty et al. 2005, 1436), reflecting poor access to primary and preventive care.

Exploring Undocumented Immigrants' Lived Realities: Assessing Unmet Health Needs

Given that undocumented immigrants' health care utilization and spending rates are lower than their legal and citizen counterparts, there is evidence of considerable unmet health needs among this population. As Mohanty and colleagues note, immigrants' lower health care utilization rates are not due to their relative health, as ratings of health status were lower for the foreign-born than for the U.S.-born (2005). Other studies confirm this finding. Here, again, is where qualitative studies of the life circumstances of undocumented immigrants can help illuminate potential unmet health needs. These studies suggest that such immigrants may face a greater burden of disease due to their disadvantaged position in the global and domestic political economies.

First, undertaking an undocumented migration is itself an indicator of vulnerability in the global economy. Moreover, arduous and often dangerous undocumented journeys expose immigrants to a variety of health risks before they even set foot in the United States. For example, Ho (2003) describes the three-month-long journeys of undocumented immigrants from Fujian province in China as they are guided by "snakeheads" by land through Europe and by ship around the Horn of Africa. Ho shows that the cramped, confined quarters of the "duck houses" in which they are held and the ship holds—combined with physical abuse and malnutrition—contribute to the observed epidemic of tuberculosis among Fujianese immigrants in New York City.

Similarly, scholars point to the way that the concentration of immigration enforcement at urban ports of entry has increased the risk of heat illness, dehydration, and death entailed in an undocumented journey across the U.S.-Mexico border (Stonecipher and Willen 2011). Following the U.S. policy of "prevention through deterrence," the rates of deaths in Pima County, Arizona, alone have increased by a factor of more than twenty (Rubio-Goldsmith et al. 2006). Meanwhile, the growing intersection of human smuggling at the U.S.-Mexico border with the drug smuggling industry has increased undocumented immigrants' exposure to physical violence and crime and their risk of being incarcerated (Slack and Whiteford 2011).

While an undocumented journey itself exposes many migrants to health risks, poor living and working conditions once they are in the United States contribute to their disproportionate burden of disease. Such immigrants' concentration in the low-wage and informal economy—in particular, in jobs

such as farmwork, construction, and day labor—increases their risks of becoming injured on the job. Rates of injury and fatality are highest in the jobs that undocumented immigrants typically fill. Yet studies show that immigrants' high rates of occupational injury and fatality are not solely accounted for by their overrepresentation in these more risky and dangerous jobs. Instead, immigrants—and Latino immigrants in particular—account for a disproportionate number of workplace injuries and fatalities. Thus immigrant status in and of itself is a health risk on the job (Schenker 2010). Relying upon participant observation and depth of time spent in immigrant communities, ethnographic studies have helped reveal the factors that mediate the connection between immigrant status and occupational injury. One study of undocumented Mexican day laborers in San Francisco, for example, shows that laborers' fear of losing their jobs, need to support family at home, and need to repay high migration debts—that is, debts incurred in paying *coyotes* for their undocumented passage—may make them less likely to protest unsafe work conditions (Walter et al. 2002).

THE FUTURE: POLICY DIRECTIONS

Given the fact that undocumented immigrants have a disproportionate burden of disease, how can policies be designed that would improve their health care access and that of their children? The Patient Protection and Affordable Care Act of 2010 (known as the Affordable Care Act, ACA) has the potential to ensure a greater number of children in mixed-status families who currently exceed the income requirements for Medicaid. However, undocumented immigrants themselves are exempted from the mandate to carry insurance coverage and are ineligible to receive government subsidies or to purchase insurance through the newly constructed health insurance exchanges. As the largest population categorically excluded from ACA's provisions, undocumented immigrants will comprise an increasing share of the nation's uninsured (Zuckerman, Waidmann, and Lawton 2011). Vigorous outreach to immigrant families will be essential if policy makers wish to overcome the chilling effect of previous policies on undocumented immigrant parents.

Undocumented immigrants will continue to remain dependent upon a fragmented and locally variable health care safety net for their care. Meanwhile, ACA's funding provisions will likely expand one source of care to undocumented immigrants while decreasing another. Its expansion of funding for community health centers may make such centers a more vital part of the safety net for undocumented immigrants. Yet at the same time, ACA will reduce federal disproportionate share payments to safety net hospitals—payments intended to help compensate such hospitals for their disproportionate share of

uninsured patients—due to a projected reduction in the number of uninsured (Coughlin et al. 2012). This will reduce the capacity of such public hospitals—traditionally a source of charity care—to care for undocumented immigrants.

Short of major immigration reform, some local initiatives promise to reduce health care disparities between documented and undocumented immigrants. It appears that an anti-immigrant climate precludes any meaningful action at the federal level to extend health care access to undocumented immigrants. For example, an innovative initiative that proposed to reduce the lower enrollment rates of children of noncitizens in the State Children's Health Initiative Program (SCHIP) by extending care to their noncitizen parents failed (Kullgren 2003).Yet some localities have stepped in to provide care that the federal government will not. For example, in California—where state legislation after PRWORA allowed public entities to furnish discounted care to undocumented immigrants—localities have created county-wide insurance plans for the uninsured regardless of legal status.

San Francisco, for example, has enacted some notable city policies aimed at reducing disparities in health care access by legal status. The Sanctuary Ordinance, for example, prohibits the city's public employees from requesting or collecting information regarding an individual's legal status that is not required by law or from cooperating with federal immigration authorities unless a person is under investigation. Meanwhile, Healthy San Francisco and San Francisco Healthy Kids use public funds to increase access to health care for all uninsured low-income adults and children regardless of legal status. These programs not only provide primary care services to undocumented immigrants, but—just as important—the existence of a reimbursement mechanism also allows safety net providers to extend services without inquiring about legal status. According to political scientist Helen Marrow, such reforms help destigmatize undocumented status and thereby reduce the chilling effect of previous policies (2010).

Returning to the opening case of Elisabeta, the policy implications of her aversion to using federal health care benefits are clear. Because undocumented immigrants' concern about their legal status plays a major role in depressing health care utilization for themselves and their children, a pathway to citizenship for such immigrants would clearly improve the health of all members of immigrant families. Yet due to a hostile federal policy climate, localities are stepping in to attempt to reduce disparities in health care access that lead to unmet health needs. As we have seen in the case of Elisabeta, this is a concern that affects not only undocumented immigrants themselves but also the increasing number of citizen children with foreign-born parents. As policy makers increasingly recognize, reducing health care disparities for undocumented immigrants is a struggle for health equity in which we all have a stake.

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The Mental Health Needs of Illegalized Latinos

Kurt C. Organista
Maria Y. Hernandez

Most folks don't know how hard it is to get one of those cards. An American could do the job I am doing. . . . I can't tell you how good it felt to be free in the USA without worrying about being deported all the time! I felt so free when I got my first driver's license in California that I was floating on air! Not looking around for cops all the time, not hoping I didn't get stopped and busted, deported. I was one paranoid person before I got my license. That was two or three years of looking over my shoulder.

—Neil Young (2012)

Mitt Romney has called the Arizona law—much of which was just deemed unconstitutional by the nation's highest court—a "model for the nation." . . . Today, the difference in leadership between President Obama and Mr. Romney could not be clearer. I urge Mr. Romney to repudiate his support for a policy now found to be largely unconstitutional.

—Senator Luis Gutierrez (D-Ill.), Chairman of the Immigration Task Force of the Congressional Hispanic Congress (2012)

We would expect such strong words from the chairman of the Immigration Task Force of the Congressional Hispanic Congress, regarding Arizona's contentious Senate Bill (SB) 1070. But would we expect the chairman to be Puerto Rican? After all, because Puerto Ricans are U.S. citizens, the plight of undocumented Latinos seems of little relevance to this Latino population—or is it? Maybe Senator Gutierrez is offended both as a Latino and as an American. Even Colombian pop singer Shakira was so offended by SB 1070 that she flew to Arizona to hold a press conference condemning the law and daring the SB 1070 enforcer Maricopa County Sheriff Arpaio to come and arrest her. We would also be remiss to not recognize African American leadership, including Cornel West, Jesse Jackson, and Reverend Al Sharpton, among others, who have condemned this law in high-profile venues such as television, press conferences, and major newspapers.

The quote from rock musician Neil Young's recent book is meant to remind us of the racialization of the undocumented in America, who exist largely in the public imagination as Mexican, even though about 40 percent of the undocumented are from other countries and backgrounds. The fact is that Neil Young, who came undocumented from Canada back in the 1960s, would not be questioned about his immigration status under SB 1070 today, a law that essentially legislates racial profiling of the Latino variety in Arizona. In fact Senator Gutierrez's colorful criticisms of SB 1070 on the senate floor once included a pop quiz of his fellow senators, in which he presented pairs of celebrity photographs (i.e., Justin Bieber and Selena Gomez, Bill Clinton and Geraldo Rivera) accompanied by the question: Can you tell which of these two is the immigrant?

Arizona SB 1070 and copycat laws like it, introduced in states such as Georgia, Alabama, and South Carolina, all claim to be hard on immigration but are really only hard on struggling immigrants. If such laws and the elected officials who implement them were truly hard on immigration, they would go to the root of the problem and repair a badly broken immigration system in order to regulate the flow of migrant workers in ways beneficial to both American businesses and the millions of undocumented workers who supply *essential* labor to thriving businesses that provide more affordable products and services to the American public.

Misguided state laws and policies, challenged by the federal government for overstepping state authority, exacerbate our failed immigration system by trying to make it so costly and traumatic for undocumented people that they will begin to deport themselves. Of course therein lies the bind, because economic conditions in countries of origin such as Mexico are typically so bad that returning is an even less attractive option than being undocumented, poor, and distressed in the United States.

THE MENTAL HEALTH OF UNDOCUMENTED LATINOS UNDER CONDITIONS OF STRUCTURAL VULNERABILITY

A Theoretical Perspective

So why open a chapter on the mental health needs of undocumented Latinos by pressing the national and state level hot button debate about immigration laws, policies, and politics? The short answer is that the mental health needs of undocumented Latinos can be viewed as embedded within a larger pattern of vulnerability to health and socioeconomic problems. That is, undocumented Latinos are at risk for various psychosocial and health problems because of their challenging living and working conditions here in the United States. Such difficult life circumstances are a product of international-, national-, state-, and local-level policies and practices that render the undocumented vulnerable to patterns of labor exploitation, poverty, social exclusion, and legal persecution.

In his work with Latino migrant workers (i.e., urban-based day laborers and service sector workers, rural-based farmworkers), Organista uses a *structural environmental* (SE) framework for conceptualizing health and mental health risk and prevention in this unique population of Latinos (Organista et al. 2012). The SE perspective posits that various health and mental health outcomes result from factors at the individual level that are produced and *reproduced* by factors at the environmental level, which are also *reproduced* by structural level factors such as laws, policies, and standard ways of operating. Such multilevel combinations of factors result in a continuum from healthy well-being to poor health, depending on a population's location in society. Thus, SE factors produce good health and well-being for some groups and the opposite for others.

The risk of psychosocial and health problems for undocumented Latinos results from excessive distress at the individual level (i.e., stigma, discrimination and persecution) that is reproduced by harsh living and working conditions at the environmental level (i.e., limited, low-paying work options, substandard housing, prolonged separation from home and family in country of origin, intermittent deportation raids) that are reproduced by various structural factors, including the displacement of millions of workers from their jobs (i.e., in Mexico) because of free trade agreements (i.e., the North American Free Trade Agreement or NAFTA). For example, since NAFTA's enactment in 1994, about two million jobs in Mexico's historically huge corn industry have been eliminated, because the United States now imports tons of subsidized corn that is cheaper to buy than to produce in Mexico (Hing 2010).

The value of the SE theoretical framework is that it can help us differentiate psychosocial and health problems, to which anyone may be vulnerable,

from more distinct *patterns* of mental health problems that affect entire groups, communities, or populations. For example, while any of us could be at risk for anxiety, depression, or alcoholism because of background biological, psychological, and social factors, patterns of such problems in particular populations should suggest larger causal factors. These factors can be identified through research that leads to solutions not simply at the individual level (i.e., psychotherapy), but also at broader community and societal levels (i.e., by reducing group- or population-level vulnerability via better living conditions). That is, social solutions are needed to remedy social problems, which should not be viewed simply as individual-level problems.

Sketching the Mental Health Profile of Undocumented Latinos

It should come as no surprise that little research has been devoted to the mental health of undocumented people in the United States. With the exception of emergency services, such individuals are not legally entitled to many health, mental health, and social services because they are not citizens. Unfortunately lack of citizenship also results in avoidance of services and seeking needed health and mental health services only when problems have risen to a crisis level. This legal predicament also rules out regular prevention-oriented visits to doctors that can save lives and money.

So how might we begin sketching the mental health profile of undocumented Latinos? This chapter reviews key research studies and media stories that provide insight into mental health issues of undocumented Latinos guided by the SE model. It begins with a focus on adults and extends the discussion to include Latino youth and families.

General Vulnerability

One of the many impacts of exclusion, social stigma, and legal persecution is the chronic stress (i.e., fear, anxiety, and hypervigilance) that typically accompanies the specter of detention and deportation hovering over one's head. Although there is too little research on this, we should expect such a heightened state of general vulnerability to impact well-being. Research in the area of health disparities suffered by racial and ethnic minority groups emphasizes how the challenges of poverty (i.e., low-resource and high-crime neighborhoods, inadequate housing and community services, lack of regular health care and access to social services, etc.) and discrimination can get *under the skin.* For example, Latino migrant day laborers frequently mention trying hard to live below the radar of local

authorities by being perfect and not attracting the attention of police or others likely to call the police (as told to Organista). As intimated by Neil Young, the many undocumented workers who depend on their cars for work live in constant fear of being pulled over for a broken taillight or a minor traffic violation, minor offenses that could result in cars being impounded, being labeled a criminal, and deportation. Contrary to the wishes of public safety experts and some law enforcement officials, such as Los Angeles Police Department chief Charlie Beck, undocumented people are not entitled to a driver's license despite their need to drive (and drive safely) like everyone else in our highly mobile commuter society (Preston and Gebeloff 2010; Rubin 2012).

Even in historically immigrant friendly areas like the San Francisco Bay Area, police have increasingly begun checking immigration status during routine stops due to recent federal policies, such as the 287(g) Program[1] and Secure Communities,[2] which require police in all states to make such inquiries or forego federal state funding. Immigration and Customs Enforcement (ICE) is authorized to operate in all U.S. cities as a federal entity charged with detaining and deporting undocumented people, even in sanctuary cities such as San Francisco, where police worry that immigration enforcement interferes with law enforcement by making people afraid to report crime or cooperate with police investigations. So what might be the impact of all this on the health of undocumented Latinos?

Allostatic Load

A salient example of how being undocumented gets under the skin comes from the work of Castro and colleagues (2010), who conducted a rare pilot study of *allostatic load* (AL) with thirty migrant day laborers in Seattle, Washington. Day laborers were selected because they represent an extreme type of undocumented Latino, who gets picked up from street corners to perform temporary work (i.e., for a few hours or days), typically hard, often dangerous, manual labor for low cash wages (i.e., home construction, gardening, moving). Allostatic load is the physiological effects of chronic stress or wear and tear on the body linked to illness.

In addition to a stress questionnaire, Castro and his team measured six indicators of AL, such as blood pressure, body mass index, and cortisol, one of the major hormones released during stress or excitement. As expected, men with higher AL scores reported more work, economic, and social stressors than those with lower AL scores. High AL men also rated their physical and mental health worse than lower AL counterparts. This first of its kind study underscores the heightened state of risk for physical and mental health

problems rooted in stressful living and working conditions. Thus we can theorize that undocumented people would be at high risk for mental disorders with a strong stress component, such as depression and anxiety disorders, alcohol and substance use disorders, and adjustment disorders: excessive anxiety, depression, or a mixture of both immediately following major life events or changes in one's life (i.e., moving, losing someone). Less risk would be expected for disorders with a strong genetic component that produce consistent rates across different populations (i.e., schizophrenia, bipolar affective disorder).

The Mexican Mental Health Paradox

The Mexican mental health paradox refers to the declining mental health of people of Mexican descent the longer they remain in the United States (i.e., over years and across generations). The Mexican American Prevalence and Services Survey (MAPSS), conducted by Vega and colleagues (1998), provides a compelling demonstration of the paradox. The MAPSS assessed lifetime prevalence of diagnosable psychiatric disorders in a stratified random sample of 3,012 adults of Mexican background in Fresno County, California, more than half of whom had migrated as adults to work in the United States (N = 1,576). This population-based survey compared short-term immigrants, who had been in the United States fewer than thirteen years, with long-term immigrants, who had been in the United States thirteen years or more, and with U.S.-born Mexican Americans.

As can be seen in table 13.1, results of the MAPSS revealed a dramatic pattern of increasing mental disorders with increasing time in the United States. Affective disorders such as depression, anxiety disorders such as phobias, and alcohol and substance abuse and dependence triple from short-term Mexican immigrants to U.S.-born Mexican Americans, whose rates of mental disorders match those in the general U.S. population. The other compelling thing to note is that these mental disorders have a strong stress component (i.e., they often increase in response to stressful living conditions) as compared to disorders with a strong genetic component, such as bipolar affective disorder, which did not vary significantly across short-term, long-term, and U.S.-born Mexican Americans (i.e., 1.3, 1.6, and 2.7, respectively).

While the MAPSS clearly demonstrates better mental health in more recent Mexican immigrants, this may not be the case for subgroups of Latinos such as farmworkers, about half of whom are undocumented (Carroll, Georges, and Saltz 2011), as well as undocumented Latinos more generally, who appear to be at greater risk for mental disorders than U.S.-born Latinos, despite being immigrants (see below).

Table 13.1
Percent of Lifetime Prevalence of Psychiatric Diagnoses in the MAPPS, Including Prevalence in the U.S. Population

Psychiatric Diagnoses	Short-term immigrants (n = 884)	Long-term immigrants (n = 851)	U.S.-born Mexican Americans (n = 1145)	U.S. population* (N = 5384)
Any affective disorder	5.9	10.8	18.5	19.5
Any anxiety disorder	7.6	17.1	24.1	25.0
Any alcohol/ substance use disorder	9.7	14.3	29.3	28.2
Any mental disorder	18.4	32.3	48.7	48.6

*U.S. population data from the National Comorbidity Survey (Kessler et al. 1994)

Source: Adapted from Vega et al. (1998)

The Special Case of Mexican Farmworkers

While the MAPPS did not explicitly address undocumented Latinos, it did include 1,001 male and female farmworkers, about half of whom have been undocumented since the 1990s (Carroll, Georges, and Saltz 2011). Separate analyses of this subgroup show that both male and female farmworkers had high lifetime prevalence rates of mood disorders (7.2 and 6.7%, respectively) and anxiety disorders (15.1 and 12.9%, respectively) (Alderete et al. 2000). What's interesting about these rates is that they contradict the gender rates normally found in population surveys, which consistently document greater mood and anxiety disorders in women than in men, not similar rates. Thus we can conclude that the stress of a migratory lifestyle, combined with undocumented status, is most likely driving up stress-related mental disorders in farmworkers in general and men in particular. Other studies of migration-related stress factors and related mental health problems in farmworkers support this conclusion.

A study of sixty Latino farmworker men in North Carolina, each with a wife and children in their country of origin, found that symptoms of anxiety were related to mixed feelings about having to support one's family financially versus being an absent husband and father (Grzywacz et al. 2006). Such an absence from family is pronounced in undocumented farmworkers who cannot travel home and back freely.

Two smaller studies of stress and coping in Mexican farmworkers also found connections between the harsh farmworker lifestyle and mental health problems. The first study examined work-related predictors of distress in forty-five farmworkers and found that nearly 40 percent had clinically significant levels of depression symptoms, while 30 percent had clinically significant symptoms of anxiety, compared to rates of 20 percent and 16 percent, respectively, in the general U.S. population (Hovey and Magaña 2000). Although these studies did not conduct psychiatric diagnoses, as was done in the MAPPS, their value is in linking distress to farmwork. That is, Hovey and Magaña found that high levels of anxiety and depression were predicted by the stress of acculturation, low control over the decision to live a migrant farmworker lifestyle, lack of social support, family dysfunction, low self-esteem, and low religiosity. In the second study by Magaña and Hovey (2003), they found that the most common stressors reported by seventy-five farmworkers in their sample were uprooting and separation from friends and family, unpredictable work and rigid work demands, poor pay and living in poverty, low money for family, and poor housing. In fact, rigid work demands and poor housing in particular predicted anxiety, whereas depression was predicted by rigid work demands and little money for family.

Alcohol Use Disorders

Alcohol use disorders may be the single largest mental health problem affecting undocumented Latino men. A qualitative study of Mexican farmworkers in labor camps documented worrisome details about binge drinking on the weekend (Alañiz 1994): in a farmworker housing complex in Northern California, the men averaged ten beers each per drinking episode, with a range between six and twenty-four beers. A survey of men in Mexico who had worked in U.S. agriculture found 13 percent were heavy drinkers, consuming alcohol six to seven days per week, for a total average of twenty-one drinks per week (Mines, Mullenax, and Saca 2001). A review of the literature on problem drinking by male immigrant laborers demonstrates a relationship between alcohol abuse and migrant work–related factors such as poverty and acculturation (Worby and Organista 2007). With regard to understanding alcohol use disorders, another MAPSS report, by Finch and colleagues (2003), examined 1,576 Mexican male and female adults who had immigrated to work in the United States, finding that those reporting discrimination at work had higher rates of alcohol abuse and dependence than those not reporting discrimination. Interestingly, all of the stressors documented for farmworkers are commonly found among urban-based undocumented Latinos.

Urban-Based Undocumented Latinos

While research on Latino immigrants and migrant workers continues to accrue, we lack research data on non-farmworker, urban-based undocumented Latinos who work in the vast urban-based service sector. In a rare study of the mental health of undocumented urban-based Latinos, Perez and Fortuna (2005) reviewed the psychiatric charts of 197 adults from a Latino mental health program located in an urban hospital system in New York. The researchers compared the diagnoses, mental health service use, and life stressors of thirty-four undocumented Latinos, fifty-two documented Latino immigrants, and twenty-four U.S.-born Latinos, all of whom received services at the clinic. While 80 percent of the documented Latinos were Caribbean (i.e., Puerto Rican), the undocumented were from Mexico and Central and South America.

Not surprisingly, results revealed that undocumented Latinos were more likely to have diagnoses of depression, anxiety, adjustment disorder, and substance (mainly alcohol) abuse disorder (see table 13.2). The pattern is clearly one of higher stress-related disorders in the undocumented as compared to the other Latino groups. Although depression is high across all Latinos in the sample, it is highest among the undocumented, with substance abuse disorders being especially high. Adjustment disorder in particular is three times as high in the undocumented compared to other Latinos, and as noted previously, is characterized by excessive symptoms of anxiety and/or depression

Table 13.2
Percent of Psychiatric Diagnoses and Life Stressors in Undocumented, Documented Immigrant, and U.S.-Born Latinos in Urban New York (N = 197)

Psychiatric Diagnoses	Undocumented (n = 29)	Documented (n = 144)	U.S.-born (n = 24)
Major depression	72	60	54
Substance abuse	21	6	17
Anxiety	14	11	17
Adjustment disorder	14	5	4
Any mental disorder	16	12	13
Mean no. of life stressors	4.45	2.9	3.08
Occupational	62	47	46
Access to health care	28	10	13
Legal/criminal	100	4	4

Source: Adapted from Perez and Fortuna (2005)

following life stressors that would be more likely to occur for undocumented Latinos (i.e., moving, loss of relationships, loss or changes in work).

Why undocumented Latinos have higher rates of mental disorders than other Latinos in the sample was elucidated by Perez and Fortuna (2005), who also compared the number and types of life stressors across the three Latino groups. Results revealed significantly more life stressors in undocumented Latinos (4.5 on average) as compared to both documented and U.S.-born Latinos (each group averaging 3 stressors) at the time of psychiatric assessment. More specifically, undocumented Latinos reported more stressors related to work and access to health care, and 100 percent reported stressors related to the legal/criminal system, compared to 4 percent of the other Latinos in the study. Given these differences in mental health problems, related stressors, and consequent need for mental health services, which group do you think received the most treatment? It turns out that while U.S.-born Latinos received an average of 13.3 mental health appointments, and documented Latinos received an average of 8, undocumented Latinos averaged only 4.3 visits. Undocumented Latinos also reported lower rates of past outpatient and inpatient treatment use compared to documented immigrants and U.S.-born Latinos.

The low use of health and mental health services on the part of the undocumented is the result of multiple barriers (i.e., limited English proficiency, poverty, geographic and social isolation, lack of insurance, gender, education level, stigma, cultural beliefs, and age upon arrival) that limit access to needed services (Aguilar-Gaxiola et al. 2011). Although it is well established in the mental health literature that Latinos frequently turn to primary care doctors for mental health needs, undocumented Latinos report less use of health care services and poorer experiences when seeking care than do U.S.-born Latinos (Ortega et al. 2007). Thus, lack of legal status creates an inverse relationship: Latinos with an acute need for mental health services receive the least amount of treatment.

UNDOCUMENTED LATINO YOUTH AND FAMILY MENTAL HEALTH

Although virtually all of the research cited here has focused on Latino adults, we would expect structural vulnerability to mental health problems to pervade Latino families in which members are separated by thousands of miles (as in the case of migrant workers) or separated by legal status within "mixed status" families here in the United States. Research on Latino families affected by lack of documentation is scarce, but much can be surmised from frequent stories in the media regarding the negative impacts of immigration laws and policies.

Families without a Country

During the spring of 2012 the first author was once again teaching a graduate level master's in social work (MSW) practice course, Social Work with Latino Populations. The course emphasized the plight of the undocumented with whom social workers increasingly have contact across all spheres of the profession: health and mental health settings, schools, child and family services, and so forth. To enhance student knowledge and sensitivity regarding the impact of undocumented status on Latino families, we viewed the documentary *Sin Pais* (Without country) by director Theo Rigby, which in less than twenty minutes takes viewers on a deeply personal and emotional journey into the lives of a close-knit Guatemalan/American family experiencing deportation. Whether they are considered illegal or *illegalized*,[3] the empathy evoked by this intimate portrait of a family forced to decide which members go or stay, based not just on citizenship but on age and gender as well, forces viewers on both sides of the immigration debate to witness a serious national problem and to ask: What should be done to prevent such family trauma? Here's a synopsis of this highly recommended documentary:

In 1992, Sam and Elida Mejia were forced to leave their native Guatemala during a violent civil war that increasingly pulled peasants into the conflict between government military and rebel factions opposing the government. The Mejias fled with their one-year-old son Gilbert to the San Francisco Bay Area. For 17 years they worked multiple jobs, paid taxes, and purchased a modest home in San Rafael, CA. They also had two more children, Helen and Dulce who are both U.S. citizens. Early one morning, immigration agents who had been staking out the family for weeks stormed the home looking for an undocumented person that did not even live there. Nevertheless, Sam, Elida, and son Gilbert, now in his late teens, became deeply entangled in the immigration system. The documentary begins two weeks before Sam and Elida's scheduled deportation date. Despite spirited local protest to keep the family together, Sam and Elida were deported and took Dulce with them, given that she was just a toddler and needed her mother and father. Tearful parents are heartbroken back in rural Guatemala while little Dulce repeatedly asks for her big brother and sister. Back in the U.S., Helen, barely in her teens, also needs her parents, especially when trying to celebrate her birthday with her parents participating by Skype. As older brother Gilbert awaits his own deportation hearing, he feels the burden of trying to care for Helen.

Parents without Parental Rights

Class discussion about *Sin Pais* led to questions such as the following. Why is the federal government conducting thousands of ICE raids, costing millions of dollars, to stake out and arrest working-class people who, other than their undocumented predicament, are living within the law? Why are we

OPEN FORUM ON PARENTAL RIGHTS

Immigrants losing their kids

By Kurt C. Organista

Encarnacion Romero, a Guatemalan woman living in the United States without the proper papers, was arrested and detained in May 2007. Her son, Carlos, was born in the United States. Yet, at a court hearing that Romero could not attend because she was in an immigration detention center, a Missouri judge ordered her child put up for adoption.

Four years later, Encarnacion persuaded the Missouri Supreme Court to reverse the case and to order a new hearing. In July, Romero's dream of reuniting with her now 5-year-old son was crushed when the judge ordered the child to remain with the adoptive parents.

State Sen. Kevin De Leon, D-Los Angeles, says there's nothing unique about the Romero case. "One of my constituents, a Nicaraguan woman, was charged with neglect as a result of her detention. She was deported and her parental rights were terminated." He has authored legislation, SB1064, which seeks to protect the rights of parents, regardless of their citizenship status. SB1064 passed out of the state Senate in May on a 28-7 vote. To become law, the Assembly must pass the bill by Friday.

These stories exemplify what happens almost daily when federal immigration enforcement collides with our state's child welfare system. Because Immigration and Customs Enforcement and Child Protective Services lack procedures for handling such cases, the parents are penalized for not filing time-sensitive forms, or attending custody court dates, which often results in the loss of custody of their child.

To get an idea of the magnitude of the problem, in the first half of 2011, 46,484 undocumented parents of U.S.-born children were removed from the country, according to a report prepared by the Applied Research Center, a racial justice think tank, using data obtained under the Freedom of Information Act. Of those parents, 3,430 were from the Los Angeles, San Diego and San Francisco areas.

Such removals add to the 5,100 children of deported immigrants now in the child welfare system throughout the United States. At the current pace of deportations, that number will triple unless we enact policies to prevent parent-child separations.

SB1064 seeks to do so in California by:

- Crafting policies that give detained parents the option of placing their children with trusted relatives or family friends.
- Extending Child Protective Services and custody court requirements to accommodate detained or deported parents.

- Establishing partnerships with foreign consulates to facilitate family reunification.
- Avoiding further overwhelming the state's child welfare system, which already is filled beyond capacity with abused and neglected children.

No matter where you stand on today's immigration debate, most people can agree that detentions and deportations never were intended to separate children from their parents.

Some might say it's the parents' fault for placing their children in such a predicament. A few might even accuse such parents of having "anchor babies" in order to remain in the United States. That idea ignores that protection of family members is a core value of Latino culture.

Californians can and should keep children out of foster care that do not belong there. To that end, Child Protective Services in San Francisco and Los Angeles have implemented agreements with the Mexican government. The Mexican consulates convey information to deported parents about their children in California's child welfare system, or help search for deported parents.

While such local efforts are admirable, a state law would work better to prevent family separations. Ask your legislative representative to support SB1064. If the Legislature passes the bill Tuesday, tell the governor he should sign it.

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Note. From the *San Francisco Chronicle,* August 28, 2012.

traumatizing families by detaining and deporting undocumented parents while leaving their children to uncertain fates? Is this really a way of protecting the United States and punishing criminals? After much discussion, students became motivated to take action and the timing was right, because California SB 1064, designed to prevent placing children of detained parents in the child welfare system, was being debated by the California Senate. The class decided to research this issue and submit an opinion-editorial (op-ed) piece to the *San Francisco Chronicle* in late summer 2012, prior to the final California Senate vote (see boxed text above).

We recommend that readers locate the video of Encarnacion online to witness a devastated mother, tearful and crying, desperately pleading for the return of her son, from whom she had been apart for about four years.

The only silver lining in this story is that SB 1064 passed into law in California, thus lessening traumatic parent-child separations related to undocumented status, at least in California. How well Carlos is doing these days at about six years of age depends on the quality of his adoptive care and the fact that he was an infant when separated from his mother. But in thousands of other families, the impact of such trauma on children is more evident.

The Deportation Pyramid of Family Disruption and Childhood Trauma

Loss and separations within families of mixed legal status are too often traumatic experiences for all family members involved. The fear and anxiety of losing a parent to detention and deportation is all too common among children in immigrant families. English and Spanish media alike feature stories of deportation:

- "Thousands of Children of Deported Parents Get Stuck in Foster Care" (Miraval 2011: *The Denver Post*).
- "U.S.-Born Kids of Deported Parents Struggle as Family Is 'Destroyed'" (O'Neill 2012: *The Huffington Post*).
- "Siguen las deportaciones de inmigrantes de Estados Unidos" (The deportation of immigrants in the United States continues) (*Univision* 2012).

With constant reminders of real threats to family unity, anxiety levels can increase in children. Through interviews of 110 children in eighty immigrant families, Dreby (2012) documented widespread fear of deportation, family separation, and stigma related to legal status among children. Dreby provides a description by a mother, a legalized resident, of her undocumented eleven-year-old daughter Carmen, who, only having resided in the United States for two years at the time of the interview, intensely feared the police: "She was afraid that they would send her back to Mexico. At school her biggest worry is her legal status. She used to evade people so they would not ask her questions because she was afraid that they would ask her for a social security number. . . . She started biting her nails out of worry" (839).

Dreby's work demonstrates how young undocumented children like Carmen are burdened by stigma, fear of deportation, and the need to conceal a gnawing secret. Children conceal their family's legal status not only from teachers, police, and other authority figures, but also from friends and other members of their own community. Being undocumented carries such stigma that Dreby (2012) concludes it can negatively affect a child's sense of self. Undocumented children and U.S.-born children with undocumented parents are keenly aware of their lower social status within their own community and society as a whole.

According to Golash-Boza (2013), in 2012 more than 400,000 people were deported from the United States, a record high, including a dramatic increase in parental deportations. Such rates are the result of several recent national federal programs designed to deport undocumented people convicted of crimes. Congress appropriated $690 million for four such programs in 2011, an example of the tremendous amount of money spent on immigration law enforcement rather than on immigration reform. The largest of these programs is the Criminal Alien Program (CAP). In 2011 ICE issued more than 200,000 charging documents for deportations through CAP. More than 25,000 people were deported through 287(g), a program consisting of agreements between ICE and counties to involve local law enforcement in detaining undocumented suspects and checking their status with ICE during routine police work. It is this last part of 287(g) that is problematic, because such a program creates a conflict in which undocumented people, as well as their friends and family, become reluctant to cooperate with police or even call police when needed. For example, under 287(g) agreements, an undocumented victim of domestic violence risks deportation simply by calling the police for help. Such a victim may also lose her children to CPS, as discussed previously.

The Applied Research Center (ARC) notes that at least twenty-two states have cases of children placed in foster care due to parental detainment or deportation. The FBI also routinely sends fingerprints to the Department of Homeland Security (DHS) to check immigration status through a program called Secure Communities, which deported almost 80,000 people in 2010. All of these programs of mass deportation evoke trauma for individuals and families under the justification of deporting "criminal illegal aliens" who are a threat to society. But is this really the case?

The trauma of mixed status family separation increases the risk for depression and anxiety disorders in parents and children alike. While parents are detained and incarcerated like and among common criminals, children are deprived of breast-feeding mothers, close siblings, and parents upon whom they depend to meet their emotional and developmental needs. *The Huffington Post* recounts the case of ten-year-old Alexis Molina, whose mother Sandra was deported to Guatemala:

> Gone were the egg-and-sausage tortillas that greeted him when he came home from school, the walks in the park, and the hugs at night when she tucked him into bed. Today the sweet-faced boy of 11 spends his time worrying about why his father cries so much, and why his mom can't come home. . . . [W]hen Rony Molina [Alexis's father] became a U.S. citizen in 2009, an immigration attorney urged Sandra to go to Guatemala, where her husband could then sponsor her to return legally. It was bad advice. Though she has no criminal record her petition was denied. Desperate, she tried to re-enter with the aid of a "coyote" who demanded $5,000, but she was

stopped at the border, detained in Arizona for two weeks, and deported in March 2011. Immigrants who are deported and try to re-enter the country are considered "criminal illegal aliens" and felons and a top priority for immediate removal. (O'Neill 2012)

Sandra's story is an excellent example of how misleading ICE and other government officials (i.e., Secretary of DHS Janet Napolitano) can be when they claim to be deporting only criminal illegal aliens. Are we supposed to believe that the 400,000 deported in 2012 were all serious criminals? Such claims are simply not supported by the data, as analyzed by University of California (UC) Merced professor of sociology Tanya Golash-Boza. In fact, she concludes: "It is likely that large numbers of people apprehended through the Criminal Alien Program are minor drug offenders and immigration offenders" (Golash-Boza 2013). As can be seen in figure 13.1, the vast majority of the 400,000 deportations in 2012 were indeed for drug, immigration, or traffic violations. And while more serious-sounding crimes make up roughly another 20 percent, there is no indication how serious such crimes are or how many of the 400,000 deportations justify family separations.

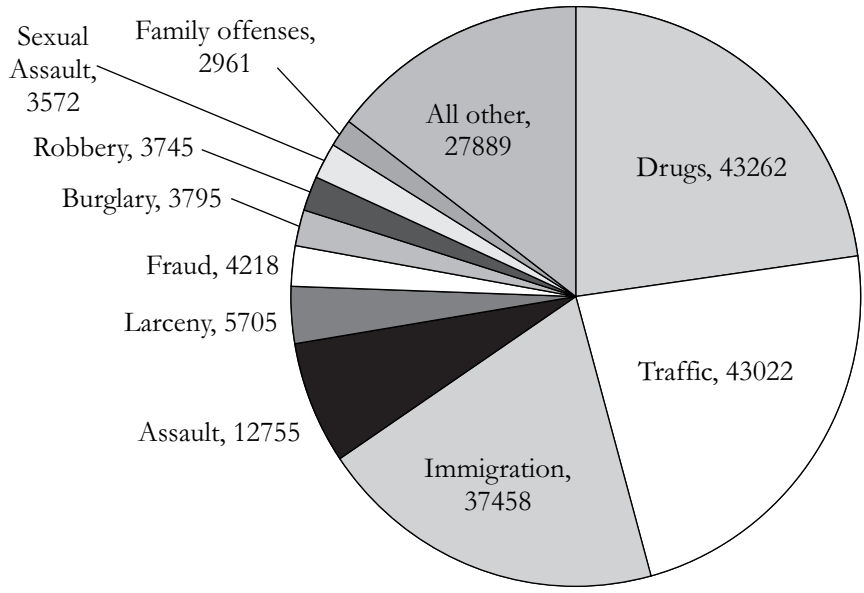

Figure 13.1
Breakdown of Type of Crimes Committed by Those Deported in 2012
Source: Golash-Boza (2013)

Back in Guatemala, Sandra faced what many a deportee experiences, loneliness, depression, suspicion and fear in a country that no longer felt familiar. She says her brother was held for ransom by kidnappers who presumed her American husband must be wealthy enough to pay. Eventually she fled to Mexico, where she says she feels so hopeless about her life that she has thought about ending it. "I just want to be forgiven," she said, sobbing on the phone. "I feel I am about to go crazy, I miss my children so much. They are all I have. I cannot go on without them." Back home in Stamford, her children are suffering too. The youngest cried constantly, the eldest became angry and withdrawn. Such children are at risk for anxiety and depression, as well as acting-out in adolescence. Though their plight is documented in thick files that include testimony from psychologists and counselors about the need for family reunification, appeals for humanitarian relief were denied. (O'Neill 2012)

Dreby (2012) developed the Deportation Pyramid (figure 13.2) to depict the increasing levels of emotional distress and burden that deportation-related crises cause in the lives of affected Latino youths. When parents and children

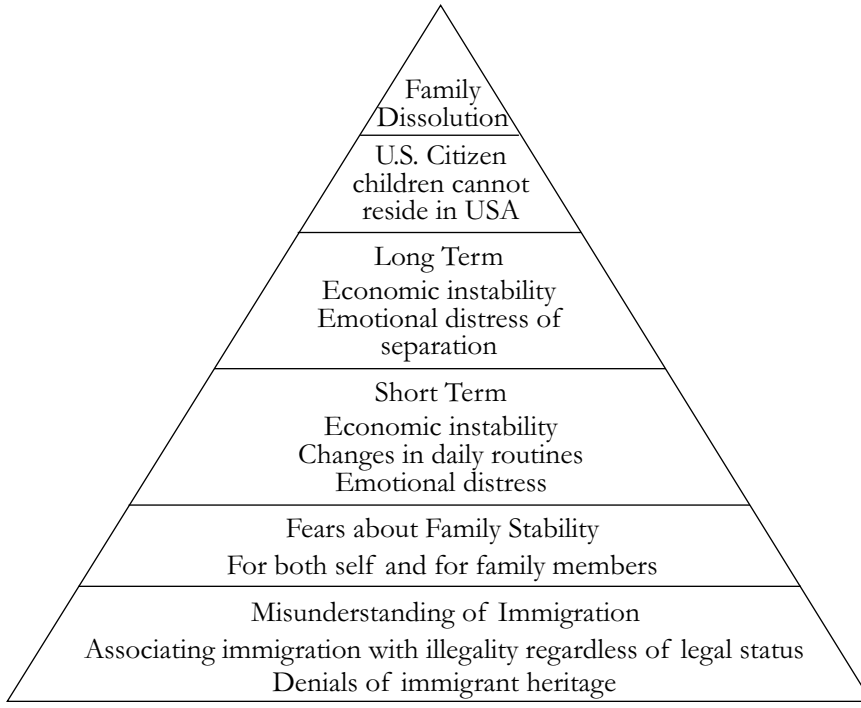

Figure 13.2
Deportation Pyramid to Assess the Burden of Deportation Policies on Children
Source: Dreby (2010)

are separated, family incomes also suffer, because the parent remaining in the United States becomes the sole breadwinner. The family that decides to return to the country of origin to maintain family unity typically adjusts to a much lower standard of living. In more extreme cases, family breakdown occurs, given that deported parents have limited contact with spouses and children who must go on with their lives.

Unaccompanied Undocumented Latino Youths

Thousands of children enter the United States undocumented and *alone* each year. Over the last two decades the number of such minors, often in search of their parents, has risen (Chavez and Menjivar 2010). This unique group of youths is at high risk for injury, assault, and poor mental health outcomes, owing to an extremely dangerous form of migration among the undocumented Latino population.

As do adults, minors migrate to the United States seeking family reunification, employment, an education, or simply escape from the rising violence and crime in their countries of origin (Aldarondo and Becker 2011). Whatever the motive, preexisting emotional scars are not uncommon. For example, children wishing to reunite with parents have typically endured years of separation and feelings of abandonment, as well as extreme poverty. Although they demonstrate both desperation and bravery in their perilous efforts to seek a better life, they are still children, who lack the physical strength to defend themselves or the cognitive and emotional development to understand their actions and rights (Chavez and Menjivar 2010).

While traveling through isolated terrain, unaccompanied minors are easy prey for smugglers, other migrants, gangs, and even unscrupulous border patrol agents, any of whom may beat, rob, or sexually assault them (Aldarondo and Becker 2011; Chavez and Menjivar 2010). In 2010 Catholic Relief Services completed a study on the detention and return of unaccompanied Central American youths from Mexico and found that several had experienced at least one incident of abuse similar to the following cases.

Araceli, a fifteen-year-old from El Salvador, attempted to avoid harassment from a local gang by immigrating to the United States. Her father paid a smuggler to take her to the United States, but en route she and another young woman were gang-raped by several men who attacked them while they were sleeping. Sixteen-year-old Eduardo eagerly hoped to find his mother in the United States, so he attempted to migrate. While traveling through Mexico he was apprehended and deported to Guatemala, where he spent two months in a shelter in Guatemala City. Hoping that with the use of bribery he would be able to successfully immigrate to the United States, Eduardo attempted his

journey a second time, but this time he brought along 700 Mexican pesos. He was robbed at gunpoint; beaten by the Mexican police, who took him into custody; held in a detention facility for adults for twenty days; and eventually sent to a home for juvenile delinquents in Guatemala.

If youths like Eduardo or Araceli are apprehended by either Mexican or U.S. border patrol agents, they encounter the trauma of being treated like criminals. In the United States the Border Control Center can voluntarily return youths to their country of origin, place them in detention, or release them under the care of a sponsor while a final decision is made regarding their removal (Piwowarczyk 2005–2006). Rather than supporting unaccompanied minors, U.S. detention centers often hold children longer than twenty-four hours, separate them from family members, use shackles and restraints during transportation, fail to appoint a guardian, and place youths in jail-like facilities with juvenile offenders (Piwowarczyk 2005–2006).

Traumatic experiences during critical periods of development, such as infancy or the teen years, can increase the possibility of lifelong mental health issues such as conduct disorders, attention deficit hyperactive disorder (ADHD), depression, anxiety, substance abuse disorders, post-traumatic stress disorder, and later in life personality disorders characterized by emotional and behavioral instability (Aldarondo and Becker 2011; Piwowarczyk 2005–2006).

Undocumented Latino Youths Living in Limbo

Improvements in education can ameliorate negative social conditions (i.e., residing in resource-poor immigrant communities, having dead-end jobs with little mobility, lack of insurance coverage) known to increase risk for poor mental health outcomes. The more education youths obtain, the greater the possibility of their securing economic stability and healthy lifestyles, and the greater the reduction of stressors that immigrant families face daily (Alegria, Perez, and Williams 2003). While such educational aspirations are part of the immigrant experience, undocumented youths quickly encounter many demoralizing barriers in late adolescence, such as not being able to obtain a driver's license, being ineligible for financial aid to attend college, and lack of a Social Security number to secure work. Although some are shocked to discover their status for the first time, most have been dreading proof of their marginal status in the United States. Frustration, disappointment, and depression are not uncommon responses, including giving up on aspirations beyond their poor working-class backgrounds. Remedies to the in-between limbo status of undocumented Latino youths are needed at national and state levels, and some partial solutions are beginning to emerge.

The DREAM Act

Much in the news, the Development, Relief, and Education for Alien Minors (DREAM) Act is a bipartisan proposal introduced more than a decade ago, yet to be passed, that is designed to improve the predicament of undocumented youths. While many variations of the DREAM Act have been proposed over the years, if passed, the core elements would include the following:

- Providing conditional permanent residency to undocumented youths with no serious criminal background, who graduated from U.S. high schools (or obtained a GED), arrived in the United States before the age of sixteen, and lived continuously in the United States for a minimum of five years prior to the bill's enactment. Such youths must be between the ages of twelve and thirty-five when the bill is passed.
- Undocumented youths who complete two years in the military or two years at a four-year institution of higher learning would obtain temporary residency for a six-year period. Within this six-year period, they may qualify for permanent residency if they acquire a degree from a U.S. institution of higher education or complete at least two years, in good standing, in a program for a bachelor's degree or higher degree, or have served in the military for two years or more and if discharged, receive an honorable discharge.

Although the federal government has failed to pass the DREAM Act, as of 2012 the following twelve states have advanced their own similar versions of the law: California, Illinois, Kansas, Maryland, Massachusetts, Nebraska, New Mexico, New York, Texas, Utah, Washington, and Wisconsin. In these states, applying for coverage under the DREAM Act requires youths to identify themselves and their parents. In California the fears of youths reluctant to out themselves and their families are addressed by the California Student Aid Commission Web site, which posts a list of DREAM Act myths and frequently asked questions, and where potential applicants are assured confidentiality when submitting personal family information.

Political Activism and Coming Out as Undocumented

Though we don't often think of political activism as a remedy for distress or stress-related mental disorders, undocumented Latino youths, their communities, and advocates became energized by the passage of the DREAM Act in a dozen states. For example, during the 2012 presidential election Latino youths campaigned heavily at the grassroots level by knocking on doors and reminding those eligible to vote to help reelect President Barack Obama

PRESIDENT OF UC BERKELEY'S MATH CLUB OUTS HIMSELF ON YOUTUBE

In February 2013, twenty-four-year-old Terrance Park, a biostatistics major at UC Berkeley and president of the math club, outed himself as part of *The Dream Is Now* campaign, led by Laurene Powell Jobs, widow of Apple cofounder Steve Jobs. Terrance is featured in a YouTube video in which he calculates on a chalk board what it would cost to deport him ($23,000) and the 2.1 million other undocumented youths in America ($48.3 billion), versus what their economic contribution to the U.S. would be (i.e., earnings, spending, taxable income, job creation, etc.) if they were allowed to remain ($171 billion). One look at the "comments" in response to this video provides a sense of how courageous Park and other undocumented people are to protest their undocumented status by outing themselves in such clever ways.

(Preston 2012a). Knowing the importance of continuing to improve the legal status of Latinos in this country, 71 percent of Latinos voted for President Obama, and Latinos comprised 10 percent of voters across the nation, the highest percentage of Latino voters to date.

In the past few years youth advocacy groups, such as United We Dream, have organized protests and rallies. Courageous youths have come out and shared their personal stories to increase public awareness of their predicaments and their desire to strive for the American dream like anyone else (see box). These organizations monitor the progress of the DREAM Act at the national level while frequently reminding President Obama that he has the authority to improve their status (Preston 2012a). For example, when President Obama spoke at the annual National Council of La Raza conference in 2011 and said that he could not bypass Congress to help young illegal immigrants, activist youths in the audience erupted in shouts: "Yes you can! Yes you can!" (Preston 2012a).

DISMANTLING STRUCTURAL ENVIRONMENTAL VULNERABILITY TO MENTAL HEALTH AND RELATED SOCIAL PROBLEMS IN UNDOCUMENTED LATINOS

National-Level Interventions

Comprehensive immigration reform (CIR), designed to sensibly regulate immigration in ways beneficial to both Latino immigrants and American business, would have the greatest impact on improving the health, mental health, and economic well-being of undocumented Latinos. Further, free

trade reform to sensibly regulate business between the United States and Latin America in ways beneficial to the economies of all countries involved would also positively impact the health and well-being of their various citizens.

At the national level, President Obama has long acknowledged the strong links between undocumented migration, NAFTA, and an ailing Mexican economy in need of support:

> At the national level, our diplomacy with Mexico must aim to amend NAFTA. I will seek enforceable labor and environmental standards—no unenforceable side agreements that have done little to curb NAFTA's failures. To reduce illegal immigration, we also have to help Mexico develop its own economy so that more Mexicans can live their dreams south of the border. That's why I'll increase foreign assistance, including expanding micro-financing for businesses in Mexico. (*Dallas Morning News* 2008)

Although it has been almost half a decade since he made this statement, Obama's second term as president provides an auspicious opportunity for beginning to address CIR, especially given the Republican Party's need to win Latino voters, who were generally offended by the party's platform as communicated by presidential candidate Mitt Romney. Sensible immigration reform can be a triple win for Democrats, Republicans, and Latinos regardless of party affiliation. Following is a discussion of the most recent iterations of our nation's efforts to negotiate CIR.

Deferred Action for Childhood Arrivals (DACA)

While they wait for a more permanent solution, Latino youths have been invigorated by Deferred Action for Childhood Arrivals (DACA), a proclamation issued by the Obama administration on June 15, 2012, as a temporary reprieve from deportations and a means of acquiring benefits denied to undocumented people. As of this writing, DACA grants two-year deportation deferrals and work permits to undocumented youths brought to the United States as children, using the same eligibility criteria as the DREAM Act (Preston 2012b). Although it is a temporary status, requiring renewal after two years, as many as 1.7 million youths will be able to receive Social Security numbers needed to obtain work, a driver's license, and financial aid to pursue a college education. While DACA does not offer a path to citizenship, it is a major victory for undocumented youths, who now have the opportunity to plan for dreams deferred. As of this writing, CIR proposals by Congress and the Obama administration have surfaced.

First Bipartisan Framework of 2013

A bipartisan framework for CIR was announced early in 2013 by the "gang of eight" senators: Charles E. Schumer (D-N.Y.), John McCain (R-Ariz.), Richard J. Durbin (D-Ill.), Lindsey Graham (R-S.C.), Robert Menendez (D-N.J.), Marco Rubio (R-Fla.), Michael Bennet (D-Colo.), and Jeff Flake (R-Ariz.). Just a day after the bipartisan framework was announced, President Obama rolled out the key principles of his administration's CIR (Tetreault 2013) proposal, which almost completely overlap with Congress's proposal:

- A "tough but fair path" to citizenship contingent upon securing our borders (i.e., billions of dollars to further militarize the border, including drones). Requirements would include that undocumented people register with the government, pay a fine as well as any back taxes owed, and submit to a background criminal check in exchange for a probationary status that would allow them to go to the back of the green card application line in order to reapply based on other criteria such as past and current employment record, English and civic classes, etc.
- Stronger employment verification (E-Verify) system to discourage future hiring of undocumented people by checking legal status of employees.
- A guest worker program that allows migrants to work legally on a temporary basis. A different path without elaboration is also noted for those who commit themselves to agricultural work.
- An improved legal immigration system to allow more university-educated immigrants to stay in the United States and contribute to the economy.

The striking similarity between the two top-down frameworks signals little change to come, and already, bottom-up, community-based responses and alternative CIR frameworks have begun to emerge that could fix a broken immigration system and improve the health and well-being of undocumented Latinos as well as the economies of countries engaged in free trade with the United States. An excellent example is the Dignity Campaign (Bacon 2013), a loose national coalition of more than forty immigrant rights and community organizations, labor unions, and churches, advocating an alternative CIR based on human and labor rights rather than immigration enforcement and labor need, which seem to be driving the two national frameworks discussed. The Dignity Campaign's alternative CIR includes the following:

- Legalization should not be the trade-off for more immigration enforcement, which costs multiple billions of dollars, results in a dangerously militarized border, and increases the overcriminalization of undocumented people.
- There should be fewer employer sanctions and E-Verify systems to police employee citizenship status. These systems not only turn employers into immigration law

enforcers but are misused to remove workers who exercise their right to union organizing and combating labor violations (Bacon 2009).

- The Dignity Campaign opposes guest worker programs in view of historical abuses of Mexican and other guest workers. The campaign would only support guest worker programs that enforce the rights of workers and that expire after five years.
- With regard to free trade, the Dignity Campaign calls for renegotiating all trade agreements to eliminate provisions that increase poverty abroad and displace workers and farmers or lower their living standards.
- There should be rapid and inclusive legal status for the undocumented without punitive fines, taxes, waiting periods taking years, or temporary legal status. The latter would include protecting family reunification and issuing all pending visas, which make up the massive backlog of current applications going back as far as twenty years or even further.

Interested readers are encouraged to learn more about CIR alternatives and ask which would have the largest multilevel impact on improving the health, mental health, and well-being of undocumented people, their families, and their communities, and which would accomplish this by improving not only the U.S. economy but also the economies of Mexico, Central American countries, and others engaged in free trade with the United States.

State-Level Interventions

California Dreaming

The *New York Times* recently featured Angie Escobar, an undocumented immigrant from Colombia and college hopeful, who in high school realized that she would not have a driver's license or be able to apply for federal financial aid if admitted to college. After high school she worked long hours for low pay at a catering company. When she was finally able to afford community college, tuition increases quickly forced her to leave school. It took her two years to earn enough money to return to school. In response to youths such as Angie, Governor Jerry Brown signed into law AB 130 and AB 131, also known as the California DREAM, in January 2011. Offering undocumented students the first form of statewide tuition assistance, AB 130 provides access to private financial aid in the form of scholarships and grants, while AB 131 allows undocumented students to meet criteria for in-state tuition and apply for financial aid but not for taxpayer federal grants or loans (Office of the Governor 2012).

Because the California DREAM Act prevents undocumented students from applying for federal and state financial aid, some efforts are underway to supplement the cost of college for undocumented students. For example, on December 11, 2012, UC Berkeley announced a $1 million grant, donated by Evelyn and Walter Hass Jr., with the goal of aiding one hundred undocumented students a year with annual grants of $4,000 to $6,000 each (Gordon and Chang 2012). UC Berkeley Chancellor Birgeneau also donated $100,000 to this cause. Such tangible investments support the health and psychological well-being of students such as Angie by improving their SES. Recent state policies to decriminalize the undocumented accomplish the same goal.

Decriminalizing Undocumented Community Members

Attorney General Kamala Harris announced in December 2012 that state law enforcement officials in California were not obligated to participate in the federal government's Secure Communities (SC) program (Romney and Chang 2012), which requires police to share fingerprints obtained from arrested immigrants with ICE in order to detect, detain, and turn over undocumented persons who commit serious crimes. Since the controversial program's introduction in 2008, many law enforcement leaders have expressed concern that it is not the job of police to assist the federal government in the deportation of undocumented immigrants who are stopped or arrested for minor offenses, some of whom have not even been convicted of a crime. The main concern is that SC makes immigrants fearful of cooperating with police. Harris said, "I want that rape victim to be absolutely secure that if she waves down an officer in a car that she will be protected and not fear that she's waving down an immigration officer," and emphasized the latter. Giving local law enforcement the discretion to enforce SC or not is also problematic, as it creates inconsistent policing throughout the state.

City and Local Latino Community Interventions

Supportive city mayors and city council members can be instrumental in taking into consideration undocumented segments of the city during decision making and resource allocations. Local Latino communities, with their bilingual, bicultural networks of nonprofit health, mental health, and social services agencies, have long been at the forefront of the outreach necessary to engage hidden, hard to reach, and at-risk members of the community. It is typically the mission of such community-based organizations to view individual clients as members of families from communities overly affected by

poverty related to racial and ethnic minority status intertwined with lack of documentation. Such an inclusive perspective means not discriminating on the basis of documentation status and requiring flexible funding streams (i.e., private foundation grants) to extend needed mental health services to undocumented people.

In his *New Practice Model for Working with Latino Populations,* Organista (2007) describes four major dimensions of culturally competent practice with Latino populations, described here with an emphasis on the mental health needs of undocumented Latinos.

Increase Mental Health Service Availability and Access

This dimension simply refers to making mental health services both available to Latinos (i.e., within county general hospitals, community mental health centers) as well as easily accessible (i.e., colocated within community-based family health centers, public-transportation-friendly locations). This dimension also refers to flexible hours, child care, and making services affordable (i.e., sliding fee scales) or free if possible (professional pro bono work). Outreach to community members to make them aware of and to encourage service use is imperative and often performed by trained lay or paraprofessional members of the community, known as *promotores de salud* (health promoters), committed to helping their community. Given the reluctance of undocumented Latinos to seek any formal type of service in spite of considerable need, all of the above maximize the probability of undocumented Latinos becoming more receptive to needed mental health services. Fortuna and Perez (2005) found that undocumented mental health clients kept just as many therapy appointments (74%) as their documented (77%) and U.S.-born Latino (69%) counterparts when such services are available and accessible.

Assess Mental Health Problems in Social and Cultural Contexts

Modern psychiatry prides itself on taking a bio-psychosocial approach to mental health, meaning that when making diagnoses, clinicians assess the varying degrees to which a client's problem results from biological factors (i.e., genetic inheritance), psychological factors (i.e., upbringing, psychological makeup), as well as social factors (i.e., socioeconomic status, living conditions, demographic background). However, in practice clients are generally offered psychotherapy in the form of talk therapy and/or psychiatric medications. While psychotherapy is a logical intervention for problems emanating from biological and/or psychological factors, it falls short in remedying

mental health problems resulting from harmful social factors that are reproduced by structural-environmental factors. Thus, while psychotherapy can alleviate symptoms of mental disorders, it generally does not address root social problems contributing to mental disorders.

Accordingly, although any undocumented Latino may succumb to an alcohol use, anxiety, depressive, or adjustment disorder, culturally competent clinicians consider the social and cultural contexts of such problems and recognize that the cluster of stress-related problems is part of a larger *pattern* of mental health problems disproportionately affecting undocumented Latinos because of structural-environmental factors. Latino cultural factors, such as how mental health problems are viewed, also need to be considered. For example, stigma related to mental disorders frequently must be addressed by clinicians, who can help to normalize the occurrence of mental health problems. They may also need to address the internalization of the stigma of being undocumented or blaming one's self for the struggle and frequent inability to support one's family given severely limited work options. Part of such clinical work requires being informed about the roots of undocumented immigration, assessing, and even raising consciousness among undocumented clients about the structural environmental roots of their suffering.

Select Culturally and Socially Acceptable Mental Health Interventions

As intimated in the preceding section, mental health practitioners intervening with undocumented clients explore and theorize linkages between symptoms of mental disorder and harsh living and working conditions, as well as the stigma and discrimination, faced daily by undocumented clients who present with stress-related mental disorders. Although there is no evidence that some types of psychotherapy work better for Latinos than others, Organista's (2007) review of the literature concluded that cognitive behavioral therapy (CBT) shows impressive pre- to post-therapy improvement in depression and anxiety disorders. Latinos benefit from CBT's less stigmatizing, classroom-like, psychoeducational, and manual-driven approach to teaching clients how diagnoses are made and treated using the CBT model (i.e., doing meaningful activities to break up cycles of low mood and inactivity; challenging depressed and anxious thinking to be more accurate and motivating; assertiveness training). For example, a depressed undocumented day laborer seen by Organista was convinced that he was a failure because he could not earn enough money to support his family back home as well as survive in the United States. In addition to challenging such depressed thinking (i.e., "Is it true you're a failure? Might there be other reasons for not earning enough money?"), he was taught the "Yes, but . . ." technique designed to

empathetically change a "half-truth" into a "whole truth" (Organista, 2007). Thus he was asked to complete the following cognition or belief: "*Yes* it's true that I have not been able to earn enough money to send home and support myself, *but* . . ." to which he was able to come up with less depressing endings ("but it isn't all my fault" and "that doesn't make me a failure").

As with CBT, adjustment disorders involve teaching clients how major changes in their lives (i.e., moving away from home and family, relationship breakups) can result in excessive symptoms of depression, anxiety, or both. With regard to alcohol use disorders, Spanish-language Alcoholics Anonymous groups are found to be helpful to many Latino immigrants struggling with this problem, as are non-AA self-help groups, in coping with problem drinking.

Hernandez and Organista (2013) recently demonstrated that Spanish-language *fotonovelas* (comic-book-like magazines with posed photos of people and bubble dialogue) can be used to teach depressed immigrant Latinas what depression is and the different ways it can be treated as well as raise their intentions to seek out needed treatment. *Fotonovelas* are a popular form of entertainment throughout Latin America and can be embedded with valuable health and mental health information in a culturally familiar format that does not require high reading or education levels.

Increase Mental Health Service Accountability

Creating multiple institutionalized mechanisms to frequently involve clients, community members, and professionals in developing, delivering, and evaluating relevant mental health services is what accountability is all about. At the client level this includes methods of feedback ranging from suggestion boxes (to which responses are promptly posted) to post-treatment exit interviews, in which clients are asked about the helpfulness of clinical services received, as well as for suggestions regarding how to improve services. For example, in a community-based organization serving immigrants in San Francisco, local immigrant men, including day laborers, requested and organized a weekly self-help support group for problem drinking facilitated by a social worker. Although it has not been evaluated, it has been well attended for over a year.

At the community level, accountability includes organizing agency community advisory boards (CABs), composed of key players (i.e., clients, advocates, undocumented community members) who help articulate community needs, acceptable solutions, and ways of evaluating and improving mental health services on an ongoing basis. Based on the findings of Perez and Fortuna (2005) reviewed above, such CABs could advocate for mental health and social services targeting stress-related mental disorders such as depression, anxiety, and alcohol use and dependence, while also helping undocumented clients

with their pronounced life stressors having to do with legalities, occupation, and lack of health insurance, to name a few related to lack of documentation.

MACRO INTERNATIONAL "OUT OF THE BOX" SOLUTIONS

When speaking publicly on the root causes of massive undocumented Latino migration to the United States, Organista is sometimes asked in tones of disbelief, "Surely you're not advocating an open border with Mexico?!" to which he often responds, "We already have an open border with Mexico, but it's open for trade and closed to people, which is inherently contradictory, because when you expand trade (i.e., through NAFTA), people come with it. Thus, you need to sensibly regulate trade *and* labor migration as well as immigration more generally."

Bill Ong Hing (2010) goes a bold step further, suggesting that we consider an open border policy not just with Mexico but also with Neil Young's homeland or transform the three neighboring NAFTA partners into a North American Union, partly modeled after the European Union (EU). Free trade reforms would also be needed to maximize the health and well-being of American, Mexican, and Canadian workers and the services, industries, and corporations that employ them. Hing believes that such a union could give North America a competitive global edge over the European Union as well as Asia, and especially China. Contrary to popular belief, open borders do not necessarily result in massive out-migration, provided that free trade agreements are crafted to improve the economies of all countries involved. For example, after Spain and Ireland joined the EU and borders were opened, previous out-migration from these countries to escape poverty slowed and eventually stopped, once Spanish and Irish citizens could earn living wages or better in their home countries (Hing 2010).

Obama has similarly stated that ideally Mexicans should be able to realize their Mexican Dream in their home country, but that will ultimately depend on how *fairly* we decide to enact CIR, including free trade reform. At stake are the health, mental health, economic, and general well-being of approximately eleven million undocumented people in America who provide essential labor to businesses.

NOTES

1. The 287(g) program creates agreements between ICE and local law enforcement departments to question individuals about their immigration status. Local law enforcement officials are given the authority to act as ICE agents and detain individuals until they are under the custody of ICE agents. Despite its being criticized for

facilitating racial profiling, twenty-four states have implemented such programs. In 2010 fifty thousand individuals were detained through 287(g) programs (Applied Research Center 2011).

2. Secure Communities is another deportation program, implemented in 2008 to improve public safety by identifying and removing "criminal aliens" from the United States. It has established partnerships with local, state, and federal law enforcement agencies. After apprehending noncitizens, local police departments use the FBI database to run a background check on the individual, which is automatically sent to ICE. The program is currently found in forty-four states and since August 2011 has led to the deportation of 134,000 individuals (Applied Research Center 2011).

3. The term "illegalized" is increasingly being used by researchers who study the macrolevel root causes of undocumented migration and conclude that millions of undocumented people who have come to the United States in search of life-supporting work are denied the opportunity to enter legally by a dysfunctional immigration system that fails to regulate immigration in ways beneficial to the needs of both these workers and the hundreds of thousands of American businesses that depend on their essential labor.

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About the Editor and Contributors

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Current research projects include urban refugees in Malaysia, evaluation of antitrafficking programs in Nepal, and research on adults trafficked to the United States.

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DANIEL KANSTROOM is professor of law at Boston College Law School, where he teaches immigration and refugee law, international human rights law, and administrative law. He is the director of the International Human Rights Program and the Post-Deportation Human Rights Project and was the founder of the Boston College Immigration and Asylum clinic, in which students represent indigent migrants and asylum-seekers. Together with his students, he has provided counsel for hundreds of clients, won dozens of immigration and asylum cases, and authored amicus briefs for the U.S. Supreme Court and other courts in immigration and human rights cases.

Professor Kanstroom has published widely in the fields of U.S. immigration law, human rights, criminal law, and European citizenship and asylum law. His latest book, coedited with sociologist Cecilia Menjívar, is *Constructing Immigrant "Illegality": Critiques, Experiences, and Responses* (Cambridge University Press, 2013). He is also the author of *Aftermath: Deportation Law and the New American Diaspora* (Oxford University Press, 2012) and *Deportation Nation: Outsiders in American History* (Harvard University Press, 2007). His articles have appeared in such venues as the *Harvard Law Review,* the *Yale Journal of International Law,* the *Stanford Journal of Civil Rights and Civil Liberties,* the *UCLA Law Review,* and the French *Gazette du Palais.*

Professor Kanstroom has taught at many universities, including the Fletcher School of Law and Diplomacy, American University, the University of Paris, Northeastern School of Law, King's College, London, the University of Hawaii, and Vermont Law School. He has lectured on immigration and human rights issues and participated in conferences around the world, trained hundreds of judges and lawyers in the intricacies of U.S. immigration law, published op-eds in the *New York Times* and elsewhere, and been featured on ABC News, National Public Radio, and Court TV, among other media appearances. He was a member of the national Immigration Commission of the American Bar Association and has served on the board of directors of the PAIR Project.

SARAH J. MAHLER is associate professor of anthropology and former director of the Center for Transnational and Comparative Studies at Florida International University in Miami. She teaches in FIU's interdisciplinary social science department, Global & Sociocultural Studies. For most of her career her research and publications have focused on Latin American and Caribbean migration to the United States and the development of transnational ties between migrants and their home communities. She was fortunate to be among those pioneering the transnational perspective on migration

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Prior to studying law, Marija worked as a technical adviser at the Harvard School of Public Health for the Longitudinal Aging Study in India. She contributed to projects ranging from measuring the social and physical determinants of community health to strategizing about more efficient mechanisms of global health governance. Marija has a BA in international studies from the University of Mary Washington.

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KATHLEEN (KATHY) STAUDT, PhD (University of Wisconsin, 1976), is professor of political science at the University of Texas at El Paso. She founded UTEP's Center for Civic Engagement and directed it from 1998 to 2008. Kathy teaches courses on public policy, borders, democracy, leadership, and women and politics. She has published more than one hundred academic articles and chapters, plus eighteen books, the latest of which include *Violence and Activism at the Border: Gender, Fear and Everyday Life in Ciudad Juárez* (University of Texas Press, 2008) and the edited volumes *Human Rights Along the U.S.-Mexico Border* (University of Arizona Press, 2009), *Cities and Citizenship . . . in the Paso del Norte Metropolitan Region* (Palgrave, 2010) and *A War That Can't Be Won: Binational Perspectives on the War on Drugs,* with lead coeditor Tony Payan (University of Arizona Press, 2013). Kathy is active in community organizations, such as the Industrial Areas Foundation/IAF-affiliated Border Interfaith. She has two grown children.

Hidden Lives and Human Rights in the United States

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Understanding the Controversies and Tragedies of Undocumented Immigration

Volume 3: Economics, Politics, and Morality

Lois Ann Lorentzen, Editor

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Introduction

Lois Ann Lorentzen

> Few of their children in the country learn English. . . . The signs in our streets have inscriptions in both languages. . . . Unless their importation could be turned they will soon so outnumber us that all the advantages we have will not be able to preserve our language, and even our government will become precarious.
>
> —Benjamin Franklin, 1753 (cited in Nevins 2008, 111)

As I write this introduction, Congress debates immigration reform. A series on undocumented immigrants[1] seems timely. Yet the national debate is not new, but merely the latest version of a deep societal ambivalence toward immigrants. Although on the one hand the United States prides itself on being a "nation of immigrants," on the other the "illegal alien" has loomed large in immigration laws and public opinion throughout U.S. history (Ngai 2004). Benjamin Franklin's remarks about German immigrants sound surprisingly "modern." Few today would question whether or not people of German ancestry are fully "American." Yet some, similar to Franklin centuries ago, question whether the foreign born, especially the undocumented, should be full members of the country, fearful of what a "new American nation" might look like (Resnick 2013).

Thirteen percent (40.4 million people) of the U.S. population in 2011 was foreign born (Batalova and Lee 2012). Four percent (roughly 11.2 million) of the country is unauthorized. The unauthorized make up nearly 5.5 percent of

the U.S. workforce (Pew Hispanic Center 2013). Two-thirds have lived in the United States for over a decade; 46 percent are parents of minor children (Taylor et al. 2011). Contrary to the stereotype of a migrant as a single male, the unauthorized are "families with children" (Passel, quoted in Resnick 2013). Whereas 21 percent of nonmigrant households are couples with children, 47 percent of undocumented households are (Resnick 2013).

The undocumented are for the most part working people with children who have lived in the United States for a decade or longer. Yet public debates on immigration reform emphasize national security, border control, amnesty, English competency, economic impact, and the need to punish "law breakers." Missing is a discussion of basic rights denied to people, based on their legal status, who *live here.* Unauthorized immigrants are here; they are neighbors, workers, and parents, part of the fabric of our life together.

I recently returned from the Nogales, Arizona/Nogales, Mexico border, where I interviewed migrants who had been deported from the United States. Many had spent time in detention centers, one of four adults were parents of U.S. citizen children, and most had lived in the United States for many years. They told heartbreaking stories of dangerous desert crossings, sexual abuse in detention centers, lack of legal assistance, verbal and physical abuse by authorities, and great sadness at being separated from loved ones. As we left a shelter run by Catholic priests and nuns on the Mexican side of the border, a young woman, her husband, and their six-month-old baby were about to cross the desert in 104-degree heat to join family members in the United States. The price many migrants pay to reside in the United States is often high, and I worried about this young family's ability to survive the dangerous journey ahead of them.

Many don't survive. Earlier this year I listened to Raquel Rubio-Goldsmith's chilling account of the unidentified remains of migrants in south-central Arizona. Between 1990 and 2012, 2,238 bodies were found in this corner of the United States, a period coinciding with increased border security: fences and walls as well as more Border Patrol. The actual number of deaths is "certainly higher than the numbers based on actually recovered bodies and official counts" (Nevins 2008, 22). The Pima County Office of the Medical Examiner in Tucson, which "handles more unidentified remains per capita than any other medical examiner's office in the United States," has been unable to identify a third of the bodies recovered (Mello 2013; Binational Migration Institute 2013). Heat exposure from traveling through the desert is the most likely cause of death. Joseph Nevins and Luis Alberto Urrea graphically describe the deaths, and compassionately tell the life stories of people who have died crossing the desert (Nevins 2008; Urrea 2004). Many of those who have died were crossing for the second or third time, attempting to rejoin

families after deportation. Deportation as a strategy for immigration control is rarely "voluntary," but involves involuntary, painful family separations and the willingness to again attempt dangerous desert crossings.

Few seem to think that deportation of all unauthorized immigrants is either desirable or feasible. Yet deportation of migrants has increased during the Obama administration. A record 400,000 people were deported in 2012, a not insignificant portion of the estimated 11.2 to 11.5 million unauthorized immigrants in the United States. Tanya Golash-Boza (2013) makes the remarkable claim that "by 2014 President Obama will have deported over 2 million people—more in six years than all people deported before 1997." Some 23 percent of "criminal deportees" were deported after traffic violations, and 20 percent for immigration crimes such as illegal entry or reentry. Similar to what I discovered through my informal interviews in Nogales, Mexico, the study found that from July 2010 to December 30, 2012, one-quarter of all deportations were of parents with U.S. citizen children living in the United States (Golash-Boza 2013).

No matter what type of immigration reform one favors (or doesn't), the question of how people are treated must be asked. Separation of young children from their parents and death in the desert don't fit a national image of welcome, fair treatment, equal protection, and human rights.

WHOSE RIGHTS?

> Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. (Universal Declaration of Human Rights, Article 2)

The United Nations General Assembly passed the Universal Declaration of Human Rights in 1948. The declaration defined a wide range of rights, including *civil rights* (protection from discrimination and freedom of expression, speech, religion, assembly, the press, movement), *political rights* (right to a fair trial, due process, assembly, vote, petition, self-defense, and freedom of association), and *social and economic rights* (i.e., the right to equal pay, the right to work, the right to education, food, housing, medical care). Article 2, quoted above, affirmed the idea that governments were not justified in excluding groups of people from rights, based on (among other things) national or social origin or status of a country to which a person belongs. Yet for

the undocumented, "both the law and popular opinion deem them somehow different from the rest of us, and not eligible for the rights and privileges that 90 percent of the population enjoys (Chomsky 2007, xiii). The coupling of rights with citizenship challenges the alleged universality of human rights.

The first justification for denying rights is noncitizenship. The unauthorized are in a paradoxical (impossible?) situation. As Cymene Howe writes, "undocumented migrants cannot claim full citizenships in the country to which they migrate because they are effectively betwixt and between—that is, in a liminal condition of nation state membership" (2009, 45). Yet for the unauthorized, it is virtually impossible to obtain U.S. citizenship, which would afford them rights, because normal "migration channels for undocumented migrants are largely foreclosed due to migrants' illegal status" (45). Full rights "belong" to citizens; undocumented migrants are not citizens, yet paths for citizenship are (for the most part) closed because they are unauthorized.

The liminal condition described by Howe becomes further complicated when "unauthorized" becomes framed as "illegal." Residing in the United States without authorization or "documents" is a civil rather than a criminal violation. "Mere undocumented presence in the United States alone, however, in the absence of a previous removal order and unauthorized reentry, is not a crime under federal law" (ACLU 2010).[2] Yet public discourse frames the unauthorized as "criminal." The inaccurate use of terms like *illegal immigrants* or *aliens* "effectively criminalize[s] individuals for entering or residing in a country without the sanction of the national government" (Nevins 2008, 13).

Unauthorized immigrants, then, are not allowed to claim full rights because a) they are not citizens, and b) they are criminals, deemed to be justifiably outside the protection of the law (although *citizen* criminals can still claim protection). Mae Ngai provides a historical account of how immigrants became "illegal aliens," thus justifying their exclusion from the United States.[3] Changing laws and policies have transformed residents, and even citizens, into "illegals." Chinese who were recruited in the 1860s to work in California agriculture became undesirable and were then denied entry and status through the Chinese Exclusion Act of 1882. Japanese American citizens *became* Japanese by edict of the U.S. government during World War II (although German American citizens did not *become* Germans). Mexican workers were recruited in 1942 under the Bracero Program and upon its repeal in 1964 became illegal from one day to the next (although they continued to labor). A new subject was created "whose inclusion in the nation was a social reality but a legal impossibility—a subject without rights and excluded from citizenship" (Princeton University Press n.d.). As Aviva Chomsky writes, "To those included in the circle of rights, the exclusion of others has always seemed justified, so much so as to be virtually beyond the bounds of discussion" (2007, xii).

RIGHTS DENIED

What are human rights violations experienced by the undocumented in the United States? I have already mentioned death, forcible separation from family members, sexual violence/abuse in detention centers, and lack of legal protection. Undocumented migrants, especially those in transit, are vulnerable to human trafficking. An estimated 14,500 to 17,500 people are trafficked into the United States every year (Polaris Project n.d.). Unauthorized people are especially vulnerable once in the United States because they lack legal status and protection. The undocumented face a wide range of human rights issues that may affect many aspects of their lives:

Family life. Numerous treaties signed by the United States express the international human right to family unity. The United Nations Human Rights Committee contends that states should restrain from deporting individuals if doing so would destroy family unity. "They may not be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence" (UN Office of the High Commissioner for Refugees 1986). Yet many families live with the constant fear that they will be separated from their loved ones. Four and a half million children live in "mixed-status" families, generally with citizen children and at least one undocumented parent. Mixed-status families risk "losing" one or both parents to deportation. A woman I met in Nogales, Mexico, had lived in the United States for twenty years when she was deported after being stopped for a missing taillight. She left behind four citizen children. In her case, a parent was still in the home to care for their children. Others are not so fortunate. The Applied Research Council found that children have ended up in the foster care system, although they *have parents*; a conservative estimate was "that there are at least 5100 children currently living in foster care whose parents have been either detained or deported" (ARC 2011, 4). The report concluded, "Whether children enter foster care as a direct result of their parents' detention or deportation, or they were already in the child welfare system, immigration enforcement systems erect often-insurmountable barriers to family unity" (4).

Workplace violations. Unauthorized laborers disproportionately experience labor and workplace condition violations, including wage exploitation and nonpayment, unsafe working conditions, greater risk of on-the-job injuries that go unreported and uncompensated, unhealthy work conditions due to pesticides and toxic chemicals, child labor, and fear of organizing. Farmworkers easily work ten-hour days, often in temperatures of 90 degrees and above. Nannies, house cleaners, and caregivers, called the "invisible workforce," are especially vulnerable to abuse and exploitation, given that their work happens in private rather than public spaces. Unauthorized migrants also make significantly less money than working U.S. citizens. The median household income for undocumented families (2007 figures) is $36,000, compared to $50,000 for U.S.-born residents (Passel and Cohn 2009). A 2004 study reported that while one in three working citizens received less than twice the minimum wage,

two of every three undocumented workers did (Passel, Capps, and Fix 2004). For some the situation is even worse. The average wage for a farmworker is $11,000 per year; many may work a piece-rate pay system. Domestic work is characterized by low pay and no (or few) benefits, and the undocumented make 18 percent less than U.S.-born domestic workers (Burnham and Theodore 2012).

Legal protection. As noted previously, during deportation proceedings immigrants are often denied due process of law and/or access to counsel. They also may face arbitrary detention and crowded and unsanitary detention facilities (Human Rights Watch 2010). Immigrants, whether authorized or not, have the right to freedom from arbitrary detention. In 2011, 429,000 immigrants were held in detention centers (ACLU n.d.). The average length of stay is thirty-seven days (Immigrant Justice 2011), although I have met many immigrants who spent up to a year in centers. Most will not have access to a lawyer, interpretation services, phone calls to their families, and other taken-for-granted rights of citizens. A recent study of deportees at the U.S.-Mexico border found that fewer than one in five had contacted their consulate because they were unaware they had the right or were denied access even after making a request (Danielson 2013).

The preceding are but a few of the numerous human rights concerns of the unauthorized. Given the complexity and breadth of the human rights issues faced by undocumented immigrants, scholars, policy makers, and activists from a wide variety of disciplines must be engaged. The three volumes of *Hidden Lives and Human Rights in the United States: Understanding the Controversies and Tragedies of Undocumented Immigration* offer contributions from the top immigration scholars in the United States in disciplines including anthropology, communications, demography, economics, education, gender and race studies, geography, history, journalism, law, political science, psychology, public policy, social work, sociology, and religious studies.

Volume 1, *History, Theories, and Legislation,* locates unauthorized immigration in the context of U.S. history, including legislative history and demographic trends. It explores laws, policies, reforms, media narratives, and public opinion concerning national security, voting, amnesty, gender, and border control at community, state, national, and international levels. At a macrolevel, contributors explore the impact of globalization on immigration to the United States, international migration regimes, and theories of immigration. At a more personal level, the dangerous journeys faced by many migrants, the impact of state laws on the daily lives of undocumented immigrants in Arizona, and difficult family planning decisions faced by Mexican immigrant women as they are sexualized, similar to immigrant women before them, are described. The volume clearly shows that macro/structural decisions affect the daily lives of millions. The theories, laws, and perceptions of who "belongs" have real-world consequences.

Volume 2, *Human Rights, Gender/Sexualities, Health, and Education,* places human rights violations faced by unauthorized immigrants in the context of a "criminalization" framework that justifies (implicitly or explicitly) deportation, detention, border violence, human trafficking, and family separation. The contributors show that being undocumented is literally bad for one's physical and mental health. They take us inside the worlds of young people as they try to adapt to life as undocumented, the daily lives of families who are divided by borders, the challenges the undocumented face as they try to become part of communities, and of college students trying to succeed academically. The challenges faced by the undocumented are made even worse for some groups, such as multiply marginalized LGBTQ immigrants.

Volume 3, *Economics, Politics, and Morality,* explores the economic impact of immigrants both in the United States and in their countries of origin, including the labor the unauthorized perform. As noted previously, undocumented immigrants make up roughly 4 percent of the U.S. population, but nearly 5.5 percent of its workforce, concentrated in the lowest wage jobs. The unauthorized are disproportionately represented in certain occupations, such as farm work (25%), grounds keeping and maintenance (19%), construction (17%), food service (12%), and production (10%) (Passel and Cohn 2009). One-third of all domestic workers (elder care, child care, house cleaning) are undocumented (Burnham and Theodore 2012). Day laborers congregate on street corners to be hired for short-term and dangerous work. The contributors to this volume show the human face behind these numbers, the unjust working conditions, and paths forward. The role of civil society, migrant hometown associations, religious groups, the sanctuary movement, and advocacy groups in humanizing the immigration regime are explored in this volume, as well as the values and morality that underlie current immigration legislation and policy.

The three volumes that comprise *Hidden Lives* share the perspective that the immigration "crisis" is a crisis of human rights and how we live together. The contributors weave stories of real people with their analyses. The "undocumented" include people who have lived in the United States for many years, have citizen children, work here, and are deeply tied to communities.

I have been honored to collaborate with the contributors to *Hidden Lives.* They are excellent scholars and on the forefront of policy making and action on the behalf of the unauthorized. They are a smart, engaged, compassionate group; their collective wisdom, scholarship, and experience are profound.

When I decided to edit *Hidden Lives,* a few colleagues questioned using the word "hidden." Certainly undocumented migrants are more "visible" than ever. They are visible in the popular imagination as the illegal border crossers; the targets of numerous state laws; and the subjects of congressional

debates, electoral politics, popular media, and vigilante groups. The preceding may be seen as *involuntary visibility.* Yet the huge demonstrations of 2006 in reaction to HR 4437 (Sensenbrenner Bill) that rocked the nation represent a massive *voluntary* grabbing of visibility.[4] Jorge Antonio Vargas, a Pulitzer Prize–winning journalist, famously "came out" as undocumented and was featured in a *Time* magazine cover story (Vargas 2011, 2012). The DREAMers[5] also self-consciously make themselves visible, when some might argue it is in their self-interest to remain hidden.

However, this series is about *human rights* and undocumented immigrants. What is still hidden to most people (although certainly not to the unauthorized) is a litany of human rights abuses, fear, and vulnerability. Hidden are the detention centers, the countless deaths while crossing the border, the separation of parents from their children, the lack of basic protection while on the job, the absence of due process during legal proceedings; in short, the basic rights taken for granted by citizens. The contributors to these volumes shine light on hidden areas of the daily lives of undocumented immigrants. They demonstrate a wide range of human rights issues, while showing "the human face of unauthorized immigration" (Marquardt et al. 2011).

NOTES

1. There are debates about terms. Most see *illegal immigrant* as pejorative, and *illegal alien* even more so. The Associated Press banned the use of both terms in 2013. Some scholars, policy makers, and activists prefer the term *unauthorized* rather than *undocumented* immigrant. They observe, correctly, that many immigrants do indeed possess "documents," so it is not technically correct to call them undocumented. Given that the term *undocumented immigrant* is more widely used and recognizable, these volumes (although not all contributors) refer to undocumented immigrants.

2. The distinctions between civil and criminal are often conflated in public debate and popular perception. Illegal entry and reentry after a prior removal order are considered crimes. Living "unauthorized" in the United States, however, is a civil violation (ACLU 2010). A 2006 study by the Pew Hispanic Center estimated that "[a]s much as 45% of the total unauthorized migrant population entered the country with visas that allowed them to visit or reside in the United States for a limited amount of time."

3. She points out that the category of "illegal" didn't exist before the 1920s, because there weren't laws to break (Ngai 2004).

4. The Border Protection, Anti-Terrorism and Illegal Immigration Control Act of 2005 (HR 4437), also known as the Sensenbrenner Bill due to its sponsorship by Wisconsin Republican representative Jim Sensenbrenner, passed the House but was defeated in the Senate. The bill, among other things, would have made it a felony to assist undocumented immigrants. The near passage of the bill inspired massive

protests in 2006, including a protest march of up to 500,000 people and a nationwide day of protest on April 10, 2006.

5. DREAMers is a term used to describe people who would qualify for a path to citizenship under the proposed (and once defeated) legislation The Development, Relief, and Education for Alien Minors (DREAM) Act.

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Economic Impact of Immigrants, Migrants, and Illegality

Aviva Chomsky

ANTECEDENTS TO ILLEGALITY

Immigration has shaped the economy of the United States since the country was founded. Mexican migrant workers played an important role in U.S. economic development as an exploitable labor force, deprived of legal rights, starting in the nineteenth century. Undocumentedness, however, is a recent phenomenon, becoming important to the economy in the late twentieth century. Until the civil rights era, the mere fact that a worker was Mexican was enough to justify legal and economic subordination. Mexicans were consistently accorded special treatment under immigration law, because they were seen as necessary, temporary workers rather than as potential immigrants to be admitted or excluded. They were legally discriminated against—but not by having their entry restricted.

The legal and ideological mechanisms for maintaining a cheap, exploitable Mexican labor force changed in the 1960s as overt racial discrimination became less acceptable. After 1965, and especially after 1986, new exclusions and a new ideology and structure of supposedly race-blind "illegality" became the principal method of justifying the marginalization of Mexican, and increasingly other Latin American, workers, even as they became even more important to the U.S. economy.

By the middle of the nineteenth century Mexicans labored inside their own national territory on U.S.-owned mines and railroads, and after 1848 as "aliens" of various statuses inside their former territory taken by the United States. In Mexico they did "Mexican work," received a "Mexican wage," and "lived in segregated quarters apart from American management" (Gonzalez 2011, 34). However, "although living separately, they labored for operations that connected directly to the heart of the American economy" (35).

When these (mostly) men crossed into the United States, they carried the border, and the segregated conditions, with them. "Mexican migration to the United States," Gilbert Gonzalez concludes, "was a single process originating in Mexico and . . . was the social consequence of American capital expansion into Mexico" (38). "Recruited laborers whether destined for northern Mexico or for the United States, travel in parties, under a boss, or 'cabo' who holds the tickets," wrote U.S. Bureau of Labor Statistics economist Victor S. Clark in 1908 (471). After "crossing a virtual open border, Mexican workers were again housed in company towns, confined to 'Mexican work,' treated to dual wages, and segregated socially . . . the workers' experiences in Mexico continued in the United States" (Gonzalez 2011, 39). By law and by custom, Mexicans were consistently viewed as foreigners and as temporary workers—and welcomed as such—rather than as potential immigrants.

"Rather than interpreting segregation as a means of keeping people out of the 'mainstream or of 'marginalizing' them to the social and economic periphery, segregation was the method of integrating Mexican immigrants and their families into the heart of the American economy. . . . Segregated settlements brought a variation of the border to the employers' doorsteps" (Gonzalez 2011, 46). Mexicans worked in the mines and railroads of the Southwest and migrated to the factories and urban centers in the Midwest.

The special treatment Mexicans received under U.S. immigration law reflected their economic importance—and the ways that society, and the law, saw them as workers to be exploited rather than potential immigrants who could gain rights. Mexicans were exempted from the literacy requirement and head tax imposed on immigrants in 1917 and were not even required to enter through an official port of entry or inspection point until 1919 (Smith n.d.; Ngai 2003). Until 1924 the new border between the United States and Mexico was virtually unpoliced, and migration flowed openly. Because they were not considered potential immigrants at all, Mexicans were consistently exempted from the increasingly restrictive immigration legislation implemented in the late nineteenth and early twentieth centuries.

Clark (1908) reported that while "complete statistics of those who cross the frontier are not kept," an estimated 60,000 to 100,000 Mexicans crossed each year to work in the United States on a temporary basis. "Except in Texas

and California, few Mexicans become permanent residents, and even in those two states, a majority are transient laborers who seldom remain more than six months at a time in this country" (1908, 466). In agriculture, Clark reported, "the main value of the Mexican . . . is as a temporary worker in crops where the season is short. . . . They are not permanent, do not acquire land or establish themselves in little cabin homesteads, but remain nomadic and outside of American civilization" (485).

Because their labor was so essential to the growing mining, railroad, and agricultural industries of the Southwest, even the most restrictive immigration laws had to make accommodations to ensure that Mexican labor was available to U.S. employers. Mexicans were treated separately by immigration legislation because growing agribusiness interests in the Southwest wielded their political clout to ensure their continuing access to Mexican labor, and because Congress conceptualized Mexicans more as workers than as potential immigrants. Thus Mexicans were invited into the country—with or without documents, or with different types of specifically work-authorizing, rather than immigration, documents—and just as easily expelled if they didn't remove themselves and simply disappear when their labor was no longer needed.

The 1924 immigration law setting up the quota system that drastically restricted immigration from southern and eastern Europe and confirmed the 1917 ban on immigration from Asia did not include any restrictions on immigration from the Western Hemisphere. Agribusiness interests, Kelly Lytle-Hernandez (2010) explains, had enormous influence on

> the early formation of U.S. immigration law-enforcement practices in the U.S.-Mexico borderlands. The Border Patrol . . . was established [in 1924] at a moment of dramatic expansion in agricultural production in the southwestern United States. To plant, pick, and harvest the rapidly-expanding acres of crops, agribusinessmen recruited seasonal labor from Mexico and rarely hesitated to demand immigration control practices that promoted their desire for unrestricted Mexican labor migration to the United States. (2010, 3)

It was not only their availability, but also their "deportability" that made them desirable workers, "because the threat of deportation disciplined and marginalized the Mexican immigrant labor force. Agribusinessmen kicked, winked, screamed, lobbied, and cajoled for border patrol practices that allowed unrestricted access to Mexican workers while promoting effective discipline over the region's Mexicano workforce" (2010, 3).

The Bracero Program between 1942 and 1964 offered agribusiness another guarantee of temporary, and deportable, Mexican labor. The program was designed to formalize what had previously been assumed: that Mexicans were

necessary workers, but not potential immigrants or citizens. It "had the . . . subtle and pernicious effect of legitimizing a particularly instrumentalist view of Mexican immigrant workers. Moreover, it internalized the border control feature of immigration law into the very being of Mexican workers. In effect, any Mexican in the United States would now be presumed to be, at best, temporary, and, at worst, illegal. Unlike any other discrete group in the United States, then, to be Mexican was to be presumed legally tenuous" (Kanstroom 2007, 219).

The need for Mexican workers was further acknowledged in the 1952 law that made "illegally harboring or concealing an illegal entrant" a felony. The law was modified by the so-called Texas Proviso, explicitly stating that "the usual and normal practices incident to employment shall not be deemed to constitute harboring" (Kanstroom 2007, 222). "This section was called the Texas proviso because many Texans took advantage of it by hiring illegal aliens from Mexico and other countries south of the border," wrote Robert Pear in the *New York Times.* Until the Immigration Reform and Control Act was passed in 1986, explained a former general counsel of the Immigration and Naturalization Service, "there was no prohibition at all on employment of illegal aliens as household workers" (Pear 1993).

Criminalizing Work

Given the importance of Mexican workers to so many sectors of the U.S. economy, it might appear paradoxical that new laws at the end of the twentieth century began to illegalize work and make it more difficult for Mexicans to cross the border. However, the impact of the laws was to make Mexican workers more vulnerable and exploitable, rather than to diminish their presence.

The first attempt to criminalize the employment of people who were undocumented was in 1973, at the initiative of the AFL-CIO and the NAACP (Brownell 2005). Senator Peter Rodino introduced the bill, but it failed in the Senate. In 1986, however, employer sanctions were a key element of the new Immigration Reform and Control Act. The AFL-CIO, the NAACP, and the Leadership Council on Civil Rights, a national coalition of 185 civil rights organizations and the country's "premier coordinating mechanism for civil rights advocacy before Congress and the executive branch," all backed the idea, although the Leadership Council was "sharply divided" (Tamayo 1997).

In 1990 the NAACP reversed its position after an acrimonious debate and under pressure from Latino civil rights organizations. The AFL-CIO did the same in 2000. Those favoring the sanctions, in both organizations, argued that the presence, and the hiring, of undocumented people lowered the floor, making it more difficult for blacks in particular, and for poor or unskilled American workers in general, to obtain decent employment. If it became more difficult for the undocumented to work, they reasoned, employers would have to

improve conditions and employ citizen workers. "If you withdraw those sanctions, then you open the door and you flood this state with a multitude of undocumented aliens who will take the jobs of blacks and other minorities," one NAACP branch president explained (Johnson quoted in Tobar 1990).

For Latino organizations, though, employer sanctions are a civil rights issue. They cited a March 1990 GAO report that found the sanctions led to a "widespread pattern of discrimination," especially against Latinos and Asians, who were thought to look "foreign" (Roybal 1990; Tobar 1990). Moreover, Latino organizations argued that the sanctions themselves lowered the floor for everyone. By making a large group of workers more vulnerable to exploitation—because they have little recourse under the law—they enable employers to lower wages and working conditions, with little fear that workers will protest or organize. Thus the sanctions, paradoxically, make undocumented immigrants a *more* desirable workforce and at the same time help to *lower* working conditions for others, because they make them more desperate and more willing to accept substandard conditions.

Employer sanctions also "generated a flourishing industry in fraudulent documents, which merely imposed further expenses and greater legal liabilities upon migrant workers themselves, while supplying an almost universal protection for employers." Rather than punishing employers—who were routinely given warnings prior to inspections of their hiring records or were subject at most to token fines—the law "actually aggravated the migrants' conditions of vulnerability and imposed new penalties upon the undocumented workers themselves" (De Genova 2007).

While the Bill Clinton administration implemented very punitive anti-immigrant legislation, it did not focus specifically on the workplace. During the George W. Bush administration, workplace raids became the major public face of immigration enforcement. These were high-profile operations that let government authorities bask in the public impression they created that they were "getting tough" on immigration. The Michael Bianco factory in New Bedford, Massachusetts, the AgriProcessors plant in Postville, Iowa, Smithfield and Swift meatpacking plants around the country, and Howard Industries electronics plant in Laurel, Mississippi, were the sites of just a few of the many raids. Immigration authorities would descend upon the workplace and round up workers, arresting hundreds. In December 2006 more than twelve hundred workers were arrested in a sweep of six Swift meatpacking plants.

Barack Obama publicly criticized the raids when he was a candidate, but spoke ambiguously about the employment of the undocumented. During his convention speech he carefully played both sides of the fence, declaring: "Passions fly on immigration, but I don't know anyone who benefits when a mother is separated from her infant child or an employer undercuts American wages by hiring illegal workers" (2008).

Once in office, President Obama pursued a policy that some have termed "silent raids." Instead of descending on the workplace and making arrests, the new policy used audits. The Immigration and Customs Enforcement (ICE) agency would require a business to turn over employment eligibility forms for all of its workers. "Since January 2009," the *Wall Street Journal* reported in May 2012, "the Obama administration has audited at least 7,533 employers suspected of hiring illegal labor and imposed about $100 million in administrative and criminal fines—more audits and penalties than were imposed during the entire George W. Bush administration" (Jordan 2012; Preston 2011). With the audits, workers are not deported. But they do lose their jobs. In addition, Obama pressed for expansion of the E-verify program, under which participating employers check the Social Security numbers of every new employee against federal databases, pushing those without valid numbers into ever more hidden corners of the economy.

UNDOCUMENTED JOBS

Most undocumented people work in three specific types of jobs. All of these jobs have certain characteristics in common: they tend to be low wage and low status, offer few if any benefits, have difficult or unstable schedules, and offer little job security. They may be seasonal or involve night shifts. The work is generally heavy, unpleasant, dirty, and even dangerous. And it is absolutely essential to the functioning of the postindustrial U.S. economy.

One type is jobs that have existed for a long time and have a history of being filled by noncitizen workers. Agriculture is the primary area in this category. As large-scale agriculture spread through the Southwest in the twentieth century, migrant Mexican workers became the primary labor force. Today, 42 percent of agricultural workers work as migrants—that is, they follow the crops. Seventy-five percent of farmworkers were born in Mexico, with 2 percent born in Central America and 23 percent in the United States (U.S. Department of Labor 2005, 11). About 4 percent of undocumented immigrants work in agriculture, and undocumented immigrants comprise a very large proportion of agricultural workers.[1] The National Agricultural Worker Survey, taken by the U.S. Department of Labor over the past twenty years, has consistently found that approximately 50 percent of agricultural workers have been undocumented.[2] Some analysts, like Rob Williams of the Migrant Farmworker Justice Project, believe that the percentage is even higher, up to 90 percent or more, because many people, when interviewed, will not admit to being undocumented (*Economist* 2010). The seasonal, and back-breaking, nature of farm work, and dangerous, often unregulated conditions and low pay, make these jobs unattractive to even low-skilled workers who have the advantage of citizenship.

Farmworkers find work for only about thirty weeks out of the year and earn $12,500–$15,000 per year (Carroll 2011).

The second type of job is work that has been "in-sourced." While most people are familiar with outsourcing—in which jobs, from manufacturing to call centers, are shifted overseas—in-sourcing is less well known. The term can have various meanings: it can refer to companies deciding to carry out internally tasks that they had previously contracted out, or it can mean companies bringing back to the country jobs that had been outsourced abroad. Here I am referring to a particular kind of in-sourcing: when a company closes down an operation in order to move it somewhere else inside the United States where it will have access to cheaper (often immigrant, and frequently undocumented) workers, lower taxes, fewer environmental or health and safety regulations, or other financial incentives. These are the same kinds of factors that encourage companies to relocate abroad. In recent decades, some older industries have followed the same pattern inside the country. The meatpacking industry, for example, closed down unionized plants in major urban areas to relocate in the rural Midwest. As these jobs became more unattractive—because the companies relocated in areas where workers did not want to move and downgraded working conditions and pay—these companies also began to recruit heavily among undocumented immigrants.

Many in-sourced jobs differ from agricultural work because they are year-round instead of seasonal. Their rise coincides with a growing long-term, as opposed to seasonal, migration of undocumented workers and a growing shift out of the historic seasonal migration areas of California and the Southwest into the Midwest and especially the South. Despite the poor wages and working conditions in these jobs, many immigrants consider them a step up from farm labor (Marrow 2011).

Another type of in-sourcing is in the construction industry, which employs almost one in five undocumented immigrants. Construction employed about a million undocumented workers in the first decade of the twenty-first century (Passel 2006). During the industry's long expansion between 1970 and 2006, total employment in construction more than doubled, to 7.7 million, before declining sharply in the housing-led recession (Martin 2012). The booming construction industry in urban centers like Nevada and post-Katrina New Orleans attracted large numbers of undocumented immigrants.

The third category is jobs in the service sector that have emerged in recent decades. Fast-food service, domestic work, newspaper delivery, and landscaping are all areas that have increased their demand for low-paid, contingent workers. Changing lifestyles, including increased pressure on the middle class, rising expectations for consumption, and the entry of women into the workforce, have created whole new sectors of the economy that have relied heavily on undocumented workers.[3]

As Steve Striffler notes, "Latinos are becoming virtually synonymous with food preparation and cleanup in our nation's restaurants. To find a meal that has not at some point passed through the hands of Mexican immigrants is a difficult task" (2005, 5). Chicken, for example, boomed in popularity in the 1980s and 1990s, just as it was transformed from a low-profit farm product that was generally sold whole or in parts to a highly processed—and highly profitable—manufactured commodity in forms like nuggets and fingers. And who did the processing in the new plants that created our contemporary incarnation of chicken? In large numbers, and across the country, it was Mexican and Central American workers, many of them undocumented.

Agriculture

As fruit and vegetable agriculture spread in California at the end of the nineteenth century, farmers sought a labor force that would be as tractable and exploitable as African slaves had been in the South—or even better, one that would be there only when needed for the labor-intensive seasons. "A California farm spokesman in 1872 observed that hiring seasonal Chinese workers who housed themselves and then 'melted away' when they were not needed made them 'more efficient . . . than negro labor in the South [because] it [Chinese labor] is only employed when actually needed, and is, therefore, less expensive' than slavery" (Fuller [1940] quoted in Martin 1994).

When Chinese exclusion eliminated that option a decade later, agriculturalists turned to Mexicans. As the *Saturday Evening Post* reported in 1928:

> There are around 136,000 farmers in California. Of these, 100,000 have holdings under 100 acres; 83,000, holdings under forty acres. With these small farmers their project is a one-man affair until harvesting period is reached, then they need ten, twenty, or fifty hired hands to get their crop off and into market. Fluid, casual labor is for them a factor determining profits or ruin. Specialized agriculture has reached its greatest development in California. The more specialized our agriculture has become the greater has grown the need for a fluid labor supply to handle the cropping.
>
> Mexican labor fits the requirements of the California farm as no other labor has done in the past. The Mexican can withstand the high temperatures of the Imperial and San Joaquin valleys. He is adapted to field conditions. He moves from one locality to another as the rotation of the seasonal crops progresses. He does heavy field work—particularly in the so-called "stoop crops" and "knee crops" of vegetable and cantaloupe production—which white labor refuses to do and is constitutionally unsuited to perform.

Mexican labor, the author estimated, comprised from 70 to 80 percent of "casual" or seasonal farm labor (Teague 1928, 25–27).

Seasonal farm labor increased rapidly over the course of the century, as farming centralized. "This [worker] mobility, this unsettledness," writes Don Mitchell (2012), "was, it seemed, *necessary* to the production of profit in the fields of California." However, he continues, "Not so much nature . . . as economic structure was decisive in who moved where, when and how" (11). The Bracero Program, established in 1942 as a response to wartime labor shortages and renewed repeatedly until it was finally ended in 1964, institutionalized and bureaucratized the recruitment of Mexican migrant workers. It also helped to spur the consolidation of industrial agriculture.

A report to President Harry Truman's Commission on Migratory Labor in 1951 noted the Bracero-era shift away from small farms relying on family labor and the rapid growth of large farms making heavy use of migrant labor. "The most significant trend in American farm employment patterns is away from farms using either no hired labor or only one or two year-round men and toward the hiring of large numbers for a relatively short period" (President's Commission on Migratory Labor 1950, 1). "Farm employment has become highly irregular but the American farm worker is still legally and morally responsible to feed his family every day. His problem has become basically one of underemployment. He can meet it partially by moving from area to area, but even then it is almost impossible for him to meet American standards of life" (3).

The commission's final report emphasized the contingent nature of the labor: "When the work is done, neither the farmer nor the community wants the wetback around" (quoted in Kanstroom 2007). Furthermore, agricultural employers preferred a kind of "feudal" relationship that they could only enjoy with migrants. They "do not care for workers who may voice complaints in regard to working conditions, housing, or sanitary facilities. They want only those people who will go quietly about their work and make no comments or objections. They want the Mexican worker who has just come across the border and is strange to our language and ways of life. They find that the Mexican who has been in this country for some time and become acquainted with our free customs is no longer suited to the economic and social status of a stoop laborer" (President's Commission on Migratory Labor 1950, 15).

The Bracero Program was a building block in the establishment of the California agricultural system. "The bracero era was decisive in cementing into place a particularly large-scale, industrialized form of agriculture dependent on highly exploitative labor processes, when it did not have to be that way," concludes Mitchell (2012, 6). Migratory labor was "the *essential* labor force" at the basis of this system (13).

With the end of the Bracero Program in the 1960s, undocumented workers came to the fore as the migrant agricultural labor force. The program was phased out gradually between 1965 and 1967, ending completely just as the first numerical limit for the Western Hemisphere, of 120,000 immigrants per

year, went into effect (Massey and Pren 2012, 3). By 1965 "undocumented Mexican laborers were easily fulfilling U.S. labor demands and thus obviating the need for further bilateral agreements" (Overmyer-Velázquez 2011, xxxvii). As Douglas Massey and Karen Pren (2012) show, "when avenues for legal entry were suddenly curtailed after 1965, the mostly-circular migratory flows did not disappear but simply continued without authorization or documents." In fact, "during the 21-year history of mass undocumented migration [between 1965 and 1986], the United States, in effect, operated a de facto guest-worker program" (Massey, Durand, and Malone 2002).

The Immigration Reform and Control Act (IRCA) of 1986 highlighted the paradox of the need for undocumented—"illegal"—workers in agriculture. To apply for legal status, undocumented people (the vast majority of them Mexicans) had to prove that they had been in the United States continuously since 1982. However, the provisions for farmworkers were different: instead of requiring the four years of continuous residence, the act offered special agricultural worker (SAW) status to migrant farmworkers who had simply been employed in agriculture for at least ninety days in the 1985–1986 season. The law made this exception precisely because it acknowledged the special situation of these migrant workers and agriculture's special reliance on them. Despite this legalization, and despite the employer sanctions that accompanied it, the unauthorized population continued to grow.

At the time the IRCA was passed, the Department of Agriculture estimated that some 350,000 undocumented migrants were working in agriculture and would be eligible for SAW status. However, some 1.3 million applied—almost as many as applied for status under the four-years-of-continuous-residence provisions. In California, with only an estimated 200,000 undocumented agricultural workers, some 700,000 applied. By early 1992 the Immigration and Naturalization Service (INS) had approved 88 percent of these applications, or over a million nationwide (Martin 1994, 50–51). But independent studies carried out in Mexico, among migrants who had applied for the SAW provision, showed that only 60–70 percent of those who applied were actually eligible (Suro 1989).

Philip Martin argues that the IRCA contributed to what could perhaps be called illegal legalizations—people using false documents attesting to their status as agricultural workers to apply for, and obtain, legal status in the country—and what he calls "documented illegal aliens" (1994, 51). In an article in the *New York Times,* Robert Suro (1989) claimed that there had been "fraud on a huge scale." Yet fraud or no fraud, people became officially legal. Moreover, the whole process may have actually spurred further undocumented immigration by "spreading work authorization documents and knowledge about them to very poor and unsophisticated rural Mexicans and Central Americans, encouraging first-time entrants from these areas" (Martin 1994, 52).

The employer sanctions provision of the IRCA also contributed to a shift away from direct employment to the use of farm labor contractors (FLCs). The use of FLCs increased, from about one-third of farms hiring migrant labor in the mid-1980s, to over half in the early 1990s (Martin 1994, 53). The IRCA contributed to the growth of the FLC system in three ways. Employer sanctions encouraged employers to seek third parties to take the risks. Many former migrant workers, now legalized under SAW, took advantage of their new status to become FLCs. Finally, the rise of the FLC system coincided with the shift from Mexico's traditional sending regions to new, indigenous areas in southern Mexico and Guatemala, in which the FLC served as an important recruiter and intermediary (56).

Martin concluded that "FLCs are practically a proxy for the employment of undocumented workers and egregious or subtle violations of labor laws" (1994, 55). He noted that while the manufacturing sector shrank in the 1980s, the agricultural sector expanded, as farmers continued to be confident of their ability to rely on low-wage labor. "This immigrant labor subsidy encourages the expansion of an industry in which the majority of workers earn below-poverty-level incomes" (53, 54). "Immigrant workers continue to act as a subsidy that encourages the expansion of a subsector of the U.S. economy in a manner that leaves the majority of its workers in poverty" (57).

A temporary labor force that will simply move on when the work dwindles at the end of the season may seem ideal from an employer's perspective. For the workers, however, such a life is characterized by poverty, uncertainty, and long periods of unemployment. *The Economist* noted in 2010 the parallels between today's Mexican migrants and the desperate "Okies" who migrated during the Great Depression, comparing a contemporary Mexican migrant family, the Vegas, to the Joads in John Steinbeck's *Grapes of Wrath*:

> Often they take the same roads on which the 'Okies' travelled en masse in the 1930s as they fled the depressed dust bowl of Oklahoma, Texas and Arkansas to seek a living in California. These Okies are forever etched into America's psyche as the Joad family. . . . Joads then and Vegas now are pushed by the same need, pulled by the same promise. Now as then, there is no clearing house for jobs in the fields, so the migrants follow tips and rumours. Often, like the Joads, they end up in the right places at the wrong times. Felix Vega and three of his group, including his wife, were dropped off in Oxnard, famous for its strawberries. But they arrived out of season, so they slept on the streets, then in a doghouse, then in somebody's car. For two months they did not bathe and barely ate. Finally, they found jobs picking strawberries and made their first money in America. (*Economist* 2010)

In the summer of 2010 the United Farm Workers (UFW) decided to confront the myth that "they [immigrants] take our jobs" directly. The union

organized a campaign called "Take Our Jobs," inviting citizens and green-card holders to apply for agricultural work. The campaign got an extra publicity boost when comedian Stephen Colbert took up the challenge and then testified to Congress about the experience. Three months into the campaign, the union announced that its Website, takeourjobs.org, had been visited by three million people. Some eighty-six hundred had expressed an interest in a job in agriculture, but only seven had actually followed through. "These numbers demonstrate that there are more politicians and finger-pointers interested in blaming undocumented farm workers for America's unemployment crisis than there are unemployed Americans who are willing to harvest and cultivate America's food," the Farmworkers concluded (United Farm Workers 2010).

The experiences of farmers and their organizations mirror the UFW experiment. Larry Wooten, the president of the North Carolina Farm Bureau, explained that "agricultural employers who advertise jobs—as is required for those who are part of the federal guest worker program—for nearly two months get little to no response. 'We have no choice,' Wooten said. 'We must use immigrants'" (Llorente 2012).

A 2010 U.S. Department of Agriculture report analyzed the probable impact of increased immigration enforcement on the U.S. agricultural sector. The report cited the commonly used figure that over half of the agricultural labor force consisted of undocumented Mexican workers (Calvin and Martin 2010a, 1). A reduction in undocumented migrant labor would lead to rising labor costs, the report concluded, and different scenarios depending on the characteristics of the crop. Where the potential existed, mechanization would spread. Where mechanization was not an option, farmers would face market loss due to higher costs. Finally, new research in mechanization and rising consumer prices would likely result. It is notable that in no case did the report foresee improved working conditions or rising employment of domestic workers in agriculture (Calvin and Martin 2010a, 1). "The U.S. fruit and vegetable industry competes in a global economy with producers from other countries who often have much lower wages. With increasing trade, competitive pressures are greater than ever. In summer 2009, the Federal minimum wage was $7.25 per *hour* and the minimum wage in California was $8.00 per hour, while the minimum wage in Mexico ranged from $3.49 to $4.16 per *day,* depending on the region," the report explained (Calvin and Martin 2010a, 1).

Labor made up 42 percent of the variable production costs for fruit and vegetable farms, and labor is the "single largest input cost" for many crops. Moreover, "most [farmworkers] will move on to nonagricultural employment within a decade of beginning to work in the fields" (Calvin and Martin 2010a, 1). Thus agribusiness interests see continuing supply of migrant workers as essential

to their continued production and have lobbied heavily for a century to ensure that this supply continues to be available to them. As another USDA report stated bluntly: "The supply of farmworkers for the U.S. produce industry depends on a constant influx of new, foreign-born labor attracted by wages above those in the workers' countries of origin, primarily Mexico. Immigration policy helps to determine whether the produce industry's labor force will be authorized or unauthorized" (Calvin and Martin 2010b).

The state of Kansas sought in 2012 to develop a system of its own to legalize undocumented farmworkers (Fox News Latino 2012). Georgia's farmers panicked in the summer of 2011, when a new law made it a felony for an undocumented person to apply for work. The Georgia Department of Agriculture stated: "Non-resident immigrant laborers, those of legal and illegal status, harvest crops, milk cows, gin cotton and maintain landscapes. Georgia farmers and agribusiness employers widely attribute the need for these workers due to the fact that local citizens do not generally possess or care to develop the specialized skills associated with agriculture and, further, do not regularly demonstrate the work ethic necessary to meet the productivity requirements of the farm business" (Georgia Department of Agriculture 2012, 2). A majority of Georgia farm employers hired laborers for a limited period of one to three months (21), another thing that made the jobs undesirable.

One season after the passage of Georgia's new law, 26 percent of farmers answered that they had lost income because of lack of available labor for their farms. For some specialty crops like labor-intensive fruits and vegetables (blueberries, cabbage, cantaloupe, cucumbers, eggplant, peppers, squash, tobacco, and watermelon), more than 50 percent were in that situation (Georgia Department of Agriculture, 41–43). Some 56 percent said they had trouble finding qualified workers (46). "A major response theme for this question was that the work is too physically demanding and difficult for U.S. citizens (non-immigrants). Respondents believe that only immigrant workers are willing to do the tasks needed in their operations" (50).

Productivity was also an issue. "Producers expressed great concern with the quality of work from domestic workers." According to data provided by one onion producer, "a migrant worker was twice as productive as a non-migrant worker in planting Vidalia onions" (Georgia Department of Agriculture 2012, 63). As one Georgia farmer remarked, "American workers are not interested in getting dirty, bloody, sweaty, working weekends & holidays, getting to work at 4 a.m. 2 mornings a week & at 6 a.m. 5 mornings a week" (100).

Experiments with criminal offenders who are out on probation—and required to work as a condition of their probation—backed up the farmer's opinion. One crew leader "put the probationers to the test . . . assigning them to fill one truck and a Latino crew to a second truck. The Latinos picked six

truckloads of cucumbers compared to one truckload and four bins for the probationers. 'It's not going to work,' [the crew leader] said. 'No way. If I'm going to depend on the probation people, I'm never going to get the crops up'" (Associated Press 2011).

As Philip Martin shows, most workers won't spend more than ten years working in agriculture. "As it is currently structured, fruit and vegetable agriculture requires a constant inflow of workers from abroad who are willing to accept seasonal farm jobs" (2009, xiii). Farm labor is so marginal, strenuous, and low paid that when workers achieve legal status, they quickly move into other sectors. Thus "farmers and their political allies . . . oppose simply legalizing unauthorized workers, which would enable them to get nonfarm jobs. Instead, farmers agree to legalization only in exchange for large guest-worker programs that give employers considerable control of foreign workers" (Marshall 2009).

Sixty years ago the folksinger-songwriter Woody Guthrie asked, somewhat rhetorically, "Is this the best way we can grow our big orchards? Is this the best way we can grow our good fruit?" In the ensuing half a century we have only deepened our "modern agricultural dilemma" (Wright 2005). We have devised a vast and multifaceted agricultural system that depends on desperate workers for its survival. True, for many Mexicans, from the Bracero days to the present, low-wage, temporary, migrant labor in the United States offers a viable or even hopeful alternative to poverty at home. But this merely means that our agricultural system depends on the existence of a lot of extremely poor people in Mexico.

Although modern large-scale agricultural systems produce vast amounts of food, they have also created large-scale problems: "high capital costs; environmental deterioration of farmland through erosion, salinization, compaction, and chemical overload; pesticide and chemical fertilizer pollution of lakes, streams, and groundwater; unhealthy working conditions for farm workers, farmers, and farm families; dependence on an extremely narrow and destabilizing genetic base in major crops; dependence on nonrenewable mineral and energy resources; the destruction of rural communities; and the increasingly concentrated control of the nation's food supply" (Wright 2005, xvi). Another literature has examined the consumption side: our increasing reliance on overprocessed, high-sugar and -fat foods, fast food and junk food, and the "lifestyle diseases" like heart disease and diabetes that have resulted (Schlosser 2001/2012).

As we confront the problems in our agricultural and food production system, the issue of labor scarcity and our continued reliance on impoverished, undocumented workers has to be central to the discussion. The way our agricultural system currently works, farm labor is so precarious and so harsh that

only displaced migrants, the majority of them rendered "illegal" by our country's laws, are willing and able to do it. Paradoxically, most of these migrants were in fact displaced from centuries-old systems of subsistence agriculture in Mexico by precisely the same agricultural modernization that now demands their labor elsewhere. A truly comprehensive approach to immigration reform would need to look at these interlocking economic and structural systems, as well as make more narrow changes in immigration law.

In the meantime, however, we can question the role of illegality itself in the system. Farmers overwhelmingly oppose the harsh state-level immigration laws that make it more difficult for them to find the seasonal workers they need. In the short term, simply making it legal for immigrants to work in agriculture would address the needs of both farmers and immigrant farmworkers who are undocumented. The larger problems, however, await a more long-term and profound reform of our global agricultural system. Nevertheless, we must acknowledge that our access to relatively cheap and abundant food in the United States exists because of the hard labor of poor Mexicans, in their country and in our own.

In-sourcing: Meat Processing and Construction

If the U.S. agricultural system has relied on Mexican labor as it has developed over many decades, meat processing and construction are two industries that shifted to heavy use of Mexican and Central American—and in particular, undocumented—immigrants at the end of the twentieth century. This shift coincided with the trend of outsourcing—when manufacturing plants began to shift their labor-intensive production abroad. While manufacturing employment declined from a high of twenty million in 1979 to eleven million in 2012, meatpacking and construction couldn't exactly be moved abroad.[4] But meatpacking could be moved out of heavily unionized urban centers like Chicago into the rural Midwest. Construction boomed as manufacturing declined, with employment in that sector doubling between 1970 and 2006 to a high of 7.7 million (Martin 2012, 1).

Construction

While the construction industry grew in the last decades of the twentieth century, wages stagnated and unionization plummeted—from 40 percent in the 1970s to only 14 percent in 2011. Unions lost ground, especially in the high-growth area of residential construction, which was being buoyed by low interest rates and subprime loans through the first decade of the new century. But as employment rose and undocumented workers increased their presence in the

workforce, wages fell (Martin 2012, 5–6, 7). In fact, the low wages of undocumented workers helped contribute to the housing bubble (Martin 2012, 16).

In Las Vegas the population doubled to almost two million between 1990 and 2007, and the share of immigrants in the city's population also doubled during the same time span, from 9 to 19 percent. Many of the newcomers worked in hotel construction and tourism-related services in the booming city: half of the state's construction workers were Latino immigrants. By 2008 Nevada had the largest percentage of undocumented workers of any state, at 12 percent (Martin 2012, 8).

Houston's 1970s oil boom likewise spurred a jump in construction. "The record-breaking construction of office buildings, shopping centers, storage facilities, apartment projects, and suburban homes in the 1970s and early 1980s created an insatiable demand for Mexican immigrant labor. Undocumented workers from rural and urban Mexico became a preferred labor force, especially among construction employers who paid low wages and offered poor working conditions" (Moore 1993, 116). The Greater Houston Partnership estimated that 14 percent of Houston's construction workforce was undocumented in 2008—the largest percentage and also the largest number of workers in any job category (Jankowski 2012).

In New Orleans, only days after Hurricane Katrina hit, the federal government waived documentation requirements for hiring workers in New Orleans, and soon after it waived prevailing federal wage standard requirements for contractors working on federally funded reconstruction projects. It thus set the stage for an influx of low-paid, undocumented workers (Fletcher et al. 2006, 5). Some 100,000 Hispanics moved into the Gulf Coast after Katrina. Hispanics made up half of the labor force working in reconstruction, and half of them were undocumented. Undocumented workers formed "the backbone of post-Hurricane Katrina reconstruction," reported *USA Today* (Associated Press 2006b). Curiously, though, while the workers remained undocumented, it was ostensibly not illegal for them to work, at least during the first month and a half, because of the waiver.

Overall, undocumented workers made up a quarter of the workforce in New Orleans in the months following the hurricane (Fletcher et al. 2006, 12). Almost 90 percent were already in the United States and moved to New Orleans from other areas, primarily Texas (41%) and to a lesser extent Florida (10%) (14). Unsurprisingly, undocumented workers faced lower wages and poorer working and living conditions than those with documents.

After Hurricane Ike hit southeastern Texas, undocumented immigrants performed a significant portion of the cleanup work. "All across southeast Texas, roofs need repair, debris must be discarded and towns hope to rebuild. Hurricane Ike's destruction is sparking one of the largest rebuilding efforts

the state has seen in decades, but at the same time is highlighting a thorny facet of the region's labor force: A lot of the recovery work will be done by illegal immigrants," reported the *Houston Chronicle* (Carroll 2008).

When the housing boom went bust after 2008, strangely, construction wages appeared to rise. Really what was happening was that the lower-paid newcomers were the first to lose their jobs, so the rise in wages was more apparent than real (Martin 2012, 8–9).

Meatpacking

Like construction, meatpacking is an industry that is very difficult to outsource. In some ways the work process in meatpacking resembles that of the large manufacturing plants of other industries more than it does construction, in which most workers are employed by small companies and contractors. But while industries like textiles or electronics can transport the raw materials and the finished products over long distances to save on the costs of production, such a strategy is not very practical for meatpackers, who deal with a perishable, bulky, and sometimes cantankerous product. So like construction, meatpacking has relied on bringing immigrant workers to the point of production, rather than sending production to countries where production is cheaper.

Lance Compa describes the process of in-sourcing in the Nebraska beef industry:

> From its founding as a territory in 1854 until the late twentieth century, Nebraska was mostly populated by white Americans of European origin, joined by a minority of African-Americans. Omaha was always an important meatpacking center because of its proximity to livestock and feedlots. Immigrant workers from southern and eastern Europe made up most of the meatpacking labor force in the early twentieth century. In the 1940s and 50s, the children of these immigrants, along with African-American coworkers in key roles, formed strong local unions of the United Packinghouse Workers. As happened in the industry generally, in the 1980s and 1990s, many meatpacking businesses closed plants that provided good wages and benefits. Following closures, company owners often relocated plants to rural areas. In Omaha, some companies later reopened closed factories employing low wage, new immigrant workforces without trade union representation. (2004, 7)

Wages in meatpacking fell 45 percent between 1980 and 2007. The downgrading of meatpacking jobs proved "devastating to the standard of living for workers in an industry that once sustained a blue-collar middle class" (Kammer 2009, 5). As both wages and working conditions deteriorated, immigrant workers became the mainstay of the labor force. By the late 1990s, fully a quarter of meatpacking workers were estimated to be undocumented (Martin 2012, 3).

The strength of the agricultural lobby has prevented immigration enforcement from targeting that industry, although as shown previously, state-level legislation has destabilized the agricultural labor force in several parts of the country. It was in the meatpacking industry that the federal government chose to highlight its new "get-tough" immigration enforcement capability, starting in the late 1990s.

In 1999 the INS launched "Operation Vanguard" in the state of Nebraska, subpoenaing the employment records of every meatpacker in the state. After reviewing all twenty-four thousand employee records received, the agency identified forty-seven hundred cases in which the employee's legal status was in doubt. It presented employers with the lists and required all of the "suspects" to appear for interviews with the agency. It seemed clear to the meatpackers that "INS's intention was not to apprehend potentially unauthorized employees, but to 'chase off' those workers who were present in illegal status" (Edwards 2000, 1).

In "chasing [them] off," the operation succeeded. Only one thousand of the workers dared to appear for their interviews. The others simply left their jobs. Overnight, the state's meatpacking industry lost 13 percent of its workforce. Of the one thousand interviewed, thirty-four were determined to be unauthorized to work and were arrested and deported. "Meatpacking company officials . . . believe that a substantial number of these employees [who disappeared] were authorized to work but chose not to appear because of the intimidation inherent in any such interview (for example, from questions such as 'are you *or any members of your family* not authorized to be present in the United States?')." The Nebraska Cattlemen's Association estimated that its members lost $5 million, and the state economy as a whole lost $20 million, as the result of the operation (Edwards 2000, 1).

Operation Vanguard ended in 2000, but in 2006 a new enforcement effort began, focused on workplace raids. On December 12, 2006, ICE agents descended on six Swift meatpacking plants in Iowa, Minnesota, Nebraska, Texas, Colorado, and Utah, arresting thirteen hundred of the company's seven thousand day shift workers. Swift was emblematic of the industry pattern of shifting from urban to rural locations and employing large numbers of new Latin American immigrants, many of them undocumented. In several Swift plants, researchers drew a direct connection to the Bracero Program. Former Braceros and their relatives who received amnesty in 1986 moved into these plants and started new chains of migration, both documented and undocumented, to meatpacking jobs (Kammer 2009, 3).

The raids affected more than just those arrested, as family members and others were afraid to show up to work in the aftermath. The Center for Immigration Studies looked at what happened in the devastated plants over the following months. All of them managed to replace the hundreds of workers who were

arrested. Strikingly, all of them relied on a new group of immigrants. Most of the lost workers were eventually replaced by refugees, from Burma and different parts of Africa, recruited or attracted from other parts of the United States. Their refugee status gave them legal authorization to work (Kammer 2009, 3).

Another devastating raid took place at the Agriprocessors plant in Postville, Iowa. Agriprocessors represented a cross between in-sourcing and a new industry. Although meatpacking in general was an old industry that was moving into new rural areas, kosher processing had been a local, small-scale industry until the late twentieth century. "In the 1980s, before the Postville plant had opened, almost all fresh kosher meat had been sold through local butchers. It came in raw quarters from slaughterhouses that were rented out by rabbis, and it rarely made it beyond major cities on the coasts" (Popper 2008).

The Rubashkin family changed all that. Locating their new plant in the small town of Postville, Iowa, they proposed to turn kosher meat into a nationally available, mass-produced product. "The Rubashkins created a world in which it was possible to buy fresh kosher beef and poultry in ordinary supermarkets across the country, even in places that had few Jews. . . . The changes brought about by the Rubashkins did something more than expand the reach of kosher meat. They brought an entirely new customer base to kosher food: the secular Jews and even non-Jews who never would have stopped at a butcher shop. The expansion also allowed Orthodox communities in places that had never had them" (Popper 2008).

Agriprocessors also differed from other meatpackers in choosing the tiny town of Postville as its location. Most meatpackers moved to medium-sized towns of thirty to sixty thousand when they left the urban centers. Postville, with a population of fourteen hundred, was "a town with no stoplights, no fast-food restaurants and a weekly newspaper that for years featured the 'Yard of the Week'" (Jones 2012).

Most of the workers were recruited from two small villages in Guatemala. Over 75 percent of the workers were undocumented, and some were minors (Jones 2012). Working conditions at the plant were abysmal:

> One of those workers—a woman who agreed to be identified by the pseudonym Juana—came to this rural corner of Iowa a year ago from Guatemala. Since then, she has worked 10- to 12-hour night shifts, six nights a week. Her cutting hand is swollen and deformed, but she has no health insurance to have it checked. She works for wages, starting at $6.25 an hour and stopping at $7, that several industry experts described as the lowest of any slaughterhouse in the nation. (Popper 2006)

In May 2008 ICE agents descended on the plant and arrested 389 of its 900 workers, most of them Guatemalan. As their lengthy saga of incarceration

and deportation began, the rest of the town's immigrant population panicked. "Within weeks, roughly 1,000 Mexican and Guatemalan residents—about a third of the town—vanished. It was as if a natural disaster had swept through, leaving no physical evidence of destruction, just silence behind it" (Jones 2012).

The Agriprocessors raid in May 2008 was "the largest single-site operation of its kind in American history" (Times Wire Reports 2008). Because one of the court interpreters, Erik Camayd-Freixas, wrote a detailed protest about the irregularity of the procedures, which circulated widely on the Internet and was later submitted to Congress, the public obtained access to an unusually detailed picture of the process. According to Camayd-Freixas's account, "the arrest, prosecution, and conviction of 297 undocumented workers from Postville was a process marred by irregularities at every step of the way" (*Hearing* 2008).

Like Swift, Agriprocessors looked to other sources of marginalized, immigrant workers in the wake of the raid. "In one of its most desperate moves, Agri recruited 170 people from the Micronesian island of Palau—whose status as a former U.S. protectorate means its citizens can work legally in the United States. In September 2008, the Palauans traveled 72 hours and 8,000 miles on planes and buses before arriving in Postville with little more than flip-flops and brightly colored shorts and top" (Jones 2012).

Six months later the plant closed. It was later sold and reopened, and like other plants in the industry, it implemented the new federal E-Verify system to confirm that all workers hired had valid permission to work. However, as a journalist found in 2011,

> few Iowan-born locals work there. Ridding this small community of its illegal workforce, far from freeing up jobs for American-born citizens, has resulted in closed businesses and fewer opportunities. Even nearly four years later, many homes still remain empty, and taxable retail sales are about 40 percent lower than they were in 2008.
>
> In order to staff its still low-paying jobs with legal immigrants, the new owner of the plant has recruited a hodgepodge of refugees and other immigrants, who often leave the town as soon as they find better opportunities, creating a constant churn among the population. The switch to a legal work force has made the community feel less stable, some locals say, and it's unclear if Postville will again become a place where immigrants will put down roots, raise children, and live in relative harmony with their very different neighbors. (Goodwin 2011)

Although the Obama administration scaled down the Bush-era policy of workplace raids, it expanded other enforcement programs that dated to the Clinton and Bush administrations. In terms of workplace enforcement,

Obama greatly expanded the use of E-Verify, a program created in 1997 under the auspices of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). E-Verify requires participating employers to check each new hire against a set of federal databases to ensure that the individual is either a citizen or an immigrant specifically authorized to work in the United States. The system was initially voluntary, but in 2007 the Office of Management and Budget required all federal government agencies to screen all new hires through E-verify and in 2009 required certain federal contractors and subcontractors to use the system for existing employees as well as new hires. Several states, beginning with Arizona in 2007, have mandated that all employers in the state utilize E-Verify (Stana 2010). Other states have tried to restrict its use.[5]

But the experience of the meatpacking industry shows that eliminating undocumented workers, either through workplace raids or the use of E-Verify, has not increased employment opportunities for citizens. Instead, it has destabilized businesses and communities, created temporary flows of refugees, and brought harm to innumerable people with benefits to none. Many argue against the use of E-Verify because the GAO found it to be plagued with errors and false alarms, citing in particular several GAO investigations between 2005 and 2011 (Stana 2010; U.S. Government Accountability Office 2005, 2008). Although it is quite true that the program has a history of erroneously targeting some individuals, in particular work-authorized immigrants and naturalized citizens, that is not the only or even the main reason to oppose it. Even if it worked perfectly, its impact on individuals, businesses, communities, and the economy would only be to cause harm all around (Sharry 2011).

New Jobs: Landscaping, Nannies, and Newspapers

Other sectors that employ significant numbers of undocumented workers are the mostly unregulated, small-scale niches in the service sector like landscaping, nanny services, and newspaper delivery. The first two are sectors in which employment has grown in recent decades, while in the latter it has shrunk. But all three have been refuges for undocumented workers, in part because they involve low pay; insecurity and lack of benefits; difficult hours; and isolated, heavy, and sometimes dangerous working conditions. These poor working conditions parallel the working conditions in industries that have been outsourced (manufacturing) and in-sourced (meatpacking, construction). The cheap products provided by outsourcing and in-sourcing, along with the cheap services provided by these new service industries, have contributed to rising consumption and illusions of affluence in the United States.

The landscaping industry has grown steadily since the 1970s, hand in hand with the construction industry. "A strong upturn in the construction of homes, commercial businesses and schools translated into a similarly strong upturn in the demand for landscape materials. . . . This in turn prompted the . . . industry to ratchet up supply of products and services, hence the remarkable growth of this industry" (Haydu, Hodges, and Hall 2006, 5).

Two additional, interrelated changes in the past few decades have contributed to the increase in demand for landscaping services. First, the ranks of the super-rich who hire landscaping companies to maintain their palatial grounds have increased. Second, middle- and upper-middle-class suburban families, who a generation ago might have maintained their own yards, are now busier than ever and contracting out services that they used to provide for themselves, or that their children used to provide. And as the industry grew, the new jobs were filled by immigrants, especially undocumented immigrants.

A *Washington Post* article described the transformation of one landscaping company during the 1990s:

> In the early 1990s, Floyd had fewer than a dozen employees, all of them black. Today, 73 percent of the Washington area's landscaping workers are immigrants, along with 51 percent of office cleaners and 43 percent of construction workers. . . . Floyd's 20 wintertime workers are all men from El Salvador, except for two black women who manage the office. In the summer, he employs twice as many men, all immigrants. Floyd's experience illustrates immigrants' impact. Once just a guy with a lawnmower, he runs a business with annual sales of more than $2.5 million. He credits immigrant employees for his business's growth and pays about $10 an hour, with no work and no pay in inclement weather. It's grueling labor in the winter; a man can spend the day stabbing a spade into frozen dirt or be asked to shimmy up a tree with a chainsaw in one hand and no netting below. (Williams 2007)

Like the farm and meatpacking associations discussed previously, the California Landscape Contractors Association is strongly opposed to the criminalizing of immigrant work and implicitly acknowledges the industry's dependence on undocumented workers. Calling for legalization for the undocumented, the association notes: "The status quo is untenable, as it puts employers in a strange 'don't ask, don't tell' situation where they can never be sure of their workforce." The industry operates under a continuous labor shortage, the association explains:

> The landscaping industry relies heavily on an immigrant labor force. Landscaping is physically demanding work. It is performed in hot, cold, and sometimes rainy weather. Some landscaping jobs are seasonal. American-born workers increasingly are not attracted to such jobs. Because landscaping work involves outdoor manual labor, it is to some extent young person's work. Yet America has an aging workforce. At the same time,

the landscape industry is growing and therefore has a need for more workers, partly because this same aging population tends to enlarge the market for landscaping services. Immigrants, who tend to be young, address this unmet need for younger workers in the landscape industry. (California Landscape Contractors Association 2010)

Landscaping is not the only personal service job that has expanded based on the use of undocumented immigrants in recent decades. A number of high-profile public figures have been embarrassed when reporters uncovered their use of undocumented domestic service workers. Lawyer Zoe Baird, who had worked for the Carter administration and the Department of Justice, was withdrawn by President Bill Clinton as his nominee for attorney general when it was revealed that she had employed undocumented workers as chauffeur and nanny. Then Clinton's second choice, Kimba Wood, was withdrawn for the same reason.[6] When Mitt Romney was running in the Republican primary in 2007, in large part on an anti-immigrant platform, the *Boston Globe* published an investigation showing that he in fact had undocumented workers regularly maintaining the 2.5-acre lot around his home in Belmont, Massachusetts (Cramer and Sacchetti 2007). California Republican gubernatorial candidate and former eBay CEO Meg Whitman fired her nanny of nine years during the campaign when the candidate allegedly first learned that her employee was undocumented. And in 2004 Bernard Kerik stepped down from his nomination as chief of Homeland Security in 2004 when it was learned that he too hired a nanny who lacked documents.

But it's not only the super-rich who hire nannies, landscapers, and people to clean their houses. In 2001 Pierrette Hondagneu-Sotelo described the proliferation of services in the previous twenty years that had transformed middle-class life in Los Angeles. At the time she was writing, Los Angeles was still in the vanguard; by 2012, what she describes had become more prevalent throughout the United States. "When you arrive at many a Southern California hotel or restaurant," she writes,

you are likely to be first greeted by a Latino car valet. The janitors, cooks, busboys, painters, carpet cleaners, and landscape workers who keep the office buildings, restaurants, and malls running are also likely to be Mexican or Central American immigrants, as are many of those who work behind the scenes in dry cleaners, convalescent homes, hospitals, resorts, and apartment complexes. . . . Only twenty years ago, these relatively inexpensive consumer services and products were not nearly as widely available as they are today. The Los Angeles economy, landscape, and lifestyle have been transformed in ways that rely on low-wage, Latino immigrant labor. (Hondagneu-Sotelo 2001, 3)

The number of gardeners and domestic workers in Los Angeles doubled between 1980 and 1990 (3).

The inexpensive nature of these services—in part because of the often undocumented immigrant labor that provided them—"has given many people the illusion of affluence and socioeconomic mobility" (Hondagneu-Sotelo 2001, 3). This illusion overlays other changes in the U.S. economy over the past fifty years, as the rapid expansion of the middle class that began in the post–World War II era slowed and then reversed in the 1970s, to be replaced by growing economic inequality. "Greater inequality . . . tends to generate greater concentration of paid domestic work" as the middle class works harder to maintain its standard of living, and must increasingly rely on low-cost services provided by the more impoverished (6):

> While most employers of paid domestic workers in Los Angeles are white, college-educated, middle-class or upper-middle-class suburban residents with some connection to the professions or the business world, employers now also include apartment dwellers with modest incomes, single mothers, college students, and elderly people living on fixed incomes. They live in tiny bungalows and condominiums, not just sprawling houses. . . . In fact, some Latina nanny/housekeepers pay other Latina immigrants . . . to do in-home child care, cooking, and cleaning, while they themselves go off to care of the children and homes of the more wealthy. (Hondagneu-Sotelo 2001, 9)

Tellingly, Los Angeles was in the vanguard of these events. In the 1990s, "when Angelenos, accustomed to employing a full-time nanny/housekeeper for about $150 or $200 a week, move to Seattle or Durham, they are startled to discover how 'the cost of living that way' quickly escalates. Only then do they realize the extent to which their affluent lifestyle and smoothly running household depended on one Latina immigrant woman" (Hondagneu-Sotelo 2001, 3–4).

A little over a decade later, *Business Review* reported, "Nannies [are] a growth industry in slow economy." With more parents working and child care expensive or unavailable, the nanny industry fills the gap (De Masi 2011). The *Arizona Republic* explained: "Unconventional work schedules, increased awareness and flexible care options have ignited growth in the nanny industry. At the same time, parents have a desire for more personalized care" ("More Parents Opting for Nannies" 2007).

Newspaper Delivery

Newspaper delivery, of course, has been around for a long time. But today's newspaper delivery system is something entirely new. No longer does a local kid walk or bike through the streets tossing papers into his neighbors' yards. Today, 81 percent of paper deliverers are adults—and a large proportion of them are undocumented immigrants. A look at the structure of the industry will help explain why.[7]

In many areas of the country, newspapers are delivered through a system of "independent contractors." The newspaper works with a contracting company, which in turn hires workers who are required to sign a contract attesting to the fact that they were not hired at all; rather, they are independent contractors. In Connecticut, all fourteen respondents to a survey of newspapers in the state confirmed that they used this system (Moran 2006). Likewise, in the Boston area the *Wall Street Journal,* the *New York Times,* and the *Boston Globe* are all delivered by a single company, which hires contractors to deliver all three in a given area.

As independent contractors, workers may not receive minimum wage and may not be eligible for workers' compensation or unemployment benefits. (States and courts have varied in how they treat these cases, but newspapers overwhelmingly insist that their deliverers are contractors, not employees.) In a case in which independent contractors sued and appealed for class status in a class action suit, the U.S. District Court–Southern District of California described the job in the following terms:

> Plaintiffs deliver the North County Times to the homes of subscribers. Each morning, the newspaper carriers arrive at one of several distribution centers in San Diego County. . . . They generally arrive between 1:00 a.m. and 4:00 a.m. . . . The carriers are contractually obligated to deliver the assembled newspapers by 6:00 a.m. each weekday and 7:00 a.m. on Saturday and Sunday.
>
> Upon arrival, the carriers are responsible for assembling the newspapers. Some assemble the papers at the distribution center—those that use the distribution center pay a rental fee, and others assemble the papers elsewhere. Assembling the newspapers may involve folding or inserting the following: newspaper inserts, sections, preprints, samples, supplements and other products at NCT's direction. The carriers pay for their own rubber bands and plastic bags used to assemble the papers. Some carriers buy the rubber bands and bags from Defendant, and others purchase them elsewhere. The carriers also pay for their own gas and automobile expenses they incur delivering the newspapers. (Jung 2010)

Contractors, then, sign up to deliver papers 365 days a year, starting no later than 4:00 am every day. They cannot miss a day unless they can arrange for their own replacement. They must own a car and have a valid driver's license. They have to maintain and buy gas for the car, driving hundreds of miles a week. All for less than minimum wage. And during winter weather emergencies, when public transportation is shut down and the governor of Massachusetts calls a state of emergency, closing public offices and begging residents to stay at home and businesses to remain closed until the plows can clear the streets, independent contractors receive a curt message with their newspapers. "SNOW IS EXPECTED. . . . WE WILL BE WORKING. IC'S

ARE EXPECTED TO DELIVER THEIR ROUTES. PLAN ACCORDINGLY: BE EARLY; DO NOT ALLOW YOUR CAR TO BE BLOCKED IN; EXPECT TO HAVE TO SHOVEL OUT."[8] It's a job, in other words, made for an undocumented immigrant.

CONCLUSION

Overall, the rise in undocumented workers over the past several decades has coincided with a rise in the invisible, exploited labor that they perform. Almost everybody in the United States benefits from that labor in one way or another, because it underlies almost all of the goods and services we use. But clearly an economic system that keeps a lot of people unemployed and another group trapped in a legal status that restricts them to the worst kinds of jobs does not really benefit everyone.

Some have argued that the influx of undocumented workers depresses the labor market, lowers wages for less-educated workers, and creates more competition for jobs at the lower end of the pay scale. Labor economist George Borjas has made this argument most persuasively, and many commentators who argue that we should restrict immigration base their arguments on his work (Borjas, Grogger, and Hanson 2010).

Other economists, however, have found that the low-wage labor of undocumented immigrants actually increases the wages and employment of even low-paid citizen workers. By increasing productivity, low-paid undocumented workers can increase capital available for investment, hiring, and wages. Because undocumented workers add to the population, their consumption stimulates the economy (Hotchkiss, Quispe-Agnoli and Rios-Avila 2012; Peri 2006; Card 2005). One recent study tried to document the expected economic impact of deportation, versus legalization, of the undocumented population of Arizona. The study found that legalization would be far more beneficial, and deportation far more costly, for American citizens:

> Undocumented immigrants don't simply "fill" jobs; they create jobs. Through the work they perform, the money they spend, and the taxes they pay, undocumented immigrants sustain the jobs of many other workers in the U.S. economy, immigrants and native-born alike. Were undocumented immigrants to suddenly vanish, the jobs of many Americans would vanish as well. In contrast, were undocumented immigrants to acquire legal status, their wages and productivity would increase, they would spend more in our economy and pay more in taxes, and new jobs would be created. (Hinojosa-Ojeda and Fitz 2011)

Two recent films, one a feature film and one a documentary, demonstrate this effect. *A Day Without a Mexican* imagines that California awakens one morning

to a strange fog, which has caused everyone of Mexican origin to vanish. Non-Mexicans stumble through their lives trying to fill in the gaps, realizing along the way how utterly dependent their economy and daily lives are on the labor of Mexican immigrants. In a moving scene at the end, after the fog lifts and the Mexicans reappear, the Border Patrol comes across a group in the wilderness at night. Flashing their lights, a patrolman asks, "Are you guys Mexican?" When the migrants confirm, the Patrollers break into welcoming applause.

9500 Liberty looks at a case in which the fantasy of *A Day Without a Mexican* became a reality. In Prince William County, Virginia, in 2007 a local ordinance required police to stop and question anyone they suspected of being undocumented. Although the ordinance was eventually repealed, the acrimonious anti-immigrant mobilization surrounding it, as well as fear of its implementation, caused many immigrants to leave. As businesses closed, schools and neighborhoods emptied, and the housing market collapsed, white Americans became more dubious about the supposed benefits of expelling the undocumented.

The work that undocumented migrants do is essential to the functioning of the economy and to the comfort of citizens. The system is also, however, fundamentally unjust. By creating a necessarily subordinate workforce, without legal status, we maintain a system of legalized inequality. It's a domestic reproduction of a global system. The fetishization of the border rationalizes the system globally: it makes it seem right and natural that exploited workers in one place should produce cheap goods and services for consumers in another place. Illegality replicates the rationale domestically: it makes it seem right and natural that a legally marginalized group of workers should produce cheap goods and services for another group defined as legally superior.

As with the case of agriculture, we must recognize the injustice of the current system while also thinking seriously about how it works and what steps could make it more just. If immigrants are being exploited by the current system, and if undocumentedness is one of the concepts that sustain the system, then we need to question undocumentedness itself.

The system benefits Americans materially, given that Americans consume an extraordinary proportion of the planet's resources. Only 4 percent of the world's children are American—but they consume 40 percent of the world's toys (Clark 2007). Despite the fact that many Americans are unemployed, in debt, and struggling to pay for health care and put food on their plates, *they still consume more than their share.* And they do so because of the economic chain that links them to workers who are legally marginalized—either because they work in other countries, or because they work "illegally" inside the United States.

Undocumentedness has everything to do with work and the economy. It is a key component of the late-twentieth-century global economy. Every so-called industrialized country—or more accurately, deindustrializing country—relies on the labor of workers who are legally excluded to maintain its high levels of consumption.

This system also creates fantastic profits for the few. But a more fair economic system would distribute the planet's resources more equally. If we can understand undocumentedness as a mechanism for creating and perpetuating economic inequality, it will be easier for us to reject it outright.

NOTES

1. Passel (2006). His estimate of 24 percent, the lowest among the various estimates, is based on the 2005 Current Population Survey.

2. In 2001–2002 the National Agricultural Worker Survey estimated that 53 percent lacked authorization to work in the United States. See U.S. Department of Labor (2005, 11). Although this is the most recent report that is fully available to the public, Daniel Carroll of the Department of Labor has summarized the results through 2009 and shows the percentage of farmworkers who are undocumented falling only slightly, to around 50 percent, in subsequent years. See Carroll (2011).

3. Fast food, for example, is a product of the post–World War II era. The first McDonald's opened in 1955. By 1959 there were a hundred, by 1963, five hundred, and by 1978, five thousand. www.mcdonalds.com.

4. The decline in employment was due to increased efficiency and increased imports as well as outsourcing. See Martin (2012, 1).

5. California and Illinois prohibited the state and localities from requiring employers to use the program. Illinois also tried to prohibit the use of E-Verify in the state, but that law was overturned in court. See National Conference of State Legislatures (n.d.).

6. In the case of Kimba Wood, the employment took place before the 1986 Immigration Reform and Control Act made it illegal to hire an undocumented person. See Pear (1993).

7. For the 81 percent figure, see Associated Press (2006a).

8. Flyer in author's possession, from January 2011.

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Undocumented Immigrant Workers and the Labor Movement

Ruth Milkman

In the 1980s and 1990s labor unions began to actively recruit immigrant workers, including many who were undocumented, defying the widespread view that such workers were "unorganizable." The best-known immigrant worker union drive was the Los Angeles "Justice for Janitors" campaign, launched by the Service Employees International Union (SEIU) in the late 1980s. But unions had been organizing the unauthorized workforce even earlier, especially in California, home to the nation's largest concentration of low-wage undocumented workers. As early as the 1960s and 1970s the United Farm Workers (UFW) and the International Ladies' Garment Workers Union (ILGWU) were engaged in such efforts. The UFW suffered a sharp decline soon afterward, but the ILGWU continued to recruit both authorized and undocumented immigrants in various industries in the 1980s and 1990s, joined by SEIU, the United Brotherhood of Carpenters (UBC), the Hotel and Restaurant Employees (HERE), and the International Association of Machinists (IAM).[1]

The immigrant organizing successes of the late twentieth century—which included many undocumented workers but were never limited to that population—came as a surprise to many observers, both inside and outside of the labor movement, who had presumed that recent immigrants, especially those

without papers, would be at best wary of unionization efforts. As it became increasingly apparent that this was not the case—and in fact, that foreign-born workers were often *more* receptive to unionism than their U.S.-born counterparts—the beleaguered U.S. labor movement gradually came to regard immigrant organizing as a potential source of revitalization. Thus the American Federation of Labor–Congress of Industrial Organizations (AFL-CIO) reversed its previous stance in favor of immigration restriction in early 2000 and officially endorsed the goal of legalization for the nation's estimated eleven million undocumented immigrants. More recently the AFL-CIO and other key organizations in the U.S. labor movement have emerged as leading advocates of comprehensive immigration reform and vocal defenders of immigrant workers' rights.

Historically, U.S. labor unions had responded to labor migration in an ambivalent and inconsistent manner, as Janice Fine and Daniel Tichenor have documented (2009). In the late nineteenth and early twentieth centuries, unionists who favored exclusion and restriction generally carried the day in labor's internal debates over this question. But from 1924 to 1964, a period in which new immigration to the United States was sharply limited, and also the era when the largest upsurge in unionism in the nation's history took place, labor's anti-immigrant animus grew weaker. After 1965, when new legislation loosened the previous restrictions and mass immigration resumed, nativism and exclusionism resurfaced among unionists, many of whom—including key UFW leaders—were especially hostile to the undocumented. Yet history did not repeat itself; instead, at the turn of the twenty-first century, the U.S. labor movement decisively rejected exclusion and became a strong supporter of immigrant rights and legalization for the undocumented.

Since then the U.S. labor movement's engagement with immigrant organizing has continued to grow, not only through traditional union drives but also through the efforts of "worker centers," nonunion community-based organizations that advocate for and provide direct assistance to low-wage and precarious workers, especially unauthorized immigrants. Even as it grapples with declining membership and power in the workforce as a whole, organized labor has become increasingly committed to immigrant organizing and deeply engaged in the broader movement for immigrant rights and the call for comprehensive reform to create a path to legal status for the undocumented population.

HISTORICAL BACKGROUND

Settler colonialism in what is now the United States, combined with the near extermination of the region's native population, meant that from the

earliest period the U.S. working class was comprised primarily of European immigrants and their offspring—along with African slaves and their descendants. Thus the entire arc of U.S. labor history is inextricably intertwined with the history of immigration. Nevertheless, as they began to form durable labor unions in the nineteenth century, U.S.-born workers developed a culture of nativism that regularly sparked hostility toward foreign-born newcomers. Many craft unions in particular, whose organizational logic and bias toward skilled workers gave them a strong predisposition toward exclusionary closure, were openly antagonistic to the massive wave of immigrants who arrived in the post–Civil War era. The most ignominious example of labor-sponsored immigration restriction in U.S. history, the 1882 Chinese Exclusion Act, which had nearly monolithic union support—even from the otherwise inclusionary Knights of Labor—was another highlight of this era (Fine and Tichenor 2009; Mink 1986). To be sure, other U.S. labor organizations (most notably the short-lived Knights of Labor, but also some quasi-industrial unions like the Mineworkers' union, and by the early twentieth century the garment unions as well) actively recruited foreign-born workers.

In the late nineteenth and early twentieth centuries, as large industrial corporations became the dominant force in the U.S. economy, introducing mass production systems that increasingly undercut the craft unions, most labor leaders regarded the millions of unskilled immigrants arriving from southern and eastern Europe as one of the many looming threats to their organizational survival. Union hostility toward immigrants was pervasive in this period and deepened each time an opportunistic employer recruited foreign-born workers as strikebreakers. Most labor leaders regarded recent immigrants as "unorganizable" and actively supported legal restrictions on immigration (Greene 1998). Yet efforts to stem the influx were stymied until World War I, when a combination of new developments—most importantly the 1917 Russian Revolution, as well as economic shifts that reduced labor demand—created the impetus for passage of the Johnson-Reed Act in 1924, which severely limited European immigration for the first time in U.S. history.

Although there are many parallels between the immigration patterns of the late twentieth and early twenty-first centuries and those that existed a hundred years earlier, they differ in one crucial respect. Before 1924, only a miniscule fraction of the millions of Europeans who arrived on U.S. shores were turned away, and nearly all of those who chose to stay found it easy to obtain full citizenship rights. Although they faced discrimination in many arenas and often were considered racially distinctive vis-à-vis their predecessors from northern and western Europe, virtually none of the eastern and southern Europeans who immigrated in this period were "undocumented" or "illegal

aliens" in the modern sense (Ngai 2004). Moreover, only a decade after the 1924 restrictive legislation was passed, those immigrants and their offspring were rapidly incorporated into the massive upsurge of industrial unionism that swept the nation during the Great Depression. Indeed, in the 1930s the industrial unions served as key vehicles of immigrant assimilation, economic mobility, and cultural homogenization (Cohen 1990; Sanchez 1993). Soon after, as immigration into the United States slowed to a trickle and the nation's unions expanded, the issue ceased to divide the labor movement.

However, after passage of the 1965 Hart-Celler Act, which effectively marked an end to the midcentury era of restriction and soon led to a massive new influx of both legal and undocumented immigrants, mostly from Latin America, Asia, and Africa, the labor movement once again began to agonize over the question of immigration. Organized labor had supported Hart-Celler, which included a union-sponsored provision designed to ensure that new immigrants would not threaten the employment of U.S.-born workers. Nevertheless, in the years that followed, growing concern about the rapid influx of undocumented newcomers, mostly from Mexico, and fears that their presence might undermine labor standards and other gains of the New Deal era led the AFL-CIO to embrace the idea of "employer sanctions." The underlying logic was that employers who hired immigrants who lacked legal authorization to enter or reside in the United States should be penalized, not immigrant workers themselves. Passed with strong support from labor, the 1986 Immigration Reform and Control Act (IRCA) prominently featured such employer sanctions, along with enhanced border enforcement and amnesty for nearly three million undocumented workers then present in the United States.

However, IRCA had a variety of unintended consequences. Most important, the enhanced border enforcement it authorized led to an unexpected *increase* in the population of undocumented immigrants, as long-standing patterns of circular migration between the United States and Mexico were gradually replaced by permanent settlement. Although entirely unanticipated by policy makers, this was a rational response by immigrants themselves to the heightened risks and costs now associated with crossing the U.S.-Mexican border. The situation was further exacerbated by 1996 legislation that militarized border enforcement and placed new restrictions on the rights of legal immigrants inside the United States (Massey, Durand, and Malone 2002).

At the same time, enforcement of the employer sanctions that organized labor had promoted soon proved elusive. Many employers went through the motions of obtaining the required documents from the immigrant workers they hired (fraudulent versions of which were readily available on the black market) without making serious efforts to determine their validity; others

ignored the law entirely. In either case, during the late twentieth century workplace raids and other efforts to enforce employer sanctions were rare events, and if they did occur, were simply viewed as a "cost of doing business." Even more troubling, some employers used IRCA to their own advantage, threatening immigrant workers who dared to complain about pay or conditions or attempted to unionize with apprehension and potential deportation (Brownell 2009).

Meanwhile, unions were under attack on multiple fronts, suffering defeat after defeat and a relentless decline in their share of the private-sector workforce. Five years before IRCA's passage, the disastrous 1981 air controllers' strike had stimulated a wave of concession bargaining that deeply eroded organized labor's power, and in the same period newly emboldened employers became highly adept at "union avoidance" in the (relatively few) workplaces where new organizing drives were attempted. Deindustrialization and outsourcing steadily ate away at the basis of industrial unionism, once organized labor's greatest stronghold, but union density declined in other sectors as well—even in place-bound industries like construction and services, where outsourcing was not a factor. By 1996, a decade after IRCA became law, only one in ten private-sector workers in the United States was a union member, lower than at any time since before the New Deal. In many key industries, from meatpacking to building services, from residential construction to taxi and truck driving, deunionization was rapidly followed by an influx of immigrants into newly degraded jobs.

Some workers and union leaders were inclined to blame immigrants, especially the undocumented, for organized labor's increasingly desperate plight. The assumption was that since the resurgence of immigration coincided so closely in time with union decline, the former must have caused, or at least contributed to, the latter.[2] Moreover, in the aftermath of IRCA, few union leaders believed that the undocumented immigrants could be organized. As Hector Delgado put it in 1993, "the unorganizability of undocumented workers because of their legal status has become a 'pseudofact.'"[3]

THE MYTH OF IMMIGRANT "UNORGANIZABILITY"

After all, the conventional wisdom went, many immigrants were—or imagined themselves to be—sojourners, visiting the United States for a short period in order to earn money to support their families back at home. Why should they assume the considerable risks involved in unionization if they would not be present to reap the rewards? And even if the wages and working conditions they found in the United States were poor by U.S. standards, foreign-born workers were presumed to be using a different standard of

comparison, one based on their experience in the relatively impoverished nations from which they had emigrated, relative to which the jobs north of the border might not seem so bad. Moreover, the reasoning went, undocumented immigrants' continual fear of apprehension and deportation would make them reluctant to take the risks involved in the publicly visible activities that struggles for union recognition typically entailed. Employers, too, took it for granted that immigrants lacked any interest in unionization and saw them as generally more tractable than U.S.-born workers (Waldinger and Lichter 2003).

Although these assumptions all seem plausible in the abstract, they were disproven repeatedly in the post-IRCA years. Immigrant workers, whether documented or not, were highly receptive to union efforts to recruit them in the 1980s and 1990s. Where such efforts were absent, indeed, immigrants sometimes initiated organizing drives on their own. Over time, as these efforts multiplied, immigrants infused the ailing U.S. labor movement with new energy and helped expand its strategic repertoire. The process was uneven and at times halting, and the scale of the organizing was modest, although it stood out in sharp relief in an era when few unions were actively organizing at all (Bronfenbrenner and Hickey 2004). Nevertheless, by the turn of the twenty-first century the majority of U.S. union leaders had come to recognize that immigrants did not constitute a threat to organized labor, but on the contrary presented a signal opportunity for labor movement revitalization—entirely upending the once-conventional wisdom.

Hector Delgado was the first researcher to investigate this issue directly, through a case study of a successful ILGWU union drive at a mattress factory that took place in Los Angeles in 1985. "Undocumented workers' fear of the 'migra' [the immigration enforcement agency, then the U.S. Immigration and Naturalization Service] did not make them any more difficult to organize than native workers or immigrant workers with papers," he concluded. "Workers reported giving little thought to their citizenship status and the possibility of an INS raid of the plant. . . . In response to the prospect of deportation, workers responded that if deported they would have simply returned" (Delgado 1993).

Although in the three decades since Delgado did his pioneering fieldwork, and especially since the events of September 11, 2001, immigration enforcement has become far more vigorous and deportation far more common, today it is difficult to find a union organizer who believes that undocumented workers are "unorganizable." As an L.A. Justice for Janitors organizer noted, the risks involved in unionizing in the United States seem minimal to many immigrants compared to crossing the border without authorization or other risks that they have assumed in the past. "There, if you were for a union, they killed

you," El Salvador-born Rocio Saenz explained in an interview. "Here, you lose a job for $4.25 an hour [the minimum wage at the time of the interview]" (Milkman and Wong 2000, 24). In 2013 the SEIU's Eliseo Medina told a *New York Times* reporter that recent efforts to organize low-wage workers had shown that many immigrant workers were "fearless" (Medina 2013).

Attitudinal data regarding the relative receptivity of immigrant workers and their U.S.-born counterparts to unionism are fragmentary, and none are available in regard to the undocumented, who are unlikely to reveal their immigration status in a survey. But the available evidence does suggest that immigrants are generally more pro-union than U.S.-born workers, and that noncitizens are more pro-union than naturalized citizens. A 2001–2002 survey of nonunion workers in California, for example, found that 66 percent of immigrant noncitizen respondents (some of whom were surely undocumented, although it is impossible to know how many) would vote for a union in their workplace if they had the opportunity to do so, compared to 54 percent of naturalized citizens and only 42 percent of U.S.-born respondents (Weir 2002). Nor is this phenomenon limited to California. In his 2003 study of a successful union campaign among Guatemalan immigrants, including many undocumented workers, in a poultry processing plant in North Carolina, the nation's least unionized state, historian Leon Fink (2003) noted, "For workers steeped in a personalistic relationship to authority—as is classically the case in the Latin American countryside—the cold expediency of U.S. industrial relations invited alternative if not outright oppositional forms of loyalty."

Fink's comment suggests one reason why immigrant workers may be easier to organize than their native-born counterparts, but there are many other contributing factors as well. The most basic is simply that for the majority of immigrants, the quest for economic advancement is what drove them to migrate in the first place, and insofar as they are persuaded that union organizing and collective bargaining will contribute to that goal, they are likely to be highly receptive. For Latino immigrants in particular, class-based, collective organization is also highly compatible with prior lived experiences and worldviews. Many see their own fate as bound up with that of their ethnic community—in striking contrast to U.S.-born workers, who are famously individualistic in orientation.

Both reinforcing and reinforced by that collective orientation, most working-class immigrants have much stronger social networks than U.S.-born workers do, rooted in extended family and kinship ties as well as in bonds forged by chain migration. Immigrants—especially those without papers—rely on these networks to obtain housing, employment, child care, financial assistance, and other means of daily survival upon their arrival in the

United States. And because employers often rely on referral hiring, these networks are routinely reproduced within occupational communities and individual workplaces. That in turn provides immigrants with a resource rarely available to U.S.-born workers, and one that can be readily accessed in efforts to build solidarity in the course of organizing efforts.

In addition, the shared experience of racialization and stigmatization among immigrants, both during the migration process itself and even after years of U.S. residency, may help foster a sense of unity—especially in the many low-wage employment settings where the foreign-born comprise the bulk of the workforce. The lived experience of survival in a hostile environment, rather than generating passivity and fear, seems to foster labor solidarity and organization. As David Gutiérrez puts it, anti-Latino xenophobia in the wider society "helped to create a vast new subnational social space that has virtually guaranteed the emergence of alternative—and potentially deeply subversive—diasporic social identities, cultural frames of reference, and modes of political discourse" among immigrants (1998, 324–325). If unions offer immigrants economic and political resources that can help to improve the conditions they face in this context, they are likely to be welcomed with enthusiasm.

IMMIGRANT ORGANIZING, 1986–2006

In the immediate aftermath of IRCA's passage, a few unions that already had significant numbers of undocumented immigrant members began to offer them legal assistance with applications for the amnesty the new law made available. At the same time, hopeful that the legislation would facilitate such efforts, some of these same unions launched new immigrant-organizing initiatives. The iconic success story here is the SEIU's Justice for Janitors campaign in Los Angeles and other cities, but there were many other less renowned efforts in the late 1980s and 1990s. Although not all these campaigns led to union victories (all encountered strong employer resistance, which was pervasive in this period), it soon became apparent that immigrants, including the undocumented, were highly receptive to unionization opportunities.

In the 1980s and 1990s immigrant union organizing primarily involved a small group of unions that historically had been affiliated with the American Federation of Labor (AFL) prior to the 1955 AFL-CIO merger. Such organizing was not on the agenda of the industrial unions formerly affiliated with the Congress of Industrial Organizations (CIO), which were at the time understandably preoccupied with the formidable challenges posed by outsourcing and industrial decline then sweeping the U.S. manufacturing sector. The SEIU was the most active of the former AFL affiliates that took up the

immigrant-organizing effort with its janitors campaign; other former AFL affiliates that did so included the Hotel and Restaurant Employees (HERE), the Laborers and Carpenters unions (which historically represented unskilled and semiskilled construction workers), and the ILGWU (the one industrial union on this list, which was briefly affiliated with the CIO in the 1930s). All these unions launched successful immigrant-organizing drives in the late 1980s and 1990s. More recently, other unions have moved onto this terrain as well, for example the United Steel Workers (USW), which recently launched a successful car wash workers' organizing campaign in Los Angeles. All these campaigns involved unauthorized as well as authorized immigrant workers, mostly Mexican and Central American.

The largest concentration of such efforts was in southern California, home to the nation's largest and most homogeneous population of undocumented immigrants. But other immigrant-organizing campaigns sprang up across the United States, not only in large cities like New York and Chicago, but also in such locations as Arizona, where the Laborers' union organized immigrant roofers; in Miami and Houston, where Justice for Janitors was successfully replicated; and even in North Carolina, where Guatemalan immigrant poultry processing workers joined the Laborers' union in the 1990s.[4] Largely in response to these and other successful immigrant-organizing efforts that took place during the 1990s, in early 2000 the AFL-CIO abandoned its long-standing support for employer sanctions and publicly embraced the public policy goal of creating a path to legalization for undocumented immigrants. A coalition pressing for legalization and other reforms was gathering political momentum at the time of that historic policy shift, but the effort ground to a halt after the attacks of September 11, 2001, and the renewed xenophobia they unleashed.

Still, even in the aftermath of 9/11, organized labor continued to pursue both workplace-based organizing drives and political efforts to achieve comprehensive immigration reform, especially emphasizing the need for a path to legalization for the undocumented. In 2003, in an effort to revive political momentum, a coalition led by HERE, which had a substantial immigrant membership by this time, organized an "Immigrant Worker Freedom Ride," sending a caravan of buses loaded with workers on a coast-to-coast journey staged to dramatize the plight of undocumented immigrants, deliberately invoking the symbolic power of the legendary 1960s civil rights Freedom Rides (Jamison 2005).

Meanwhile, however, new divisions over immigration (among other matters) began to resurface in the labor movement. In 2005 some of the unions that had been most active in immigrant organizing—SEIU, UNITE HERE (the product of a merger between HERE and the garment unions), the

Laborers, the Carpenters, along with the Teamsters, the United Food and Commercial Workers (UFCW), and the now-tiny immigrant-dominated UFW—all disaffiliated from the AFL-CIO to form a rival federation, Change to Win (CTW). Their fledgling federation played an important role in the campaign for the 2005 bipartisan McCain-Kennedy immigration reform bill. That proposed measure included a guest worker provision that led the AFL-CIO to staunchly oppose it, even though it was part of a package that would have offered a path to legalization for the undocumented.

Ultimately this controversy proved moot, since despite support from many business groups and from the George W. Bush administration, the McCain-Kennedy proposal generated a wave of popular opposition, assiduously fanned by the extreme Right, and was never passed. In late 2005 the U.S. House of Representatives instead voted to pass an anti-immigrant bill known as H.R. 4337. Although it never became law, that draconian measure would have made it a felony for immigrants to simply be present in the United States without documentation (currently that is a civil offense, not a crime, under U.S. law), and also would have made it a felony to offer assistance to unauthorized immigrants. In response to this threat, a huge groundswell of immigrant rights street demonstrations swept the nation in the spring of 2006, mobilizing millions of immigrants and their allies. The marches were larger than any protests since the Vietnam War, and indeed, in Los Angeles and several other locations, larger than any protests ever recorded. They made the plight of immigrant workers far more visible to the general public than ever before, but also engendered reactions from xenophobic politicians and their supporters (Voss and Bloemraad 2011).

Labor unions, especially those affiliated with CTW, were a prominent part of the immigrant rights movement coalition that organized these protests. Another key partner was the worker center movement. Unions and worker centers initially had an uneasy relationship, but over time have developed an increasingly synergistic one, as both types of organizations wrestled with the shared challenges of low-wage immigrant organizing (Fine 2007, 335–360; Milkman 2010). Their improved relationship was partly forged in the crucible of the coalition both unions and worker centers participated in alongside the immigrant rights movement, leading up to and following the 2006 marches.

Another important effect of the dramatic 2006 street protests was their impact on those remaining segments of the labor movement that had not previously grasped the potential for organizing foreign-born workers. Seeing millions of immigrants take to the streets, bearing signs that read "We Are Workers, Not Criminals," now captured their attention and imagination. As a result, by the end of 2006 the lingering myth of immigrant

"unorganizability" was dead and buried; indeed, immigrant organizing had become one of the few beacons of hope for the besieged union movement, for the AFL-CIO and CTW alike.

But even with a low-wage immigrant workforce that is ripe for recruitment, unionization drives must overcome formidable obstacles to succeed. Intense employer opposition is ubiquitous in the private sector, and until recently, organized labor faced a hostile political environment as well. In addition, immigrant unionization drives face some special obstacles. For example, among the tactics that employers commonly deploy to oppose union drives is the threat of turning unauthorized workers over to government immigrant authorities. One study found that employers made such threats in half of all campaigns where the workforce majority was comprised of unauthorized immigrants (Bronfenbrenner 2009).

Another crucial development in the post-IRCA period was the emergence of the worker center movement. The new centers—NGO-like community-based organizations that advocate for, provide services to, and organize low-wage immigrant workers—sprang up in cities and states around the United States and numbered more than two hundred by 2011.[5] They took advantage of the fact that nearly all U.S. labor and employment laws provide universal coverage for all workers regardless of immigration status, including the undocumented.[6] Worker centers have become highly adept at exposing to public scrutiny the increasingly prevalent employer violations of those laws, such as paying workers less than the legal minimum wage and other types of "wage theft," or not providing mandated overtime pay premiums or meal breaks. In many cases they have also won legal redress for many immigrants experiencing such abuses. Worker centers also engage in workplace organizing, although necessarily on a smaller scale than unions do, because they typically have small staffs and limited financial resources. In most cases the centers are unable to enter into traditional collective bargaining relationships with employers, but they are increasingly interested in doing so. Like traditional unions that were actively recruiting foreign-born workers in this period, worker centers found that immigrants were extremely receptive to their outreach efforts.

Although U.S. unions have experienced continuing stagnation and decline in recent years, worker centers and other community-based organizations advocating on behalf of low-wage immigrant workers have steadily expanded their capacity. Public awareness of wage theft and other illegal employer behavior has spread, thanks in large part to the worker centers' skill in putting a human face on these phenomena and framing low-wage workers' plight in morally compelling terms. The number of centers has steadily grown, and networks of formerly isolated worker centers have sprung up, such as the

United Workers Congress, founded in 2010 (and initially known as the "Excluded Workers Congress"). In addition, a few centers, including the Restaurant Opportunities Committee and the National Domestic Workers Alliance, have expanded into sector-specific national organizations. There has also been growth in international networks in which U.S. worker centers participate, linking them to NGOs in the Global South (Fine 2011).

Unions, initially hesitant to embrace the worker center movement, have been increasingly won over. Some have adopted worker-center-like models in their own efforts to organize low-wage immigrant workers—a recent example is the USW's successful car wash campaign in Los Angeles (Greenhouse 2010). Labor has also built institutional partnerships with worker centers and provided moral and material support for their efforts. One of the first such partnerships—announced just a few months after the 2006 immigrant rights marches—involved the AFL-CIO and the National Day Laborer Organizing Network (NDLON); this was soon followed by an agreement between the Laborers' union and NDLON to conduct joint organizing campaigns in residential construction. Unfortunately, however, the impact of the 2007–2008 recession on that industry has delayed substantive implementation of this plan. In October 2011 the national AFL-CIO took the unprecedented step of granting an official charter to the New York–based Taxi Workers Alliance, a worker center whose constituency is made up of independent contractors who are not covered by the National Labor Relations Act. Finally, the emergence of the 2011 Occupy Wall Street uprising, which attracted support from unions, worker centers, and the immigrant rights movement alike, opened up new opportunities for collaboration.

UNIONS IN CRISIS

The labor movement's embrace of immigrant workers and nontraditional forms of organizing in part reflects the ever-worsening plight of traditional unions in the United States, which has ironically led to a new openness to alternative strategies. Despite the election of a nominally labor-friendly president in 2008, unions remain in deep crisis. The Employee Free Choice Act, the hoped-for labor law reform to which the AFL-CIO had devoted vast political resources in the years before that election, was soon after defeated in Congress, while union density has continued its relentless decline. By 2012 private-sector density had fallen to 6.6 percent, and unprecedented attacks on public sector unions, the one remaining stronghold of organized labor, had emerged in Wisconsin, Michigan, and several other states, with considerable impact. Even as the decline of union density continued, however, the gap in unionization rates between immigrant and U.S.-born workers

rapidly narrowed. By 2011, 9.5 percent of all foreign-born workers were union members, only slightly below the 10.8 percent of U.S.-born workers, who were much more likely to be employed in the highly unionized public sector (Hirsch and MacPherson 2012; Milkman and Braslow 2012). Latino union membership (which includes not only immigrants but also U.S.-born Latinos) rose 21 percent in the decade that ended in 2012, while white union membership fell 13 percent in that period (Trottman, Jordan, and Maher 2013).

The reduced gap in unionization rates between U.S.-born workers and immigrants is especially remarkable given the fact that many low-wage immigrant workers are excluded outright from access to unionism under the National Labor Relations Act (NLRA) of 1935, the law that granted collective bargaining rights to U.S workers. Domestic workers and agricultural workers were excluded from NLRA coverage from the outset, as a political concession to southern Democrats, who opposed such rights for African Americans, who then made up the bulk of domestic workers and farmworkers. Today those two fields of employment are overwhelmingly immigrant-dominated. In addition, other fields with large concentrations of immigrants, such as day laborers, temporary workers, and "independent contractors" (a category that includes, for example, many taxi and truck drivers) are not covered by the NLRA.

Although worker centers have successfully organized and advocated on behalf of many of these excluded workers, most are not eligible for conventional unionization under the NLRA. To be sure, many U.S.-born workers are also excluded from NLRA coverage, but among nonsupervisory workers who are not covered by either the NLRA or other collective bargaining laws (such as state-level public sector labor laws or the federal Railway Labor Act, which covers many transportation workers), the percentage is significantly higher among precariously employed low-wage immigrant workers (Milkman 2011).

Under the NLRA, the United States has a winner-take-all union representation system in which whether or not a given workplace (or "bargaining unit" as the law terms it) is unionized depends on an electoral system in which the majority of workers vote for or against union representation (or sometimes, choose among competing unions and "no union"). Thus individual workers seldom have the chance to make independent decisions about unionization. Instead, unionization occurs when a workplace (or sometimes, an entire industry or sector in a given local or regional labor market) is successfully organized. Historically, once established in this manner, unionization in a workplace, industry, or sector tended to persist over time, so that workers newly hired often became union members without having participated in the election process.

In recent decades the union representation election system has been increasingly captured by employers, who routinely campaign against unions whenever and wherever organizing efforts emerge, using both legal and illegal means of opposition (Bronfenbrenner 2009). This in turn has led to a decline in union organizing efforts. As a result most U.S. workers, whether positively or negatively inclined toward unionism, are denied the opportunity to participate in union elections, and a relatively small proportion of present-day union membership is the product of recent organizing. Instead, the demographic makeup of union membership mainly reflects the demographic composition of employment in the industries and sectors that were historically unionized. For example, the fact that both women and African Americans are overrepresented in the public sector has enhanced their overall unionization rates; by contrast, immigrants are underrepresented in the public sector, making the reduction in the gap between their unionization rate and that of U.S.-born workers all the more impressive. The recent growth of unionization among Latinos reflects their overrepresentation in sectors like health care, where union density has increased in recent years (Trottman, Jordan, and Maher 2013).

IMMIGRANT WORKERS AND AFRICAN AMERICANS

In recent years immigrants have replaced African Americans in a variety of low-wage occupations and industries, from domestic service and agriculture to poultry processing, from back-of-the-house hospitality and restaurant work to janitorial services and warehouse work. In some cases these shifts involved the opening up of better job opportunities to African Americans (i.e., in public-sector employment); in others they reflected the voluntary exodus of African Americans (and in some cases, whites as well) from once-desirable jobs that had been restructured in such a way as to make them less attractive (Milkman 2006). The extent to which direct job competition between immigrants and African Americans actually exists—as opposed to ethnic succession sparked by employer-driven restructuring—is difficult to determine, but the *perception* of such competition is widespread in the black community (Gordon and Lenhardt 2008, 1161–1238). There is also extensive evidence that employers often prefer to hire immigrants rather than African Americans in many types of jobs (Waldinger and Lichter 2003).

Labor unions and worker centers have made some notable efforts to confront the tensions this issue has generated, through a variety of attempts to organize workers across racial and ethnic lines. Perhaps the best-known example is the successful campaign at the Smithfield meatpacking plant in North Carolina, where some five thousand workers were unionized in late 2008 after a fifteen-year struggle that brought together African American and

Latino immigrant workers (Greenhouse 2008). HERE's efforts to promote cooperation between its Latino immigrant and African American membership within long-established local unions have also been documented in detail (Wells 2000; Foerster 2004, 386–409). In a different type of approach, the Los Angeles SEIU, famous for its organizing among immigrant janitors, successfully organized African American security officers in an explicit effort to overcome mistrust of the union among leaders of the city's African American community (Bloom 2010). Another recent example of efforts to build solidarity among Latino immigrants and African Americans is the Mississippi Poultry Workers Center (Stuesse 2009, 91–111). The New Orleans Workers' Center for Racial Justice, formed in the aftermath of hurricane Katrina, when African American workers were excluded from jobs tied to the city's reconstruction while immigrant guest workers were hired under highly exploitative conditions, also organizes across racial lines (Brown-Dianis et al. 2006).

These efforts, though individually impressive, are limited in scope. On a broader scale, there has been growing political alignment between African Americans and Latinos, as the latter have moved increasingly into the Democratic fold. Unauthorized immigrants cannot vote in U.S. elections, but their U.S.-born children can, and in many cases other family members who are citizens can do so as well. In part due to high-profile Republican opposition to immigration reform, eligible legal immigrants have increasingly naturalized and registered to vote, and like African Americans have become heavily Democratic. At the same time, perhaps reflecting the fact that Latino immigrants have been increasingly subject to racialization in the mainstream U.S. culture, African Americans have been highly supportive of immigrant rights in recent years. But tensions over the labor market still persist: as recently as 2006 African Americans were more likely than whites to assert that immigrants "take jobs away from American citizens" (Doherty 2006).

FUTURE PROSPECTS

Although hopes were high for congressional action on immigration reform in 2013, especially after the Senate passed legislation, once again those hopes proved misplaced. This was the case despite the fact that the Great Recession had brought undocumented immigration nearly to a stand still, shifting the focus of debate to the estimated 11.5 million undocumented immigrants already living in the United States and away from the issue of "future flow." Obama's record to date on immigration enforcement is relatively insulated from right-wing criticism, thanks to the record numbers of deportations initiated under his administration. And the fact that Latinos voted so heavily Democratic in the November 2012 elections markedly weakened the

Republican opposition to immigration reform, which the business wing of the party has long favored. Against this background, the labor movement (both the AFL-CIO and CTW) has emerged as a leading and highly visible advocate of reform. Yet in the short run, congressional action seems unlikely.

Although the environment for traditional unionism remains bleak, there are glimmers of hope on the wider political and social movement landscape. Organized labor has actively embraced not only the immigrant rights movement but also Occupy Wall Street progressive movements, which riveted public attention in 2011. If unions have any prospect of renewed growth, it will likely be predicated on such alliances. Recent efforts to organize and otherwise address the needs of foreign-born workers in precarious jobs at the bottom of the labor market are but one potential avenue through which the U.S. labor movement is beginning to address the disparity between organizational structures rooted in the bygone world of stable jobs and industrial unionism and the realities of the labor market in the new Gilded Age.

NOTES

1. The L.A. Justice for Janitors campaign is most fully documented in Milkman (2006). On the UFW, see Ganz (2009); on the ILGWU, see Delgado (1993); on the Carpenters, see Milkman and Wong (2000); on HERE, see Wells (2000), and on the IAM, see Zabin (2000).

2. Vernon Briggs (2001) has made this argument in a more scholarly vein.

3. Delgado (1993). The term "pseudofact" is from Merton (1959).

4. On Los Angeles, see Milkman (2006); on New York, Immanuel Ness (2005); on Chicago, Martin, Morales, and Theodore (2007, 155–165); on Arizona, Roca-Servat (2010, 343–363); on Miami, Nissen and Russo (2007); on Houston, Greenhouse (2005); and on North Carolina, Fink (2003).

5. Fine (2011, 604–630). See also Gordon (2005); Fine (2006); Milkman, Bloom, and Narro (2010).

6. The outstanding exception is a 2002 U.S. Supreme Court ruling in the case *Hoffman Plastics Compounds, Inc. v. NLRB,* which held that if undocumented immigrants are fired for their workplace organizing activities, they are not entitled to back pay and reinstatement. Under U.S. law such remedies are available to other U.S. workers found to have been fired in retaliation for their organizing. See Smith et al. (2003).

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3

An Inconvenient Persistence: Agribusiness and Awkward Workers in the United States and California

Juan Vicente Palerm

INTRODUCTION

Limits to Capitalist Development in Agriculture?

The presence of large numbers of immigrant and migrant farmworkers, once almost an exclusive characteristic of California agribusiness, is becoming a vital component of commercial farming in many other parts of the country, resulting in the rapid Latinoization of the nation's agricultural workforce and rural society. Immigrants, mostly from Mexico and Guatemala but also from other Central American nations and islands in the Caribbean, are, for example, harvesting oranges and tomatoes in Florida, peaches in Georgia, tobacco in Tennessee and North Carolina, fruits and vegetables in the Delaware-Maryland-Virginia-Chesapeake area, mushrooms in Pennsylvania, apples in New York, pickling cucumbers in Michigan, and apples and berries in Washington and Oregon, as well as manning meatpacking plants in rural Iowa, Minnesota, Missouri, and Arkansas. Although some of these workers are legally in the country with H2A guestworker visas, most are undocumented and not authorized to work in the United States. Not only have they become an essential part of farming, but also their growing presence is responsible for stabilizing and even reversing the population decline of rural

America. Nowhere in the United States is this phenomenon more intense, developed, and advanced than in California. This chapter therefore focuses on the California experience in order to acquire a better understanding of the social and economic processes at hand, as well as on policy challenges facing other states and the nation.

California agriculture is big business. In 2011 its entrepreneurial class of farmers generated nearly $40 billion in cash farm receipts, mostly by churning out a plethora of labor-intensive, high-value specialty crops such as fruits, nuts, vegetables, and flowers for national consumption and export. Its annual production is effectively double the combined agricultural output of the next two top agricultural states, Iowa and Texas (California Department of Food and Agriculture 2010, 20). It is also heavily concentrated in terms of both geography and ownership. For example, in 1984 Philip Martin reported that of the state's 82,000 farms, only 8,800 with annual sales of $250,000 or more accounted for 90 percent of all farm sales. It is these large commercial farms that employ the bulk of the state's hired farm workforce, engaging more than 700,000 workers (Martin 1984, 10–11). Since then the process of production concentration has continued to intensify, and as a result, California agriculture currently employs more than one million individuals. Most of these workers are from Mexico, and as many as 70 percent are probably unauthorized to work under current immigration laws (American Farmland Trust 2010, 14–15). Farmworkers in California typically toil in insecure and intermittent jobs that don't pay very well, and they often live itinerant lives that involve lengthy family separations. Moreover, they occupy substandard housing, have special but unmet educational and health needs, and are frequently denied basic worker rights and legal protections given other American workers. Although agribusiness is a matter of great pride to Californians, its accompanying labor system has been a persistent source of embarrassment.

Theory and policy questions regarding labor and agribusiness (capitalist agriculture) constitute an old but still salient debate among scholars, policy makers, and stakeholders. In a nutshell, capitalist agriculture, it seems, is hampered from replicating the industrial conditions of production (the factory system) and hence brings about a distinct labor system from the one industrial manufacturing spawned: a proletarian class of workers. Proletarians are understood as workers who are separated from ownership of the means of production (land, tools, and raw materials) and who exchange their labor power for wages in order to sustain and reproduce themselves. According to Karl Marx (1964, 67), proletarians (free labor) are a prerequisite for the development and operation of capitalism.

Agriculture, as a distinct system of production, harnesses a biological process (the growth of plants and animals) and depends heavily on the natural

environment (sunlight, climate, and soil fertility), and as a result cannot easily replicate the conditions of industrial manufacturing, which are continuous in time, concentrated in space, and monotonous in performance. Factories typically produce year-round and need their workers to carry out endless repetitive motions to churn out industrial commodities. Agriculture, in contrast, is intermittent in time, dispersed in space, and multi-operational (Karl Wittfogel 1971, 12). Farming typically follows the seasons and needs workers only occasionally, sometimes in very large numbers to, for example, harvest the crops, and other times not at all. As a result, few farmworkers receive a steady or certain salary, while most must find other jobs to survive. Sometimes this is accomplished by having access to a small plot of land and the ability to supplement insufficient wages with subsistence farming. Otherwise, they are condemned to migrate from employer to employer, from crop to crop, and region to region, always pursuing jobs and seeking to maximize employment.

Historically, large commercial farming (*latifundia*) has always been beleaguered by this difficulty; as a result, it has produced a host of peculiar agricultural labor systems. In antiquity, for example, the Roman rural *villa* relied on a slave class of expendable workers that conquest and empire building made available (Westermann 1955; Anderson 1974). During medieval times feudal manors in France, Germany, and England relied on *corvée* labor to farm the demense—the land the lord reserved for his own production—extracted from tenant serfs who were tied to the lord's land and beholden to his power (Bloch 1964). Spanish *haciendas* in the New World initially used indigenous forced labor enabled by the colonial *encomienda* and *repartimiento* systems, and later used *peonage* labor extracted from peasant communities (Zavala 1973; Simpson 1966; Katz 1974). The southern cotton plantation in the United States depended on a steady source of slave labor from Africa and, after emancipation, on impoverished sharecroppers (Stampp 1956; Johnson 2013). In industrialized Western Europe, emerging agricultural firms depended on the presence of neighboring small peasant farms for their labor supply (Kautsky 1988). And in the Soviet Union the industrialization of agriculture, accomplished through the collectivization of land and the establishment of large state farms, engendered what one scholar branded a class of *awkward* workers, because they did not conform to the conventional understanding of either the proletariat or peasantry (Shanin 1972).

Over the ages, the oppression of agricultural workers by the landed has often been met by resistance and erupted into outright rebellion: sometimes successfully, as is the case for the Mexican revolution of 1910, which destroyed the *hacienda* system and transformed modern Mexico (Womack 1969), and other times unsuccessfully, as was the case for the peasant uprisings in Andalusia, Spain, under the banner of anarco-syndicalism that ended with ruthless

repression (Díaz del Moral 1967). Indeed, the first half of the twentieth century, when capitalism consolidated its grip over agriculture, witnessed myriad peasant-worker resistances, uprisings, and revolutions (Hobsbawm 1959; Wolf 1969; Scott 1985).

Students of capitalism, including Marx and Kautsky, have attributed the difficulty agriculture faced to its resistance to industrialization (crop mechanization) and to a lag in scientific and technological progress in farming in comparison to manufacturing. But they were confident that capitalism's tendency would prevail, and eventually scientific innovation would overcome said obstacles. As a result, the societal development in agriculture would ultimately take the same road as industry and surrender to what Cary McWilliams saw as the emergence of "factories in the fields" when he undertook his pioneering exposé of California agriculture (1939). McWilliams's depiction of farms as factories, however, was unfortunate or premature, because the application of labor to farming continued to be intermittent in time, dispersed in space, and multi-operational, requiring as a result a peculiar—*awkward*—workforce of its own. California agriculture, to be sure, depended on the importation of exploitable and disposable immigrant workers from abroad, first from Asia and later from Mexico, who maintained itinerant and insecure lives as they followed the crops from employer to employer and from region to region. These workers were moreover easily replaced with new cohorts of fresh immigrants as soon as they resisted, showed signs of wear, or transitioned out of farm employment.

McWilliams later described California's agricultural land holding and labor systems more accurately as "the great exception," inasmuch as they were different from anything the rest of the country had experienced and were in conflict with America's Jeffersonian ideals about rural society based on the independent yeoman farmer, the family farm, and self-contained family labor (1949). Another early student of California agriculture, Lloyd Fisher (1953), saw the perceived national anomaly as a function of the extreme seasonal fluctuation of the labor demand created by labor-intensive crops, which in turn configured a separate and *structureless* labor market peopled by ethnically distinct, low-skilled, and nonunionized workers. Still, like their predecessors, both expressed optimistic views about the future, assuming that those labor system's faults and inequities could be corrected or changed. According to McWilliams, public recognition of the social problem could lead to reforms enforced by the government, unionization could empower workers, and ultimately the monopolistic control of land could be broken, ushering in "a new type of agricultural economy for the West and for America" devoid of its "wasteful, vicious, undemocratic and thoroughly antisocial" ways (1939, 323–325). Fisher, in turn, was less confident about the government's ability

to reform agribusiness, but saw a solution in fast mechanization, ascertaining that "[t]he brightest hope for the welfare of seasonal agricultural workers lies with the elimination of the jobs upon which they now depend, and the development of programs for the transfer of workers from agricultural to industrial labor markets" (1953, 148).

Since these early writings, California farming has become the world's premiere example of capitalist agriculture, embedded in what is arguably the most technologically advanced and democratic nation on Earth. Yet it has not substantially reformed its social ills, nor has mechanization made significant inroads in replacing migrant workers with machines. To be sure, California farms today employ more workers than ever before—as many as 1.1 million individuals according to a recent estimate—and many are underemployed, receive insufficient annual wages, and are for the most part unauthorized immigrants from Mexico (Khan, Martin, and Hardiman 2003). Personifying the world's pinnacle of capitalist development in agriculture, California farms of the twenty-first century do not appear to have unburdened themselves of the constraints that halted the formation of a bona fide class of proletarian workers in the past. California agribusiness and its "awkward" class of laborers therefore offer an excellent opportunity to again ask the old question about the limits of capitalist development in agriculture and to determine the actual tendency of its development and its relation to labor.

The question is not merely an academic one; how it is answered has huge practical implications for how society approaches the design and implementation of corrective actions. Sociological predictions advanced in the nineteenth and twentieth centuries about the course of agricultural development and its relation to labor have been woefully lacking, and as a result, agricultural labor policies have been consistently off target, especially in California. Inasmuch as California agriculture, and the workers who enable it, are a sustaining pillar of the state's economy and an essential part of the nation's food system, it is imperative to correct this serious flaw. The matter, as stated previously, transcends California as other states adopt the California model of agricultural organization; become net importers of Latino workers from Mexico, Central America, and the Caribbean; and begin to replicate the same social ills and inequities.

This chapter first critically reviews the comparatively short history of California agribusiness—approximately the period 1868–1975—and its relation to migrant labor, as well as the policies that were enacted over the course of that century to both support the industry and correct its humanitarian shortcomings. It subsequently examines the current state of affairs—approximately the period 1975–2013—to document contemporary changes in the industry and its workforce and attempt to determine the economic, technological, social, and political forces that are shaping its evolution. The chapter closes with a

discussion of current public policy alternatives to secure the health, welfare, and sustainability of the industry and of its abundant and still-growing number of Latino workers.

It is necessary to first offer some clarification of the use of the terms "migratory labor" and "undocumented workers" in this chapter. Although there isn't an official definition of *migratory labor,* Martin and Martin (1994, 11) quote a presidential commission statement that refers to "a worker whose principal income is earned from temporary farm employment and who in the course of his year's work moves one or more times, often through several states." It is necessary to add that these movements include international unidirectional and circular migrants or individuals who permanently or temporarily leave their country of origin to work in the United States; domestic itinerant workers and their families who move incessantly from one workplace to another, following the crops and crossing state lines, without having a place they can properly call home; workers who have established a "wintering" place of residence and from where they travel—often long distances and during extended periods of time—to employment sites while their families remain home; and settled workers who commute daily to work sites in their immediate hinterland, in a constant movement between sites and employers. To be sure, the term expresses the movement of agricultural workers through time, space, crops, and farms or employers to accommodate to agriculture's imposition of intermittent, dispersed, and multi-operational jobs. This is, again, what mostly distinguishes the agricultural worker from the proletarian factory worker, who is subjected to a different, uniform employment regimen and leads a different kind of existence.

Contrary to public perception, not all migrant workers in California are undocumented or "illegal" (unauthorized to work in the United States). It is not an intrinsic condition to them, though at times a substantial part of the migrant labor force has been undocumented. The condition of being undocumented results from the enactment and enforcement of immigration laws, which have been frequent, seemingly capricious, and not always enforced. For example, Mexican Braceros—the archetype of international migrant workers—were perfectly documented until Public Law 78 was unilaterally rescinded in 1964. Thereafter, though many Braceros continued to enter the country unchallenged, they had become undocumented "wetbacks" in the eyes of the law. An ironic twist to these laws is that at least until 1986, with the passage of IRCA, it was not illegal for employers to hire undocumented workers. There were, as a result, illegal workers but no illegal employers, who regularly hired undocumented workers. This lent additional mayhem to the constantly changing, ambivalent, and bewildering environment that undocumented workers have typically had to navigate.

A CONDENSED HISTORY OF AWKWARD WORKERS IN CALIFORNIA

There are two competing views about the origins (what came first, the chicken or the egg?) of California's dependency on a large immigrant, migrant, and impoverished agricultural labor force. Both acknowledge a juncture in the late 1860s that was shaped by the transfer of Spanish Mexican latifundia landholding systems to American hands—sometimes considerably enlarged by individual land grabs and public land concessions to railway companies—and by the completion of the transcontinental railroad in 1868, which effectively and efficiently connected West Coast producers to eastern and midwestern consumers. The juncture encouraged farm intensification to supply the nation's growing urban and industrial centers with high-value, perishable, off-season fruits and vegetables and other industrialized food and fiber crops that could be competitively produced in California. In *Factories in the Field: The Story of Migratory Farm Labor in California,* Carey McWilliams (1939) blames latifundia as the originator and perpetuator of an extraordinarily large seasonal labor demand that could only be satisfied through the importation of vulnerable and exploitable workers from abroad. On the other hand, in "The Supply of Agricultural Labor as a Factor in the Evolution of Farm Organization in California," Varden Fuller (1939) blames the ubiquitous supply of Chinese unemployed workers, recently dismissed from gold mining and railroad construction jobs, as the enabler of latifundia. Had these workers not been available at that crucial moment, Fuller suggests, the large land holdings might have been dismembered into smaller family farms run with family labor and occasional hired help.

In any event, regardless of how the origins debate is resolved, a noxious cycle was inevitably set in motion once latifundia farming was enabled. Following McWilliams, this led to a succession of labor stabilization and destabilization practices whereby landowners, with the assistance of the state, recruited vulnerable, docile, and exploitable workers from abroad but dismissed and replaced them as soon as they became superfluous, troublesome, or too costly, resulting in a parade of Chinese, Japanese, Mexican, Indian, Filipino, "Okie," and again Mexican laborers across California's agricultural landscapes. According to Fuller, this led to the establishment of a self-perpetuating cycle whereby an existing supply of affordable labor incentivized landowners to expand the scale and intensity of their farming operations, thereby attracting more low-skilled, cheap labor from abroad, who in turn exerted a downward pressure on wages and further spurred growers to expand. California ended up with a socioeconomic system that is characterized by an extraordinary accumulation of wealth and power in

the hands of a few privileged landowners and a large, impoverished, and disenfranchised class of foreign workers. The two explanations, though, entail very different policy approximations designed to correct or mitigate the system's social, economic, and political ills: (a) regulate agribusiness by, among other measures, compelling agricultural employers to elevate working conditions and wages to higher standards, and empower workers; and (b) regulate the labor supply through immigration control to eliminate the oversupply and presumably increase wages, which would in turn incentivize growers to innovate and adopt labor-saving farming methods and technology. The two scenarios have shaped both research and public policy regarding California agriculture in the past and indeed continue to configure and polarize the debate among present-day scholars and policy makers.

The early experience with immigrant Chinese peasants during the second half of the nineteenth century contributed to establishing the dismal standards for farmworkers in California, as well as the modus operandi for how agricultural employers recruit, employ, compensate, and dismiss workers. Created was an ethnically recognizable class of immigrants who have diminished civil and labor rights vis-à-vis other immigrants, are denied a path to U.S. citizenship, are precluded from owning property, are blocked from practicing other occupations or marrying outside their group, and can be summarily banished should they not conform to these restrictions. Indeed, Chinese peasants were recruited to California agriculture by virtue of the 1868 Burlingame-Seward Treaty, which recognized China as a most favored nation; were exploited by virtue of their diminished rights and legally sanctioned discriminatory practices; and were diminished and dismissed in 1882 by virtue of the Chinese Exclusion Act when they became troublesome, redundant or replaceable, and unwanted. Subsequently Japanese, Mexican, Filipino, Indian, and "Okie" immigrants followed in their footsteps and relived the Chinese experience. It is necessary to note that other immigrants who also reached California to work in the fields (i.e., Portuguese, Armenian, and Eastern European peasants) soon moved up the agricultural socioeconomic ladder and became independent farmers, prosperous landowners, and U.S. citizens. Also noteworthy is the fact that in California's 150-year history of commercial agriculture and immigrant labor, Mexican sojourners have been present in elevated numbers over the course of at least the last one hundred years and became the principal, if not exclusive, mainstay of farm labor after 1942. Currently, over 98 percent of the agricultural workforce present in California originated in Mexico. Hence greater attention is given to Mexican immigrants in this quick historical review of farm labor in California, commensurate with the longevity, size, and current standing of this group.

Asian Beginnings

Chinese peasants—experienced, skilled, but landless farmers from the Cantonese provinces—made their way to California with the Pacific Mail Steamship Company. They were mostly young men seeking fortune abroad with the aspiration of returning home with accrued savings and wealth to acquire land, create businesses, and establish independent and viable households. Chinese "entrepreneurs" advanced migrants' transpacific fare to California against future earnings plus high interest, and workers remained under the purview of their sponsors until their debts were paid off. According to Chan (1986, 38) more than 200,000 had made their way to California before 1880, half of them to agriculture. Indeed, some reports of the time claimed that they made up from three-fourths to seven-eighths of the agricultural workforce in the state, but Fuller (1939, 130) estimated that they may have only slightly exceeded one-half. Still, they became indispensable in fruit packing and canning operations, as well as harvesting multiple crops such as stone fruit, hops, and citrus. They were also heavily involved in large infrastructure construction projects involving land reclamation and irrigation, which further enabled agriculture.

Chinese workers labored in organized groups (gangs) based in San Francisco, Sacramento, San Jose, Stockton, Fresno, and other smaller rural towns. Gang bosses negotiated contracts with farm employers and dispatched workers to complete the work, often within twenty-four hours. The gangs had their own cook to prepare workers' meals and independently handled their lodging using bunkhouses or tents, liberating employers from most labor supervisory and administrative tasks. As soon as the work was completed the workers conveniently returned to their home base and vanished from the rural landscape; they therefore rarely formed part of the local rural social fabric (Chan 1986, 350). The gang boss was paid a lump sum for the contracted work; he in turn paid the workers individually after deducting debt, food, lodging, and other expenses. Driven by the bosses, the laborers diligently worked long hours under substandard working and living conditions, even by the standards of the nineteenth century, with no relief or legal recourse other than what was provided by the Chinese underworld.

The steady, abundant, and certain supply of Chinese workers kept farm wages at a constant rate of decline, which displaced other workers from the labor market. Chinese received a substantially lower wage for comparable work than did white workers (Fuller 1939, 327). For example, during the peak harvest season they typically earned $30 per month versus the $50 received by white workers, and the $30 was still subject to the gang bosses' multiple payroll deductions. Workers labored incessantly during the summer and spring, jumping from workplace to workplace, but remained mostly idle

at the base camps during the slower winter months, taking on occasional jobs when they were available. At the home base, located in urban Chinatowns and rural camps, the bosses provided room and board, as well as entertainment in the form of liquor and opium, gambling, and female companionship via organized prostitution. They also served as bankers, enabling transpacific transactions, and provided mail services with China. Ultimately, workers who led frugal lives while in the United States cleared about $15 per month and managed to save or send back home a large part of the balance. According to Fuller (1939, 126–127), approximately seven of every ten immigrants eventually returned to China after work stints of five to fifteen years in California. As a result, there was constant incoming and outgoing traffic of people across the Pacific throughout the second half of the nineteenth century.

The Chinese labor system greatly benefited California farmers and California agriculture by providing unrestricted access to a cheap, flexible, secure, and seemingly inexhaustible labor supply made up of skilled and highly productive workers. Chinese "entrepreneurs" also profited handsomely by managing the immigrant workforce, extracting overhead from farm employers and surplus value from workers, and by providing high-cost services to immigrants. And immigrant workers, despite hardship and abuse dispensed by their employers and handlers, also benefited when they were able to fulfill their goal of accruing savings and returning home to resume normal domestic lives. But the system was halted and eventually came to an end. First, a string of national economic downturns in the late 1870s and early 1880s brought about an agricultural slowdown and sent eastern idled workers westward looking for jobs. In California they found that the Chinese monopolized farm jobs, which spurred resentment, awakened anti-Chinese sentiment, and unleashed violence against them and their communities: many Chinese towns, villages, and camps were burned to the ground, and Chinese immigrants were attacked and killed despite the objections and chagrin of farm employers (Fuller 1939, 108–111; Majka and Majka 1982, 33–34; Chan 1986, 370–374). Also, to the dismay of farm employers, Chinese gang bosses began to demand improved terms for their workers. All this led the federal government to intervene, adopting a number of escalating actions that would eventually eradicate the system: in 1880 it renegotiated with China the Burlingame-Seward Treaty to include new provisions that granted the United States the power to regulate, limit, or suspend but not entirely prohibit the immigration of Chinese laborers; in 1882 it passed the Chinese Exclusion Act, which suspended immigration from China for a decade; in 1888 it approved the Scott Act, which closed the door to twenty thousand Chinese immigrants who had left the United States but intended to return; and in 1892 the Geary Act extended Chinese exclusion for another decade and provided for the deportation of all Chinese illegally in the country, affecting up

to 95 percent of the Chinese population in the United States (Majka and Majka 1982, 34). By 1910, Fuller reports, "the Chinese had declined to a position of relative insignificance in the aggregate farm labor supply" (1939, 131), but the labor vacuum was soon filled by Japanese and Mexican immigrants.

Not all the Chinese immigrant farmworkers, however, returned to China. Some remained in urban and rural towns occupying specialized service positions, such as cooks and launderers, and a substantial number managed to become successful independent truck farmers as tenants or sharecroppers of small farms, especially in the Sacramento–San Joaquin Delta area. One writer of the times observed that "the whole of San Francisco lives on fruits and vegetables bought from the Chinese. Every morning you see their loaded wagons headed towards the markets in the center of town stopping in front of private homes. It may even be said that in all of California this branch of industry has passed exclusively into the hands of the Chinese" (quoted in Chan 1986, 105). But eventually these truck farms also withered away. As a result of Chinese culture, which did not encourage out-migration of women, and U.S. policy, which selected single men as eligible immigrants, Chinese households in California were womanless—socially incomplete—typically made up of six to eight unrelated men of varying ages who worked and consumed as a unit (Chan 1986, 369, 386–388). They made extremely efficient production units, but without procreation, they slowly withered away, leaving behind little tangible evidence of their passage through California other than their labor contributions in agricultural infrastructure, cemeteries, and county archives replete with tenancy and sharecropping records.

By the turn of the century, as the number of Chinese workers declined, California agriculture took another giant step toward industrialization. Initially, sugar beet and citrus crops drove the process, later joined by cotton. The two crops led to the construction of the first factories in the fields in California's agricultural landscape. Sugar beets, for example, required massive refineries located in the midst of a vast agricultural hinterland dedicated to supplying them with fresh and high-quality produce. In 1897 Claus Spreckels, who had made a fortune in cane sugar in Hawaii, established a sugar beet refinery in the Salinas Valley with the capacity to daily process three thousand tons of beets; in 1898 sugar mogul Henry Oxnard erected a $2 million factory in Ventura capable of processing two thousand tons and committed twenty thousand acres of prime farmland to supply it with produce; and in 1899 the Union Sugar Company established the Betteravia refinery in the midst of the Santa Maria Valley in Santa Barbara County. These initiatives radically transformed these regions economically, socially, and environmentally and spurred the rise of agricultural cities and the expansion of the railway network. Citrus, which had been important in southern California since the

1870s, exploded in the early years of the twentieth century to a $200 million investment with more than 5 million orange trees and 1.5 million lemon trees in production (McWilliams 1946, 210). The resulting "citrus belt" extended from San Diego to Santa Barbara, but was heavily concentrated in the Los Angeles basin between the San Gabriel and Santa Anna Mountains. Citrus was at the time deemed to be the "second California gold rush," and East Coast investors and bankers rushed in with capital. In 1893 Edward Dreher, the "father" of the California citrus industry, established the Southern California Fruit Exchange, an association of citrus farmers, which later adopted the new and now iconic name of Sunkist, controlling nearly one-half of the state's citrus output.

Both crops generated vast profits, but they also required massive amounts of permanent and seasonal labor. The cultivation of sugar beets, for example, demanded a steady supply of workers to sow, thin, or block and chop the crop, and the refineries employed large contingents of seasonal factory workers. Two orange varieties (navel and valencia) occupied workers in the orchards during two extended harvest seasons, and lemons were harvested year-round. In addition, the citrus packing sheds employed another large contingent of workers. To attract and retain workers, both citrus and sugar employers erected company towns and offered housing privileges to both field and factory workers.

Unauthorized Japanese workers began to trickle into California from Hawaii, then an incorporated territory of the United States, toward the end of the nineteenth century, but soon after the signing of the 1894 Treaty of Commerce and Navigation they grew into a steady stream, directly from rural Japan, as Japan relaxed emigration restrictions for its citizens and the United States granted Japanese the right to immigrate but without the possibility of naturalization. Within a decade 130,000 Japanese peasants had made their way to California, with more than one-half of them ending up in agriculture as laborers. According to Fuller (1939, 151), nine out of ten Japanese immigrants were men, and three-quarters were under the age of thirty. They quickly surpassed in number and vitality the dwindling and aging Chinese and by 1913 accounted for 65 percent of the agricultural workforce, with a presence of 87 percent in berries, 66 percent in sugar beets, 52 percent in grapes, 46 percent in vegetables, and 37 percent in citrus (Fuller 1939, 160; McWilliams 1939, 111–112). They performed the heavy, insecure, and underpaid work of agriculture and in the process enabled the consolidation of the new industrial crops.

As the newcomers that they were, Japanese laborers were paid considerably less than their Chinese and white counterparts. Fuller (1939, 164) reports, for example, that in 1894 a gang of Japanese workers (I assume by the date

that they were undocumented) laboring in Santa Clara County were paid 50 cents per day without board, whereas Chinese and white workers received $1 and $1.25 to $1.75, respectively. And in 1896 Japanese workers in the Pajaro Valley reduced the contract price for sugar beet work from $1.20 to 70 cents per ton. Scholars (Fuller 1939, 168; Daniel 1981, 74; Majka and Majka 1982, 38) suggest that Japanese workers purposefully and consistently underbid other workers as a strategy to displace the competition and win purchase over the labor market. However, it seems more reasonable, and consistent with the history of California agriculture, that other forces were at play: the Japanese newcomers were simply the vulnerable, disadvantaged, and exploitable class of workers whom agricultural employers prefer to hire.

The wage differential diminished during the first decade of the twentieth century, though Japanese workers still earned slightly less than other workers (Fuller 1939, 167). Soon afterward—with larger numbers, experience, and above all legal authorization to immigrate—they became the highest paid. According to McWilliams (1939, 111), wages increased by 50 percent in fifteen years as Japanese enjoyed and leveraged a scarcity value. The Japanese employed a job placement system that was in many ways similar to the Chinese gangs. Japanese sponsors facilitated and financed transpacific transportation, housed immigrants in hotels and boarding houses, and secured jobs for them. Young men, without homes or dependents, were highly mobile and could jump from job to job, crop to crop, employer to employer, and region to region with relative ease. These workers, moreover, were provided with transportation, food, and housing, and were willing to work for whatever wage or piece rate their bosses managed to negotiate. They were also able to "hibernate" during the slow employment months. One important difference, though, is that their bosses, rather than being in collusion with farm employers to extract a high overhead for themselves and surplus value from the workers, were honest brokers looking after the best interests of the workers. Japanese bosses drove a hard bargain when they could and avoided competition with other Japanese work groups. A common tactic was to withhold labor during critical moments of the harvest and force employers to raise wages or piece rates. The Japanese power to leverage improved conditions for their workers awakened the ire and resentment of employers, which resulted in a severe backlash and a wistful recollection of the Chinese past. Majka and Majka (1982, 41) and Daniel (1981, 74–75) report that delegates to the 1907 convention of California Fruit Growers expressed that the Chinese "were patient, plodding, and uncomplaining in the performance of the most menial service. They submitted to anything, never violating a contract, while the Japanese were a tricky and cunning lot, who break contracts and become quite independent. They are not organized into unions but their clannishness

seems to operate as a union would." Fuller (1939, 170) quotes the *Pacific Rural Press*: "If the Japanese had proved better laborers than they have, the California farmers would be more interested in having plenty of them. . . . [But] some are . . . urging that a turn about would be fair play, and that to put the Exclusion Act upon the Japanese and the free entry upon the Chinamen for a while would be a good move."

Hostility toward Japanese immigrants in California, residing in both urban and rural areas, led to vitriolic anti-Japanese campaigns and dogged lobbying efforts in Washington to reverse the Chinese exclusion and block Japanese immigration. These efforts precipitated diplomatic exchanges between the two countries, which led to the so called Gentlemen's Agreement of 1907. The diplomatic agreement stated that Japan would no longer issue passports to its citizens to migrate to the United States, thereby stemming the migration flow, and that the United States would accept the presence of Japanese already in the country and allow the immigration of their wives, children, and parents, thereby enabling the establishment and proliferation of complete Japanese families. All these events precipitated several important developments. First was the decline of immigrant workers from Japan; Majka and Majka (1982, 44–45), for example, document that in 1909 the in-and-out balance of Japanese immigrants turned negative as 21,500 new immigrants—I assume mostly spouses and close kin of established workers—arrived, and 27,000 returned to Japan. The second development was that urban and rural Japanese families begin to move out of farm employment and urban jobs to establish independent farms through the acquisition and lease of farmland (McWilliams 1939, 107; Fuller 1939, 175; Matsumoto 1993, 17–55). For example, Japanese farmland ownership grew from 2,500 acres in 1905 to 17,000 in 1910, while leased (managed) farmland grew from 62,000 acres to 195,000 in the same period of time (Majka and Majka 1982, 42). And again, farmland controlled by Japanese increased from 282,000 acres in 1913 to 458,000 in 1920, with owned acreage tripling from 27,000 acres to 75,000 acres in the same period of time (Majka and Majka 1982, 48–49). Third, Japanese farmers employed mostly Japanese laborers and further subtracted workers from the agricultural labor market, contributing to the decline of Japanese workers' availability for corporate agriculture.

The rise and success of Japanese family farms triggered a volley of new anti-Japanese actions. In 1913 California passed the Alien Land Law, which forbade aliens ineligible for U.S. citizenship (i.e., Japanese) from owning land and limited leasing arrangements to three years; a 1920 revision of the law approved overwhelmingly by California voters prohibited land leases altogether. In 1924 the U.S. Congress approved a new Immigration Act that, on the one hand, limited the number of immigrants from the usual sending

countries, and on the other, prohibited immigration from Asia altogether. The 1924 law was aimed at ensuring Chinese, Indian, and especially Japanese exclusion. Finally, in 1942, after the Japanese attack on Pearl Harbor, the United States mandated the internment of all Japanese living on the Pacific Coast—including many U.S. citizens—effectively separating them from their farms and farming activities. Few returned to their farms after the war, virtually marking the end of Japanese involvement in California farming both as workers and farmers.

There were two other farm labor supply experiments undertaken by the United States—smaller in scope and short lived—involving Asian immigrants: Indians from the Punjab region and Filipinos primarily from the provinces of Visayas and Ilocos. Punjabi peasant males began to appear in California in 1906–1907 as the likelihood of Japanese exclusion loomed (Fuller 1939, 180). Their numbers, however, never amounted to a significant part of California's agricultural labor supply, though residual communities remain in the San Joaquin Valley and Imperial County (Leonard 1992). They too coped with the many restrictions imposed on other Asian immigrants and were subjected to exclusion after the 1924 Immigration Act was passed. Filipinos also made an early-century token appearance as sugar cane workers imported to Hawaii, *sakadas,* slipped onto the U.S. mainland. As subjects of a U.S. possession, Filipinos had unrestricted access to California, though they were denied the possibility of adopting U.S. citizenship; in 1934 the United States granted the Philippines its independence, and Filipinos were thereafter subjected to the blanket Asian exclusion. Filipinos increased significantly in California between 1920 and 1930, after they were expressly recruited directly from the Philippines to supplement immigrant workers from Mexico. Fuller (1939, 234) reports that thirty thousand Filipinos entered California, mostly as farm laborers, between 1923 and 1929. Majka and Majka (1982, 65) report that the Filipino immigrant population in the United States grew from fifty-six hundred in 1920 (mostly students) to fifty-six thousand in 1930, mostly farmworkers on the Pacific Coast; 90 percent of them were male, single, and under thirty years of age. Filipino workers received the lowest wages and were subjected to the worst forms of discrimination and abuse. Carlos Bulosan (1946), an immigrant worker himself, reports that they were lodged in chicken-coop-like structures, worked twelve-hour days—from six to six—six days a week, received miserable wages from their handlers, and were mistreated by the farm employers. Filipinos were especially destined to perform stoop labor and became essential for the backbreaking asparagus and melon harvest in Stockton and Imperial Valley, respectively. Still, at the height of the Great Depression, when Filipino workers were no longer needed and possibly because they had become a force in labor union efforts and effective

strike organizers, they were "invited" to return to the Philippines. Indeed, H.R. 6464, signed by president Franklin Roosevelt in 1935, offered Filipino workers free passage back home with the stipulation that they would not be able to return to the continental United States (Majka and Majka 1982, 72). Few, it appears, accepted the offer, and they remained in California.

The Mexican Century

The year 1910 marks the beginning of the Mexican century, a period when immigrants and migrants from Mexico dominated California's agricultural labor market, with the exception of a brief interlude when American "dustbowl" refugees displaced them. Two powerful forces configured a massive movement of Mexican nationals to the United States and to California's agricultural landscape. First, the devastation and violence of the Mexican revolution (1910–1920) forced torrents of refugees across the border in search of jobs and safety, especially from the most affected states in the north and the densely populated central plateau (Gamio 1930a, 1930b). Second, the continuing expansion of labor-intensive agriculture in California had exceeded the state's labor supply, which was in a state of decline and uncertainty owing to Japanese exclusion. Moreover, the outbreak of World War I (1914–1918) and U.S. entry into the war in 1917 created an extraordinary demand for food and fiber commodities that California was already straining to produce. Sugar, citrus, and cotton production, among others, boomed.

The transformation of Imperial Valley in the early twentieth century offers an excellent illustration of California's pattern of agricultural growth, as a slice of the Colorado Desert was converted into an agricultural powerhouse by diverting water from the erratic Colorado River (Taylor 1930, 2–3). "Within eight months [of having completed the first diversion channel in 1901] there were two towns, two thousand settlers, and a hundred thousand acres ready for harvesting" (Reisner 1986, 122–123). Irrigation added nearly 400,000 acres of farmland to the valley by 1927, enabling the production of both extensive (i.e., alfalfa and barley) and intensive crops (Taylor 1930, 7–9). Cantaloupes, lettuce, and cotton, for example, headed the list of intensive crops, and those farmers became the principal employers of labor in the valley. Lettuce and cantaloupes, practically unknown in 1910, occupied 42,000 and 37,000 acres respectively, by 1927; cotton acreage grew from an experimental 6,500 acres in 1910—the first cotton harvest in the valley—to 126,000 ten years later. The Imperial Valley benefited greatly from southern cotton capital investments and marked the rise of the Boswell cotton empire, which eventually came to dominate the worldwide cotton market with its production sites in the Imperial and San Joaquin Valleys (Arax and Wartzman 2003).

As early as 1916, Imperial Valley growers were scrambling to secure workers wherever they could find them and triggered what the local *Imperial Valley Press* termed "the greatest hunt for men that the valley has ever experienced" (Taylor 1930, 15). Paul Taylor, who witnessed and researched the valley's economic and social transformations in 1927, reports that as the valley met its expanding labor needs mostly with immigrants from Mexico, their representation quickly mounted to over one-third of the valley's population of 54,500 (1930, 18). Fuller (1939, 249) confirms that the early presence of Mexican immigrant workers was seen first in the Imperial Valley next to the border, but that it quickly infiltrated the Southern California citrus belt and the sugar beet factories-in-the-fields throughout the state. Fernando Alanís Enciso, a Mexican scholar using Mexican sources—which are incidentally deemed more reliable than the U.S. immigration records—reports that approximately 925,000 Mexicans moved to the United States between 1910 and 1930, and that in the years closest to the wartime agricultural boom, between 1916 and 1918, 324,000 made their way across the border. Sugar companies located in California and Colorado, desperate for labor, recruited many of these immigrants on the spot and transported them to their work sites: Holly Sugar, American Beet Sugar, Spreckels Sugar, and Pingree Sugar (Fuller 1939, 222; Alanís Enciso 1999, 22–23, 30). As a result, California, with only 8 percent of the Mexican population in the United States in 1900, augmented its share to 25 percent by 1930 (Fuller 1939, 222). Clearly all Mexican immigrants in California did not end up in agriculture—many were also in construction and manufacturing—but by then they constituted the largest body of unskilled, low-wage laborers in agriculture. Some observers claimed that they amounted to as much as 70 to 80 percent of the casual labor supply, but Fuller does not think they exceeded 50 percent. Mexican immigrants saturated the labor market, causing wages to fall precipitously starting in 1921, and they dominated over Japanese and Filipino workers in most agricultural regions and major crop groups (Fuller 1939, 241, 244, 276).

Alarmed at the prospect of losing crops and revenue because of a lack of workers during the agricultural boom that accompanied World War I, California agriculturists successfully lobbied Congress to facilitate the entry of Mexican nationals to the United States by waiving the literacy test and head tax that were required from all immigrants, under the condition that they would engage exclusively in agriculture or be apprehended and deported. "If Mexicans were not available to perform those menial tasks, agricultural production would stagnate and depress the level of economic welfare of all the other industries in California," the agriculturalists warned. (Fuller 1939, 253–254; Majka and Majka 1982, 70; Alanís Enciso 1999, 14). Later, when the new Immigration Law of 1924 was passed, lobbyists made sure that Mexico

and other Latin American nations were exempt from the quotas imposed on other countries. Indeed, U.S. and Mexican officials held frequent conversations in 1917 and 1918 (i.e., the U.S. ambassador with Mexico's secretary of foreign affairs, and the governor of California with Mexico's general consul in San Francisco), and consular offices on the border were instructed to facilitate the free movement of Mexicans; Fernando Alanís Enciso designated these agreements the "first *bracero* program" between the two countries (1999).

Mexican immigrants introduced several novelties to the farm labor milieu in California. First and foremost, for the first time complete and large families, instead of single unattached males, made up the bulk of the immigrant population and farm labor supply. Employers soon discovered many advantages to hiring families and began to select them for employment: families, including children, provided an abundant and flexible supply of diverse workers who could easily be mobilized according to need, and families were easier to stabilize, retain, and manage than volatile young men. To this end, employers, especially in the sugar and citrus industries, began to offer families benefits, including housing, as part and parcel of their hiring practices (González 1994; Alanís Enciso 1999, 25–30). A typical citrus family, for example, would place its men at work in the orchards and its women in the packing sheds; both were employed full time during the harvest. In a similar fashion, farmworker families employed by the sugar beet companies divided their time and workers between the sugar beet fields and the refining plants. Second, Mexican workers adopted the automobile as a means of transporting themselves with their families up and down the state, following the crops, in search of jobs. By 1921 the "Ford Revolution," launched by the introduction of the affordable Model T (1908–1927), had reached California farmworkers, who routinely used the cars for transportation and shelter.

The arrival of a large number of immigrant families from Mexico, welcomed in the fields to work but not in the communities to live, created an immediate housing predicament that resulted in the erection of small villages and shantytown-like places located near employment sites and in wintering locations. One of the earliest references to these places comes from a citrus rancher in Ventura County, who recalled in 1918 that ten years earlier, on a property he had purchased "was a small colony of Mexican families who had been employed to care and harvest the tree crop. The workers had been given a place to camp where they furnished their own tent, or shelter of boughs and palm leaves, to begin with, later gathering together from unknown sources [the] usual conglomerate of boards, tin, iron, canvas, sacks, etc. with which [they] constructed a so-called house. From this impoverished sordid-looking camp of huts there came to work each Monday morning men who could be depended upon for a full-measure day's work" (Shamel 1918, 151). He added

that in order to avoid the replication of the ramshackle village, the ranch refurbished a large dormitory, originally occupied by Japanese single men, for Mexican families and soon afterward undertook the construction of one hundred small cottages arranged in six camps located in different parts of the extensive plantation. Another eyewitness reported "a number of Mexican families in different parts of Ventura County, living in small parcels of land along the Santa Clara River. The land would in the main be useless for other purposes, but it serves as a home for the Mexicans, providing place for a few chickens, a small garden and tether for a horse. When the harvest season is on, the occupants of these houses are strenuously engaged in the fields—the whole family usually serving. When it slacks, they are content to eke out a humble, but homelike existence in their little garden spot. And so they remain year after year, always on hand when needed, and able to care for themselves temporarily when turned off" (Vaile 1918, 97).

In a segment titled "The Colonia Complex," published in 1948, Carey McWilliams wrote that perhaps 80 percent of the 150,000 to 200,000 Mexicans living in Southern California lived in *colonias,* varying in size from a cluster of shacks to communities with several thousand people. He highlighted a *colonia* outside the town of Upland in which "the average house consists of two or three rooms and was built of scrap lumber, boxes, and discarded odds-and-ends of material. Ten, twenty, and thirty years old, the houses are extremely clean and neat on the inside and much effort has obviously gone into an effort to give them an attractive appearance. Virtually all the homes lack inside toilets and baths and a large number are without electricity" (1990, 197–201). He also wrote in 1939: "Within two miles of the pleasant California college town of Whittier . . . is an amazing Mexican community which has existed for years. Removed a short distance from the highway, and crowded into a few blocks made up of shacks and hovels, some 2500 Mexican make their homes, most of them farm workers" (McWilliams 1939, 149–150). He repeated that "[s]imilar 'Little Mexicos' can be found throughout Southern California."

Paul Taylor also encountered these *colonias* in Imperial Valley in 1927 and documented their formation and geographic and social isolation. He describes how the Mexican population, made up mostly of immigrant workers, is settling in with their families and building up their *colonias.* Homeownership is a rapid and extensive development that begins with real estate purchased "across the tracks" on which squatters proceed to build their homes. There "they construct a small house or 'shack' of rough or second-hand lumber; then, when finances permit, construct a second, and a third house in the same lot. It is not uncommon to see five, six, or seven of these one or two-room houses on a single lot . . . [a]nd tents are sometimes squeezed into the intervals between shacks" (1930, 68).

The Imperial Valley's thriving agriculture was not the only quality that attracted Mexican immigrants; the valley also became a favorite wintering location for the state's growing itinerant workers by offering winter and early spring jobs, low cost of living expenses, homesteading opportunities, and proximity to Mexico. "[H]alf or more of the Mexicans in the valley join the great migration to the San Joaquin Valley to work in grapes, cotton, apricots, peaches and prunes" (Taylor 1930, 40). Typically, family workers would toil in the valley during winter and spring and pile into their vehicles in late spring to seek summer jobs in other parts of California, leaving behind infant children, some women, and the elderly, and sometimes joining another household group to share travel expenses and improve employability. They would return home to their desert *colonias* in the fall in time for the cotton harvest. It was in great measure on the strength of having multiple family income earners, mobility, and access to affordable *colonia* life that Mexican farmworker households were able to eke out a precarious existence on the foundation of low agricultural wages and social exclusion.

Taylor also notes that Californians in the valley are not alarmed by the Mexican influx because they are conspicuous by their absence. "The Mexican laborers in the Valley are on the whole a class apart, maintain a separate culture. It is the coincidence of class, racial, and cultural differences which combine to maintain social ostracism, which in turn reinforces and stabilizes the differences upon which it is based" (1930, 94). *Colonias,* McWilliams aptly explains,

> are always located adjacent to an agricultural town or city but inevitably on the "other side of something." Their location is a function of low wages, cheap rents, low land values, prejudice, closeness to employment, undesirability of site, and placed a just sufficiently inconvenient distance from the parent community so that they require separate schools and discourage civic participation. It was never intended that the *colonias* were to be part of the wider community; rather, it was meant that they were apart from it in every way; *colonia* residents were to live apart, work apart, play apart, worship apart, and . . . trade apart. (1990, 198–199)

As the Mexican immigrant population grew and settled, their *colonias* evolved into more stable and dynamic social systems—alas, apart from mainstream society—with a rich cultural, economic, and political life (González 1994; García 2001; Alamillo 2006). As a seemingly lasting fixture in the agricultural landscape, Mexican *colonias* were the closest that California had come to creating a stable and reliable class of "domestic" workers capable of satisfying the agricultural industry's many and ever-changing labor needs. But it was not to be. The Wall Street bust of 1929, followed by the Great Depression, displaced the Mexican agricultural workforce and undermined their

budding communities. Indeed, the resulting agricultural slowdown—if not decline—led to chronic unemployment and underemployment, falling wages and commodity prices, discontent, and labor disputes. And an already dire situation was compounded by the arrival of a new wave of despairing immigrants vying for California's farm jobs: the displaced and bankrupt American farmers from the dust bowl states.

The 1930s witnessed growing union militancy among Mexican farmworkers and an explosion of strikes driven by a bad situation gone worse: declining wages that were already low, sluggish employment that was already haphazard, and increased poverty that was already rampant. The decline in wages, the root of most of the pain inflicted upon farmworkers, was severe: in the Los Angeles Basin, berry workers' wages decreased from a high of 25 cents per hour in 1932 to 10 and 15 cents one year later (González 1998, 116), and in the San Joaquin Valley, cotton chopping was cut more than half as cotton pickers, paid one dollar per hundred pounds in 1928, received 40 cents in 1932 (Weber 1994, 80). This situation was compounded by the fact that agricultural workers were ineligible for the National Industrial Security Act of 1933, designed by the federal government to assist unemployed workers and their families. The assertiveness of the strikers expunged the image of Mexican immigrant farmworkers as docile and servile. The American Federation of Labor (AFL) at the time was hostile to Mexican and Filipino membership and hence had little involvement in their mobilization. Instead, unionization efforts were started by the Confederación de Uniones Campesinas y Obreras de México (CUCOM), a Mexico-based and -supported organization. Subsequently the left-leaning Cannery and Agricultural Workers Industrial Union (CAWIU) assumed leadership and added Mexican farmworkers to both its membership and rank and file (González 1998, 112; Weber 1994, 85; Majka and Majka 1982, 75). The farm labor strikes, with 75 to 90 percent Mexican participation, affected all of California's major agricultural regions and crops: lettuce and melons in the Imperial Valley, cotton, grapes, and peaches in the San Joaquin Valley, and citrus and berries in the Los Angeles Basin, among others (Weber 1994, 79–80). It is interesting to note that the Mexican *colonias* became safe and essential places for union work, from where strikes were planned and strategized (González 1998, 117, 119; Weber 1994, 160, 181).

Associated growers quickly confronted the growing labor militancy by first deploying strike breakers, scabs, imported to the fields from the ranks of unemployed urban workers, and then, after that failed, with violence and repression unleashed by armed vigilantes and sheriffs' deputies. The 1933 cotton strike in the San Joaquin Valley, for example, involved more than eighteen thousand cotton pickers, who virtually halted the harvest. Growers first evicted workers and their families from employer-owned labor camps

and then, on October 10, as strikers—including women and children—gathered at Pixley, across from the CAWIU hall, "ten carloads of shotgun wielding growers" opened fire, killing two Mexicans and wounding eight others. This was one of several deadly incidents that took place that year across the San Joaquin Valley (Daniel 1981, 182, 195–201; Weber 1994, 100). In 1936 armed guards and vigilantes terrorized twenty-five hundred to three thousand citrus strikers and their *colonia*—El Modena—located near Santa Ana in Orange County. The *Los Angeles Times* (1936, 1–2) reported:

> Submachine guns bristled in the hands of Sheriff's officers outside a justice court in Anaheim, where thirteen Mexicans, charged with rioting, were given a preliminary hearing. . . . In a county tense after rioting which resulted in the jailing of 155 persons day before yesterday a rumor sped from ranch to ranch of a band of strikers in El Modena plotting further depredations. . . . [L]ater in the night, three or four automobiles loaded with grim-faced men, appeared out of the darkness surrounding the little settlement. In a few seconds, tear gas bomb[s] hissed into the small building where the assertive strikers were in conclave. . . . Witnesses said they heard the mysterious automobiles and the night-riders whirring away without leaving a trace of their identities.

These kinds of intimidation tactics and assaults against striking farmworkers happened regularly throughout agricultural California (Majka and Majka 1982, 92) and compelled many unemployed Mexican families to seek refuge in Mexico after having lived and worked in the United States for more than two decades.

The economic crisis of the 1930s made underemployed and underpaid Mexicans troublesome and rendered their labor less necessary. Like their Chinese and Japanese predecessors, they ceased to be welcome, and swift actions were taken to be rid of them (Guerin-Gonzalez 1996, 77). Soon after the crisis erupted, the U.S. State Department reinstated the statutes of the 1917 Immigration Act, thereby canceling the waivers granted to Mexican immigrant workers, and effectively stemming the immigration flow. No visas were granted to common laborers after 1930. Moreover, for the first time Congress passed laws setting penalties for illegal entry into the country and facilitating deportations, and the border was strengthened. As a result, immigration from Mexico decreased from an annual average of 62,000 in earlier years to 18,800 in 1930 and 2,500 in 1931 (Majka and Majka 1982, 70–71). Immediate action was also taken to deal with "troublemakers" as immigration agents closely monitored strikes involving foreigners and removed Mexican strike leaders and picketers, arrested for participating in what were deemed to be illegal activities (Balderrama and Rodríguez 1995, 59; Weber 1994, 80). "Illegal" Mexicans, those found to be without papers in hand and who appeared

to be Mexican, were rounded up in well-organized and timed raids in the *colonias* and Mexican barrios—without warrants or probable cause—and forcibly removed from the country (Guerin-Gonzalez 1996, 80–81). A broad category of jobs was closed to aliens, and their eligibility for public relief programs was impeded or altogether blocked. All this was applauded by organizations such as the San Diego–based National Club of America for Americans, which advocated the removal of Mexicans (Balderrama and Rodríguez 1995, 80–81). The described actions were designed not only to return unwanted workers to Mexico but also to increase the difficulty, stress, hardship, and insecurity that Mexicans experienced while in the United States and to encourage their voluntary return (self-deportation) to Mexico. To aid this process, California cities and counties offered prospective returnees financial assistance by providing free or reduced transportation costs to Mexico. Indeed, Los Angeles County chartered a weekly train to transport immigrants back to their homelands (Guerin-Gonzalez 1996, 85). Carey McWilliams witnessed the first shipment in 1931: "*Repatriados* arrived by the truckload—men, women, and children—with dogs, cats, and goats; half-opened suitcases, rolls of bedding, and lunch baskets." He estimated that it cost the county $77,249.29 to repatriate one trainload of some six thousand people, but the savings in relief amounted to $347,468.41 (1990, 176).

Repatriation, forced and voluntary, took place in cities and counties across the country, wherever Mexican immigrants had settled in large numbers, and across most economic sectors that required low-skilled, cheap labor: in California, Colorado, Illinois, New York, Pennsylvania, and Texas and in agriculture, manufacturing, mining, construction, railroads, fisheries, and lumber mills. But California and its agriculture were hit the hardest, with the state's outsized Mexican population and labor-intensive farming (Guerin-Gonzalez 1996, 78). *Colonias* were especially affected. George Clements, the agricultural affairs officer of the Los Angeles Chamber of Commerce, estimated, with likely exaggeration, "that of the 175,000 Mexicans who from 1917 to 1930 met the agricultural labor requirements of the whole state . . . there are possibly no more than 10% available in 1936" (quoted in McWilliams 1990, 176). Balderrama and Rodríguez (1995, 103–105) report that fifty thousand nationals and their children were repatriated from Los Angeles alone during a five-month period—one-third of the Mexican population in the city—and describe the once bustling *colonias* as "taking on the eerie look of abandoned ghost towns" now populated by indigent and broken families. There is little agreement among scholars about the actual number of repatriated Mexicans during this period, other than that existing data are insufficient and too unreliable to make an accurate count (Carreras de Velasco 1974; Hoffman 1974; Balderrama and Rodríguez 1995; Guerin-Gonzalez 1996). This was, and continues to be,

a perennial problem with Mexican migration statistics, since neither country is able to accurately record many border crossings moving in both directions. As a result, most estimates are largely conjectural. Nonetheless, there appears to be a consensus that at least one million individuals were repatriated, half forcibly and the rest voluntarily. There is also widespread agreement and considerable anecdotal evidence that many naturalized and U.S.-born citizens were either wrongly apprehended and sent away or taken to Mexico as children and spouses of Mexican households (Guerin-Gonzalez 1996, 83).

Many immigrant families, nonetheless, remained in agriculture—living in their old *colonias,* working their old jobs, and following the crops—joined by chronically unemployed urban Mexican families who chose to try farm work and itinerant lives as a means to remain in California rather than return to Mexico, but with the novelty that they were under assault by a new wave of "ethnic" immigrants from the American agricultural heartlands of Oklahoma, Arkansas, Missouri, and Texas. The new immigrants successfully competed for scarce, low-wage jobs and limited, substandard housing. In some places Mexicans were evicted from employer-owned and -controlled farmworker housing units to make room for the new Okie workers. For example, in the town of Santa Paula, the headquarters of the Limoneira and Sespe citrus giants, Mexican strikers were evicted from their homes in 1941, which were turned over to dust bowl refugees, who also took their jobs (Galarza 1964, 39). These actions were repeated throughout rural/agricultural California in the late 1930s and early 1940s as economic troubles ignited labor disputes and exacting workers were replaced with a new source of docile labor.

Okie Interlude

The Great Depression slowed down California agriculture, but it halted farming and devastated rural society in other parts of the country. In Oklahoma, Texas, Arkansas, and Missouri the farm crisis was compounded by environmental degradation that contributed to the making of the "dust bowl." Traditional family farmers and tenants were priced out of farming by falling farm values, "tractored out" of their land by machines, and forced out of their homes by an extended drought and the "rollers" (massive dust storms), which ruined crops and people's health as they blew away homes and much of Oklahoma's topsoil. After losing their farms to the banks, bankrupt and landless farmers were evicted from their homes and forced to move away. Many traveled westward toward California in search of jobs and new beginnings. Paul Taylor is credited for first recognizing this westward movement of what he called "drought refugees" in a 1935 *Survey Graphic* article, in which he highlighted the process of social erosion taking place among the displaced

farmers and the hard work, social marginalization, and itinerant lives they found at the receiving end, California, where only bad jobs and no land were available to them (Taylor 1935; Gregory 1989, 81). Moreover, he raised the important question of whether these American immigrant farmworkers would find a place in California history and tradition.

Taylor (1935) describes the "drought refugees" as they enter California crossing the Colorado River in slow-moving and conspicuous cars loaded with people; they "travel in old automobiles and light trucks, some of them home-made, and frequently with trailers behind. All their worldly possessions are piled on the car and covered with old canvas or ragged bedding, with perhaps bedsprings atop, a small iron cook-stove on the running board, a battered trunk, lantern, and galvanized iron washtub tied on behind. Children, aunts, grandmothers and a dog are jammed into the car, stretching its capacity incredibly." Many of the more educated and skilled migrants made their way to metropolitan areas, primarily Los Angeles, where after some hardship they eventually settled in to industrial jobs and the social fabric of the city. Others, mostly the farmer stock, made their way to the state's agricultural regions with the aspiration of landing farm jobs and eventually buying a piece of land on which to farm and build a home. One migrant stream made its way west to the Los Angeles Basin, still an agricultural powerhouse with its citrus orchards and berry fields, while another—the largest—moved north into the San Joaquin Valley following cotton, a crop that the southwestern migrants knew well. At the time, the San Joaquin Valley was consolidating as the new agricultural heartland of the state on the basis of a new and sophisticated hydraulic agriculture that demanded increasing numbers of seasonal workers (Worster 1985; Pisani 1984). San Joaquin Valley farms already led the nation in their reliance on irrigation, modern equipment, chemicals, scientific experimentation, capitalization, and hired labor (Gregory 1989, 54). High demand for agricultural work, though, was mostly seasonal for a number of crops dispersed throughout the vast valley (cotton, potatoes, grapes, and stone fruit), resulting in lots of travel and dire episodes of unemployment in between.

Between 1935 and 1940 some seventy thousand refugees found their way into the San Joaquin Valley, where they did not necessarily find an empty occupational niche to fill, but rather ruthless competition with Mexican workers, many of whom seasonally trekked their way to the valley from their Los Angeles–based "wintering" *colonias.* They also found strike-weary employers who saw in them a new source of affordable, docile, and willing workers. One result of the abundance of workers competing for scarce jobs was a steep decline in farm wages. Citing a 1935 California Relief Administration study, Taylor reports that a migrant family's average annual earnings of $300 to $400 in 1930 had decreased to $100 to $200 in 1935 (1937); Gregory (1989, 84)

reports a 20 percent cut in 1938, making life miserable for both families who got the jobs and those who didn't.

Immigrants also found settlement elusive, having to adopt the nomadic ways imposed by the seasonality of the crops. "The ragged camps of the migrants squatting in filth by the roadside, in open fields, along ditch banks, or on garbage dumps fairly beggar description," wrote Taylor in 1937. "Squatter villages varying in size from a few families to several hundred persons could be found throughout agricultural sections of the state, sometimes located near an outlying service station or grocery store where residents obtained water and supplies" (Gregory 1989, 64). Eventually, as the Mexican immigrants had done before them, Okies built their *colonias,* aka Okievilles and Little Oklahomas. Many were built just outside city limits to avoid building codes and interference, but to be near commerce, transportation nodes, and services. Large Okie developments emerged outside large cities (i.e., Bakersfield, Modesto, Fresno, and Stockton) and also around smaller farm towns such as Shafter, McFarland, Delano, and Arvin. Gregory (1989, 72) quotes a 1939 Kern County Health Department report complaining that

> Bakersfield has experienced the creation of new subdivisions almost completely inhabited by people from Oklahoma, Texas, Arkansas, and Missouri. Many have purchased lots for as low as $3 per month; houses have been constructed of any materials that can be salvaged from the alleys or retrieved from dismantled structures in exchange for labor. Some of these communities have no satisfactory water supply, poor sewage disposal, no gas nor electricity . . . crude, often offensive, toilets.

Settled families stayed put in their villages during a large part of the year, accessing local farm jobs, but took to the road in the summer, with working children in tow, to the upper reaches of the San Joaquin Valley and into the Sacramento Valley to work in the fruit orchards and vineyards.

Okie immigrants and their communities were not welcomed into San Joaquin Valley society, where separation rather than interaction with earlier residents became the norm. They were perceived as intruders and as a separate and inferior, alien social group. Okies, it seems, inherited the stigma of the foreign, noncitizen immigrant farmworker and were subjected to the opprobrium typically reserved for people of a lower class. Their communities, like the Mexican *colonias,* were kept physically apart and with barriers to local basic public services and institutions—segregated and ostracized. As a result, they evolved to become a society apart from the mainstream with a distinct subculture, which furthered their isolation and prejudicial treatment. Following is a sample of epithets and slurs directed at the Okie immigrants by the valley's townsfolk, taken from a longer list collected by James Gregory

(1989, 100–102). To start, the use of "Okie" in the San Joaquin Valley was meant to be deeming and hurtful, hurled as an insult. The Okie is ignorant and uneducated, dirty of habit if not of mind, slothful, unambitious, and dependent; sullen and unfriendly; arrogant and overbearing; dishonest; no-good bastards; ignorant filthy people who should not be allowed to think they're as good as the next man; shiftless trash who live like hogs; these people have lived separate for too long, and they are like a different race; too dumb to care for themselves; adult children; a disgrace to the community; a source of disease; degenerate; the scum of the earth; the lowest class of humans in the United States. To close, some demanded that their shacks be torn down and they be kicked out. In short, what appears to be a vicious, dehumanizing effort designed to deny citizenship and civil rights to U.S. citizens and to justify their mistreatment and exploitation was not very different treatment from what Chinese, Japanese, Filipino, Indian, and Mexican farmworkers had experienced before.

Resentment toward the Okie immigrants and their communities, and concern about their impact on state revenues, led to various efforts to stem the influx into California and oppose settlement efforts, especially in the San Joaquin Valley. For example, while the state's Relief Administration caseload grew by 77 percent between 1937 and 1939, in the San Joaquin Valley it grew by 344 percent; similar increments were reported for school and hospital expenditures (Gregory 1989, 85–86). Valley residents also opposed the construction of federal migrant camps, fearing that they would place an undue burden on schools and other community institutions. To address these concerns, and claiming state sovereignty, California attempted to physically block the entry of unwanted Americans by erecting border control posts at the main entry points from Arizona and Oregon. Incidentally, in 1941 the U.S. Supreme Court ruled that states had no right to interfere with the free movement of persons across their borders. Discrimination against and marginalization of Okies impeded upward mobility and social integration. As a result, only 2 percent of recent San Joaquin Valley immigrants had become farm owners, tenants, or farm managers by 1940 (Gregory 1989, 54). They became entrapped in dead-end, unsteady, and poorly paid farm jobs, and in segregated Okievilles, with little hope for improvement.

The conditions under which Okie families lived and worked in the San Joaquin Valley—abject poverty, discrimination, employer abuse, and public neglect—did not go completely unnoticed. For example, Paul Taylor, the Berkeley economist-ethnographer who pioneered the study of Okies, frequently disseminated his findings in popular journals (i.e., *Survey Graphic*), in internal government reports, and through expert testimony at state and federal hearings. And John Steinbeck, commissioned by the *San Francisco News,*

researched and wrote a number of articles on the plight of the immigrants and their squatter communities, published in 1936 (Steinbeck 1988). But neither had much effect in awakening public awareness and outrage, at least until 1939. That was a landmark year for Okie farmworkers, as they were placed at center stage in an American social drama.

In 1939 John Steinbeck published his instant best seller, *The Grapes of Wrath,* which received the National Book Award in 1939 and the Pulitzer Price for fiction in 1940; before the end of the year 430,000 copies had been issued in eleven printings. As much as America's readership loved the novel, in Kern County, where the drama unfolds, it was banned from schools and subjected to public book burnings. That same year John Ford's film of the *Grapes,* starring Henry Fonda, was released, and it won two Academy Awards (Oscars) in 1941. It was also in 1939 that Woody Guthrie, the Okie folk songwriter and performer, recorded his *Dust Bowl Ballads* in New York; although his work was already known in California, the recording reached the mainstream American listener through the radio airwaves. Dorothea Lange—the photographer—and Paul Taylor—the social scientist—published *An American Exodus: A Record of Human Erosion,* which contains many of Lange's iconic images of Okie families that have become imprinted in the American consciousness. Lange had already published many of her images in artistic and popular magazines (i.e., *Survey Graphic, U.S. Camera, Look, Business Week, Collier's, McCall's,* and the *New York Times* magazine) as part of the U.S. Farm Security Administration's plan to photographically document the impact of the Great Depression on American life and to chronicle and publicize President Roosevelt's New Deal efforts to combat rural poverty (Finnegan 2003). In 1939 Carey McWilliams—activist, author, lawyer, head of Governor Olson's California Division of Immigration and Housing, and editor-to-be of *The Nation*—published *Factories in the Field: The Story of Migratory Farm Labor in California,* an exposé of California agribusiness and its "undemocratic" treatment of the agricultural workforce.

Last but not least, it was also in 1939 that the La Follette Committee, a subcommittee of the U.S. Senate Committee on Education and Labor, finally undertook an investigation of the state of civil liberties in California agriculture, giving special attention to vigilante activities carried out by Associated Farmers to counter farmworkers' attempts to organize and strike (Guerin-Gonzalez 1996, 125). The La Follette Committee was charged with the responsibility of conducting extensive investigations of civil infractions of the National Labor Relations Act of 1935 (aka the Wagner Act), including violations of the rights of free speech and assembly and undue interference with the right of labor to organize and bargain collectively. The committee had been asked to look into the California matter in 1936 but, busy with industrial

issues in other parts of the country, it delayed action until 1939, when it opened offices in Los Angeles and San Francisco and undertook public hearings to capture information and evidence from more than four hundred witnesses, accruing a formidable record to be used by Congress to legislate (Auerbach 1966, 177–196). The committee concluded that although the Wagner Act did not apply to agricultural employees, farmworkers in California farm factories should enjoy the benefits of federal legislation and not remain unprotected by the Wagner Act, Fair Labor Standards Act, Social Security, and state labor legislation (Auerbach 1966, 191). Soon afterward, in 1940, the House of Representatives established the Select Committee to Investigate the Migration of Destitute Citizens to specifically look into the Okie problem, under the chairmanship of Representative John Toland from Oakland, California.

Paul Taylor asked the La Follette Committee, "Can a large farm labor class be reconciled with democracy?" (Auerbach 1966, 185), echoing John Steinbeck's closing words in his 1936 *San Francisco News* article: "If . . . as has been stated by a large grower, our agriculture requires the creation and maintenance at any cost of a peon class, then it is submitted that California agriculture is economically unsound under democracy. And if the terrorism and reduction of human rights . . . floggings, murder . . . kidnappings and refusal to trial by jury are necessary to our economic security, it is further submitted that California democracy is rapidly dwindling away" (1988, 61).

The matter of California agriculture and labor, accentuated by the plight of American Okie migrant families, had clearly reached a critical juncture. With growing public empathy for the worker and legislative focus on corporate misdeeds, it presaged a watershed of substantive adjustment and reform that would require agricultural employers to adopt practices compatible with the nation's democratic ideals or, at the very least, equivalent to the best practices of other employers, as mandated by the Warner Act. Actions should go well beyond timid and ineffectual efforts to mitigate the pain through, for example, setting up experimental model labor camps and extending federal relief eligibility to impoverished and unemployed farmworkers. Carey McWilliams (1939, 305, 323–325), eloquently and optimistically, summed up the situation in the final chapter ("The End of a Cycle") and closing subsection ("The Future") of *Factories in the Field*:

> [A] basic change had taken place in the character of farm labor in California . . . the bulk of the State's migratory workers were white Americans and . . . the foreign racial groups were no longer a dominant factor. . . . The problem of migratory labor, dramatized and intensified by the influx of dust-bowl refugees, has forced public recognition of an acute social problem. . . . The significance of the present situation is that

it is now theoretically possible to solve the farm-labor problem in California. . . . The race problem has, in effect, been largely eliminated. The growers themselves . . . have demonstrated that the demand for farm labor can be estimated with sufficient accuracy for purposes of regulating the supply. The migratory camps have proved that a measure of stabilization can be achieved. . . . The introduction of new crops has now made it feasible to extend the period of employment throughout the year. . . . It is just possible that these latest recruits for the farm factories may be the last, and out of their struggle for a decent life in California may issue a new type of agricultural economy for the West and for America. . . . But the final solution will come only when the present wasteful, vicious, undemocratic and thoroughly antisocial system of agricultural ownership in California is abolished.

Nevertheless, before any action could be taken, the outbreak of World War II in 1939, followed by U.S. involvement in 1941, created an inevitable distraction. Action thus withered on the vine, and momentum for reform was lost as the nation faced a higher imperative. For example, the Oppressive Labor Practices Bill, introduced by Senator Robert La Follette as a product of his investigations, died in Congress as the House refused to consider it (Guerin-Gonzalez 1996, 134–135). Many Okie farmworkers, however, either were drawn to the new manufacturing centers that were hurriedly built on the West Coast to meet the armament exigencies of war or enlisted in the rapidly swelling armed forces that were being deployed to battle the Axis powers. In a way the displacement of Okies from the fields solved their problem as it created another one for agriculture, which experienced a severe shortage of labor at a time of economic recovery and expansion. As a result, both growers and the government again turned their sights on Mexico.

The Okie interlude was exceptional in California's agricultural history, and it was short-lived; Okies were a major component of the agricultural workforce for less than a decade. Yet paradoxically this period shaped America's conscience about the plight of farmworkers for years to follow and triggered legislative action. Alas, this did not carry over to the new wave of immigrants who were recruited to replace them in the fields.

Mexican Workers Redux

As California's farmworkers—both the Okie newcomers and Mexican old timers—exited agriculture to seek steady and better paying urban-industrial jobs, agricultural employers clamored for the government to allow them to recruit workers across the border, reversing the recent policies of Mexican exclusion or repatriation. The most boisterous were the large, well-organized, and influential cotton, sugar beet, and citrus producers. These growers argued that unless they were allowed to rebuild the agricultural labor supply with

immigrants from Mexico, they would be unable to meet the critical demand for food and fiber goods, and crops would rot in the fields (Galarza 1964, 43, 45; Calavita 1992, 19). Indeed, California farmers estimated their need at thirty thousand new workers for just 1942; owners of sugar beet plants wanted to negotiate the immediate recruitment of three thousand Mexicans; and the citrus growers were asking for fifty thousand (Galarza 1964, 45). Although the government at first declined the requests, it relented soon after the Japanese attacked Pearl Harbor and drew the country into the war. It did not, however, authorize agricultural employers to recruit workers on their own and on their own terms but, rather, as Galarza wrote: "It was no longer a simple matter of opening the border and allowing Mexicans to enter. . . . Deliberate planning was required in an economic area in which it had never been welcome. Such planning could not be carried out by the private agencies of commercial agriculture . . . it required the participation of the Federal Government" (1964, 43). Thus commenced an initiative for the U.S. to negotiate an agreement with Mexico to provide the required workers as part of a joint wartime effort that would be known as the Bracero Program. The process of reaching a bilateral agreement happened very quickly: Mexico declared war on Japan, Germany, and Italy in May 1942, and in the same month it held preliminary conversations with the United States in Washington, D.C., about the labor question; an international executive agreement was signed in July by presidents Avila Camacho and Roosevelt. Then, on September 29, five hundred farmworkers from Mexico arrived in Stockton, California, to work in the sugar beet fields. It was the first delivery of Mexican Braceros brought to California under the wartime agreement, and soon thereafter 4,190 others followed to labor in the San Joaquin, Salinas, and Imperial Valleys (Galarza 1964, 53; Calavita 1992, 1).

Although Congress officially declared the end of the wartime labor program in 1947, two years after the end of the war, it was subsequently renegotiated and reactivated as Public Law 78 in 1951 by "popular demand," after enthusiastic lobbying on the part of agricultural employers, who continued to claim a severe shortage of workers without the Braceros. While the initial agreement (1942–1947) was justified in terms of the wartime effort, Public Law 78's declared purpose was to assist "in such production of agricultural commodities and products as the Secretary of Agriculture deems necessary by supplying agricultural workers from the Republic of Mexico" (quoted in Galarza 1964, 72). Public Law 78 remained in force until 1964, when it was unilaterally rescinded by the United States. The labor agreements were therefore active for twenty-two years, including a four-year hiatus between the expiration of the wartime agreement and the signing of Public Law 78. Some five million work contracts were issued during the life of the program, involving

between 450,000 and 2,000,000 individual workers; the exact number is uncertain because many workers were contracted more than once (Cross and Sandos 1981, 36; Massey, Durand, and Malone 2002, 39; González 2006, 7; Cohen 2011, 2). The number also grew steadily, from a peak of approximately 50,000 annual contracts during the wartime years to nearly 450,000 in the late 1950s (Galarza 1964, 53, 79).

Overall the agreement—specifically the more formal Public Law 78—was a balance struck between Mexico's interest in supporting and protecting its citizens while they were contracted in the United States as Braceros, and the U.S. interest in supporting and protecting its agricultural industry (read agribusiness), while ensuring that the Braceros returned home as soon as the contracts ended. The agreement was also crafted to prevent the unregulated displacement of unauthorized immigrants into the United States, which agricultural employers might have preferred, as evidenced by the chaotic situation that erupted immediately after the wartime agreement ended in 1947. Public Law 78 stipulated that the United States, not individual employers, was the guarantor of Bracero contracts (Calavita, 1992, 45); to this end, it involved various arms of government: the Departments of State, Agriculture, Labor, and Justice, among others. However, the Department of Labor and the Immigration and Naturalization Service (INS) of the Justice Department exercised the greater responsibilities and held concentrated power over the program. The Department of Labor, for example, was authorized to recruit workers, establish and operate reception centers, provide transportation, finance subsistence and medical care in transit, assist workers and employers in negotiating contracts, and guarantee the performance by employers of such contracts; at the same time, it was to certify that domestic workers were not available to do the contracted jobs, and that their wages and working conditions would not be adversely affected by the presence of Braceros (Galarza 1964, 72–73). The INS, on its part, was authorized to serve as the official gatekeeper by controlling entries and departures and dealing with Bracero desertions and unauthorized immigrants (Calavita 1992, 1).

The Migrant Labor Agreement of 1951, and subsequent amendments, included the following provisions and safeguards regarding the treatment of contracted workers: to be employed exclusively in agriculture; to fill a certified labor shortage; to not be engaged in any military service; to not be used to displace domestic workers or as strike breakers; to include no minors under fourteen years of age; to not be subjected to discriminatory acts; to have contracts written in Spanish and signed by both the worker and the employer; to have the employer pay transportation and living expenses in full from place of origin to destination and return; to have the employer provide food at cost, with a maximum daily charge of $1.75 for three meals; to receive the full

contracted salary without deductions; to have wage rates identical to those prevailing for local domestic workers for similar work; to be guaranteed work during 75 percent of the contract period and payment of subsistence allowance if less; to be provided hygienic lodgings and medical and sanitary services equivalent to those enjoyed by domestic workers and free of charge; to have the right to elect a representative and spokesperson at the workplace; to have grievance settlement procedures; to have safekeeping of funds contributed by workers to their Rural Savings Fund; and to have an exemption from U.S. Social Security payroll deductions. It was understood that Braceros would be men with extensive agricultural knowledge and experience.

Navigating the binational bureaucracy that qualified persons as prospective Braceros and the geographic displacements that transported them from their hometowns in rural Mexico to the work sites in the United States and back home could be complicated, time-consuming, costly, demeaning, and often serendipitous; success was not guaranteed, because aspirants could be rejected at any of the program's many checkpoints, manned by Mexican and American gatekeepers. González (2006, 63) reports that Braceros described this selection process as their *via crucis* (way of the cross) because of the hardships it entailed. The process began as soon as the U.S. Department of Labor certified a grower's request for workers by sending Mexican authorities a thirty-day notice regarding the time frame and number of workers that would be needed. Mexico's federal government, through the Dirección de Asuntos de Trabajadores Agrícolas Migratorios of the Department of Foreign Affairs, would have already issued Bracero quotas to selected state authorities, who in turn distributed them among municipal administrators, who in the end doled them out to local aspirants, often on the bases of kinship, *compadrazgo* (fictional kinship), patron-client relationships, or *cuatismo* (friendship), or simply for *mordidas* (bribes). With the proper documentation in hand, aspirants would make their way to a Mexican regional center for screening and processing. After experimenting with various models, Mexico settled on three centers, located in Hermosillo (west), Chihuahua (center), and Monterrey (east), on the principal north-south transportation routes that connect the interior of Mexico with the United States. There, often in a crowded soccer stadium and after a wait that could last days, aspirants were screened by both Mexican and American officials for their eligibility, capacity to perform farm work, and physical condition. If approved—often a capricious decision based on, for example, the calluses on the worker's hands, his attire, or the inspector's insight about the political proclivity of a worker—the aspirant was given a temporary pass and transported to a border reception center for further processing. The United States maintained five reception centers, at Hidalgo, Eagle Pass, and El Paso in Texas, Nogales in Arizona, and El Centro in California.

There, aspirants went through a more thorough inspection by public health and INS agents. Aspirants were stripped and subjected to a complete physical exam; screened for tuberculosis, venereal disease, and body lice; disinfected with chemical sprays; and vaccinated for smallpox. If approved, the INS issued its authorization to enter the United States, specifying the duration and location of the contract where the workers were expected to remain throughout the contract period. Also, the Department of Labor would draw up the work contract, which could be for as few as six weeks or as many as eighteen months anywhere in the country. Typically, agricultural assignments were for four to six months, while occasional railroad jobs could be for much longer periods of time. Most jobs, though, were in agriculture. Approved Braceros were then turned over to the employers, who would immediately transport them to the nearby or faraway work site, where they were housed and fed during the duration of the work contract. Upon completing the job for which they had been hired, workers were transported by the employers back to the border processing center, from where they could either return home at their own expense or request another assignment.

After the prewar agricultural labor system collapsed, California growers pleaded with the government to allow them to again import workers from Mexico. An official of the Agricultural Bureau of San Joaquin, quoted by Ernesto Galarza (1964, 55), stated: "We are asking for labor only at certain times of the year—at the peak of our harvest—and the class of labor we want is the kind we can send home when we get through with them." What they got was Public Law 78: a customized labor system, tailored to their needs and managed at little or no cost to them. Indeed, it was a system that delivered in a timely fashion the necessary number and quality of "awkward" workers, extracted temporarily from rural/peasant Mexico to assist large-scale commercial farming in the United States. The Bracero Program, moreover, conveyed the necessary confidence to agricultural investors to enthusiastically expand the production of labor-intensive crops, knowing that they would be provided with an endless supply of cheap, flexible, disorganized but controlled workers. Braceros thus became a permanent, institutionalized part of commercial agriculture in the United States, especially California (Galarza 1964, 71; Cross and Sandos 1981, 35); in a sense, the governments of Mexico and the United States—as labor recruiter and contractor, respectively—served at the pleasure of American agribusiness (González 2006, 7).

Over the course of its existence, the Bracero Program also institutionalized the practice of circular migration, whereby peasant-Braceros from the main labor-sending regions seasonally moved back and forth between their homes in rural Mexico and employment sites on American farms. More significantly, migration became deeply embedded in the peasant economy and society as

wage remittances became an essential part of family budgets, and the placement abroad of the most productive workers during long periods of time radically modified the division of labor within peasant households (Palerm and Urquiola 1993).

Despite the efficiencies and advantages that the Bracero Program brought to agribusiness, it was flawed and fraught with problems for the contract workers. There was a chasm between the written word of the negotiated agreement—with all its safeguards and protections—and actual practices, which was compounded by the absence of proper oversight. Agricultural employers were in great measure left on their own to handle the workers and to observe the terms of the employment contracts; not surprisingly, they reverted to their customary prewar practices. Less than five years after Public Law 78 was passed, Ernesto Galarza published his first exposé of the program, *Strangers in Our Fields* (1956), based on a report regarding the compliance with the contractual, legal, and civil rights of Mexican agricultural contract labor in the United States. After visiting labor camps and observing contract workers in the fields, he concluded that the Bracero "has encountered ignorance, prejudice, and discrimination. . . . [H]e has suffered exploitation, abuse, and injustice" (Galarza 1956, quoted in González 2006, 97). Most scholars who have researched the topic since then are in agreement. In Mexico an incompetent bureaucracy steeped in corruption in the best of circumstances, burdened the process and, at its very worst, fleeced the workers of what little they had to overcome Kafkaesque impediments officials erected to elicit bribes (Cross and Sandos 1981, 37; Calavita 1992, 62; González 2006, 59–69; Cohen 2011, 90–92). In the United States lack of oversight and complicity on the part of INS and Department of Labor officials with growers had detrimental effects on the treatment and welfare of the contract workers (Calavita 1992, 70–72; Ross 1989).

En route to the work sites, Braceros were often packed like cattle into flatbed trucks and railroad boxcars and transported over short and long distances with little regard to their comfort and safety. Researchers report that 120 persons per boxcar were regularly shipped nearly three hundred miles through the Sonora Desert, from the Mexican processing center in Empalme (Sonora) to the U.S. reception center in El Centro (California), without toilets or drinking water; a thirteen-hour trip sitting on wood planks (González 2006, 74–75; Cohen 2011, 97). This "cattle treatment" continued during the screening process at the processing centers and on to the work sites. Housing, provided free of charge by the employers, was typically below legal standards. In the best of circumstances, Braceros were crowded into military-style barracks, but most frequently into prison-camp-like places, holding up to several thousand people. Sometimes the living quarters were converted

chicken coops, stables, barns, or equipment sheds (Calavita 1992, 24; González 2006, 34–35; Cohen 2011, 118). Bracero housing was consistently placed in segregated environments, away from the main population centers. The Buena Vista Camp in Oxnard, for example, expressly built for contract workers by a local growers' association, housed up to five thousand Braceros, but it was conveniently placed on the margins of the city (Ross 1989). Residents at the camp were encouraged to remain within the fenced-in complex when not at work. The segregation and containment of Braceros accentuated a sense of indenturement created by their assignment to an employer caretaker and by the time and place restrictions of their authorization to remain in the United States (Calavita 1992, 24; Cohen 2011, 118). Wages were also not what they were contracted to be. Most received from a highest rate equivalent to the legal minimum wage downward to substandard levels, and paychecks had frequent errors, miscalculations of time and work performed, and unauthorized deductions that always balanced in favor of the employer. Moreover, wages stagnated as soon as the Braceros were introduced into the agricultural labor market, remaining unchanged from 1953 to 1959, while in regions without Braceros they increased by 14 percent. Many actually earned a lower per hour rate in 1955 than they had in 1950 (Cross and Sandos 1981, 40; Calavita 1992, 71). Food was a source of constant irritation, as it did not accommodate Mexican customs and taste preferences. Although meals were to be provided at cost by the employer and not exceed a stipulated amount, many subcontracted meal providers made a profitable business by charging three or four times the actual cost. As a result, many Braceros paid up to 25 percent of their income on bad food (Galarza 1964, 99; Calavita 1992, 24). Braceros have repeatedly reported that the worst job was the work in the fields, where they were driven hard with little rest and meager facilities. They never knew where the work would be performed or how long the workday would last—usually from sunrise to sundown or until the growers' order was filled—and hence were unable to make preparations. Those who could not take the hardship or who did not meet productivity quotas set by the employers were dismissed as incompetent and returned to the border center. In sum, the working and living conditions of the contracted Braceros were consistently in violation of the terms negotiated with Mexico (Public Law 78) and as stipulated in the individual work contracts. The workers, moreover, did not have legal recourse to challenge those conditions by filing complaints and seeking redress. Most did not have the knowledge or language skills to contest inequities, but those individuals who did question conditions, usually the math in the paychecks, were deemed to be troublemakers, sent back to the border, and blacklisted (Cohen 2011, 145; Calavita 1992, 20, citing Erasmo Gamboa).

The Bracero Program satisfied the ever-changing labor needs of the agricultural industry, especially in California, by delivering a regulated supply of controlled—contracted—workers. One thing it did not do, as it was hoped it would, is to stop or contain the flow of unauthorized immigrants ("wetbacks" or *mojados*) from Mexico, who were also vying for farm jobs. The flow of "wetbacks" had increased considerably during the "hiatus years" (1947–1951) after the wartime arrangement lapsed. Without an assured supply of workers, agricultural employers had begun to recruit directly in Mexico, with the acquiescence, if not complicity, of the INS, and by 1948 more than forty thousand had successfully entered the United States (Galarza 1964, 58, 61; Calavita 1992, 28–31). With Public Law 78 in place in 1951, the INS began to apprehend "wetbacks," but instead of returning them to Mexico, it processed them as Braceros at the border reception centers, a procedure called "drying out." But these actions did not stem the flow, which became a growing irritant that the INS addressed—not very successfully—with raids and militarized operations, such as "Operation Wetback" in 1954, to apprehend and deport unauthorized immigrants. The flow of *mojados* actually increased under Public Law 78, as many individuals who were rejected at the processing centers, instead of returning home, proceeded on their own across the border in search of jobs. Also, former Braceros began to circumvent the messy, burdensome, and time-consuming contract process and to make their way directly to known employers, who readily hired them, and other Braceros simply did not return to Mexico when their contracts and visa permits expired. As a result, a parallel but illegal supply of workers—who also traveled back and forth between the two countries and who could be legally hired—competed with legal Braceros and domestic farmworkers, enlarging the labor supply available to agricultural employers.

Being the preferred destination of Braceros, California absorbed the lion's share of all the contract workers admitted to the United States during the lifetime of the program (Cross and Sandos 1981, 50–51; González 2006, 34). California employed up to 63 percent of total Braceros as early as 1945 and maintained a steady growth, from 34,000 workers during a peak employment month in 1951 to 100,000 in 1957 (Galarza 1964, 79–80; Calavita 1992, 21). They were present year-round in all the top agricultural counties (especially Imperial, Riverside, Los Angeles, Orange, San Bernardino, Santa Barbara, Monterey, and San Joaquin), with important concentrations in the most profitable crops: cotton, tomato, citrus, sugar beet, stone fruit, and vegetables. Galarza (1964, 89) reports that almost 45,000 were employed in tomato alone in 1956; others have documented how Braceros came to constitute 95 percent of workers employed in tomato, 90 percent in lettuce, and 50 percent in citrus crops (Cross and Sandos 1981, 40; González 2006, 34).

Large agricultural corporations, like DiGiorgio in the San Joaquin Valley, and well-organized grower associations were their principal employers. Braceros also performed all kinds of jobs—not just the harvest—including, for example, pruning, weeding, hoeing, seeding, and packaging. In sum, they dominated all aspects of agriculture in California, especially during the peak employment seasons.

The Bracero Program, in conjunction with the construction of large hydraulic works designed to irrigate the arid San Joaquin Valley, enabled rapid growth based on agricultural intensification, and together they catapulted California to the (still unrivaled) position as number one agricultural state in the country (Palerm 1994; Johnson and McCalla 2004, 60). But Braceros also produced considerable social turmoil by displacing, rather than supplementing, domestic farmworkers. The combination of a considerable decline in wages, presumably caused by the abundant labor supply, and agricultural employers' preference to hire imported contract workers, forced many domestic workers to abandon agriculture. Asked what advantage Mexican Braceros had over other workers (i.e., domestic Mexicans and Okies), ranchers responded that they were dependable, available, not afraid of hard work, and generally a superior type of person, and they would never strike (González 2006, 37). Others added that they were affordable and returned home when they were no longer needed. It is interesting to note that Cesar Chavez's career as a labor organizer was launched by addressing this question in 1958 while he was still working for the Community Service Organization. The preferential treatment of Braceros over domestic workers, which violated protective terms included in Public Law 78, shaped Chavez's first big labor struggle against Oxnard associated growers and the Ventura County Farm Labor Association, which, in collusion with state and federal labor representatives, had managed to marginalize and separate domestic workers from their traditional farm jobs in order to hire Braceros. After a tedious struggle, Chavez succeeded in forcing the Department of Labor to uphold Public Law 78, and Oxnard workers were reinstated to their jobs (Ross 1989).

Rural Mexicans jumped at the opportunity to seek agricultural jobs in the United States as soon as they learned that a demand for their labor had returned. Repatriates who had not managed to reaccommodate to Mexico after their deportation just a few years before were the first to rush to the border to reinsert themselves back into the U.S. economy; many more followed when the Bracero Program (known in Mexico as the *Contrataciones*) was announced. Indeed, the recruitment center that was initially set up in a soccer stadium in Mexico City to process Bracero applicants was swamped on several occasions by more than fifty thousand people from all over the country,

overwhelming government officials and the facility; subsequently, all regional centers were typically overcrowded, with more applicants than could be processed (Cross and Sandos 1981, 37). Consistently throughout the life of the Bracero Program the supply of workers far exceeded the demand; as a result, not all who wanted to work in the United States managed to do so, unless they did it on their own as unauthorized migrants. Although Braceros came from all over Mexico, the majority were from a handful of states located in the Central Highlands: Michoacán, Guanajuato, Jalisco, Zacatecas, and San Luis Potosi. The number of participants from these states was high and grew rapidly. For example, Braceros from Michoacán started at a rate of 34,000 annually in 1942–1944, grew to nearly 50,000 in 1953–1954, and peaked at 143,000 in 1960; Braceros from Guanajuato started at 20,000 and ended at 132,000 (Cross and Sandos 1981, 37, 44). This was no accident. These were the states that in an earlier period (1910–1930) had already participated heavily in the migratory flow to the United States, but more significantly, they were privileged by the federal government's allotment of Bracero quotas. They were at that time states with considerable social unrest resulting from economic stagnation; President Lazaro Cardenas's aggressive expansion of land reform programs; and the *Cristero* rebellion, which opposed the government and its revolutionary policies (Massey et al. 1987, 52; Palerm and Urquiola 1993, 325–329).

Although they were banned from participating in the Bracero Program, many came from the new *ejido* class of workers, created by Mexico's land reform programs, which consisted of expropriating most of large landowners' holdings and redistributing them among farmworkers and landless peasants. *Ejido* farms were typically small—in Guanajuato, between four and eight hectares—with just enough land to establish a viable family operation. The state-created *ejido* farmers, however, did not possess the technical and financial resources to farm, and the government did not bolster the land grants with financial aid. As a result, it was only with great physical effort that *ejidatarios* managed to eke out a precarious existence farming basic subsistence crops. The Bracero Program offered an exceptional opportunity for *ejido* heads of household to earn cash to supplement insufficient farm income for the maintenance of the family and invest in the farm to improve labor productivity by, for example, acquiring draft animals, proper tools, and quality seed (González Martínez 1991; Palerm and Urquiola 1993, 325–329).

The relationship between the *ejido* farm and Bracero wage labor evolved over the course of the program's twenty-two years and drove a profound economic and social transformation of the labor-sending communities in Mexico and of their *ejido* families. During the first ten years dollars earned in the United States and invested in the farms greatly improved productivity, making

them into viable farm operations that produced both food subsistence and cash. Over the next ten years a greater value of earned dollars was used to acquire big ticket items, such as small tractors and trucks, which were used to farm the homestead and also to create self-employment opportunities by custom farming for other *ejido* farms, as well as for digging wells and installing diesel pumps to intensify and diversify cropping systems. Homes also evolved, on the strength of improved income, from huts built immediately after receiving the *ejido* land grant into compounds with several one- or two-room cinder block structures to house a growing family group and corral animals. Families in turn evolved, from small nuclear groups with, on average, five to eight members (a married couple with children), to large extended groups with twenty to thirty members (the grandparents, various couples with children, and unmarried adults). Constant adjustments to the social division of labor accompanied the rapidly changing size and composition of families. At first it was male household heads who typically enlisted in the Bracero Program, leaving the farm in the hands of their spouses and children during four- to six-month absences during the June–November peak employment season in California. Later the household head remained in the improved *ejido* farm but sent two or three of his children (married or single) to earn dollars in the United States. The Bracero children stayed away for longer periods of time, from six to ten months or as long as work was available. Typically the head of household managed the commercial side of the farm, women and children took care of subsistence crops and corral animals, and young men—the most productive members of the family group—sought wages outside the farm. Initially Bracero wage earnings were modest. During the 1940s, for example, Braceros received 30 to 50 cents per hour—up to ten times greater than wages in Mexico—which yielded nearly $400 for four months of work and of which as much as $300 could be taken back home as an important infusion of cash for a cash-strapped family. Toward the 1960s, however, Braceros were making 80 cents to one dollar an hour—up to eight times greater than wages in Mexico—which yielded over $1,000 for six months of work per worker or up to $3,000 for three siblings traveling together: a serious infusion of capital for the *ejido* family group (Palerm and Urquiola 1993, 327–328).

The farmers on the *ejido* farms in the Central Highlands of Mexico, created during the Cardenas administration (1934–1940), pulled themselves out of dysfunctionality and abject poverty on the strength of dollars earned in the United States while they served as Braceros, many of them in California. In the process they became hooked on Bracero earnings. Just as California agriculture came to depend on a steady supply of Bracero workers from Mexico, Mexican *ejido* family farms in the Central Highlands came to rely on a steady supply of agricultural jobs in California, making for a tight and interdependent relationship.

Public Law 78, which enabled the Bracero Program, was not renewed by Congress in 1963 and expired on December 31, 1964, despite the objections of the president of Mexico, Adolfo López Mateos, and the governor of California, Pat Brown. Every two years since 1951, Congress had routinely extended the program without objections, but a number of political forces rallied against it during the John Kennedy and Lyndon Johnson administrations. Liberals, fired up by the civil rights movement, objected to the treatment and working conditions that Braceros were subjected to, and labor union voices claimed that the presence of foreign workers undermined American workers by taking away jobs and depressing wages. Government observers saw a highly inefficient administration that was unable to uphold the law as written and marred by interagency quarrels and dishonesty. Conservative voices expressed concern that the nation's food system had become too dependent on foreign workers and begrudged the growing presence of Mexicans in the country. Meanwhile, agricultural employers who depended on Bracero labor did not put up a convincing defense because, some observers claim, an alternative labor source was already available—Mexican undocumented workers—that could be deployed at less cost and without having to use the burdensome state bureaucracy (Cross and Sandos 1981, 46–47; Calavita 1992, 113–140; Massey, Durand, and Malone 2002, 41). Without advocacy, the Bracero Program quickly expired, forcing American agricultural entrepreneurs and Mexican labor source communities to readjust.

ILLEGAL BRACEROS

It has been suggested that the Bracero labor system had become so embedded and institutionalized that it continued to operate on its own with little difficulty and without state involvement. The elimination of Public Law 78 simply "shifted from a de jure guestworker program based on the circulation of bracero migrants to a de facto program based on the circulation of undocumented migrants" (Massey, Durand, and Malone 2002, 52; Massey and Pren 2012, 22), leaving the impression that neither former Braceros nor their employers were seriously affected, other than Braceros having become "illegal" from one day to the next by congressional fiat. There is some truth to this assertion, in that migrant workers (ex-Braceros) continued to arrive, unencumbered, at their usual American agricultural employment sites and returned to their homes in Mexico as soon as the seasonal jobs ended. The INS, it appears, did not raise obstacles to stem the flow of illicit border crossings and did not pursue employers for knowingly hiring undocumented workers, though it occasionally put on a show of border apprehensions to demonstrate that it was doing its job (Heyman 1995; Calavita 1992, 159–166; Massey, Durand, and Malone 2002, 45–47). According to Massey, about 28 million

Mexicans entered the United States illegally between 1965 and 1986 (presumably many of them to work in agriculture), and 23.4 million returned to Mexico, during which time "the United States, in effect, operated a de facto guest-worker program" (2002, 45).

Under closer examination, however, the decade that followed the cancellation of Public Law 78 suggests that it was far from business as usual. Rather, it was a period of probing, wide-ranging experimentation and exploration brought about by uncertainty, the opening up of new economic opportunities, and the growing threat of successful labor union organization. Agricultural employers, for example, fearing that the access they had to the Mexican labor supply could be blocked by the government and regulated by unions, experimented with harvest mechanization and other labor-saving devices; Mexican rural workers tested other job markets in urban-industrial Mexico and the United States.

The mechanization of the cotton harvest had made considerable strides shortly before the Bracero Program ended, and because the cotton harvest accounted for more than 50 percent of Bracero employment nationwide, its deployment eliminated many seasonal jobs: ninety thousand cotton-picking jobs in Texas alone in only two years. California, slower in adopting the technology, eliminated 68,000 jobs in the same period, leaving 116,000 harvest jobs to be dealt with later (Majka and Majka 1982, 165). Sugar beets had also been impacted by mechanization, especially the harvest, but in California blocking and thinning were still being done manually, a task for which a mechanical solution was perfectly feasible. Shortly after the cancellation of the program, the introduction of the process tomato harvester and sorter eliminated fifty thousand jobs in just one year, leading Ernesto Galarza to announce: "In agriculture, as in manufacturing, technology and mechanization were . . . slowly reducing . . . labor, expelling from the process of production those who had become obsolete, inefficient, and unnecessary" (1977, 374). Many celebrated the likelihood that the social ills engendered by California's agricultural industry were about to end with the demise of the farmworker. The elimination of the largest users of Bracero harvest labor through the application of machines (i.e., cotton, sugar beets, and processed tomato) meant that Braceros would likely be confined to California specialty crops (fruits and vegetables), where mechanization was elusive (Calavita 1992, 143–144). Still, there was no shortage of agricultural engineers and economists who did not think that the elusive crops would soon also yield to machines. In the meantime, growers of those crops sought ways to reconfigure the production process to decrease the number of workers employed and increase the productivity of those who remained. To this end, employers invited their best and most reliable workers to return to

work for them and sponsored many to the INS for authorization to remain in the United States with their families as resident aliens (green cards). Citrus growers in Ventura County, again, offered housing to their more stable and skilled workers. Fruit and vegetable growers did not wean themselves entirely from the usual heavy infusion of seasonal harvest labor, but they secured many of these workers through the good auspices of their new stable resident workers.

Undocumented migrant workers—whose numbers had become greatly enlarged with former Braceros—apprehensive about the uncertainties of travel, border crossings, and finding work, welcomed the intermediation of the new "job brokers," who were often relatives, friends, and *paisanos* from their home communities. These transborder linkages set the stage for the formation of transnational families and communities that grew and consolidated on what has been called *cumulative causation* (Massey 1990; Massey et al. 1993, 448–454; Palerm and Urquiola 1993, 331). Ethnographers have documented the formation of Mexican enclaves near major agricultural employment sites in California, which served as "bridgeheads" for continuing immigration and served as migrant-receiving centers, with information and support systems to, for example, secure jobs, housing, and emotional support. Seasonal migrants were thus enabled to continue their circular practices of moving back and forth between the home community and the employment sites (Palerm 1989, 1991, 10–36). In the farm town of Guadalupe, located in the rich Santa Maria Valley, which was devoted to the production of sugar beets, vegetables, and dairy, a small Mexican enclave of some six hundred permanent residents in 1960 doubled in size by 1970, and quadrupled during the peak harvest spring and summer months with the arrivals of the seasonal migrants, *paisanos,* from Mexico (Garcia 1992).

Rural-to-rural migrants did not always find satisfactory prospects in the dead-end farm jobs with low pay, hard but intermittent work, limited opportunity for upward mobility, and dismal living conditions they found in California. Therefore they frequently moved out to nonfarm jobs in cities, like Los Angeles, as soon as they acquired English-language skills and the confidence to succeed in a second, rural-to-urban leap. The movement from rural to urban places and from agricultural to industrial jobs set in motion a seemingly perpetual "revolving door," whereby agriculture served as immigrants' gateway into the United States, but only as a first step before they moved on to manufacturing and construction jobs in metropolitan areas. The abandonment of farm jobs, however, was quickly compensated for by the constant inflow of new immigrants from Mexico. It is interesting to note the many Chicanos, rooted today in Los Angeles barrios, who have a former Bracero grandfather or great-grandfather in their early family history.

Explosive industrial and urban growth in Mexico during the 1960s and early 1970s also created a migration alternative to the nation's overcrowded *ejido*/peasant farm communities. Rural youths, the landless new generation, flocked to Mexico's major metropolitan areas (Mexico City, Guadalajara, and Monterrey), seeking to secure employment in industry, construction, and commerce (Lomnitz 1975; Adler Lomnitz 1977; Kemper 1977). The rural-to-urban option became quite popular, as it allowed rural migrants to remain in Mexico, where the wage differential with the United States had narrowed from 8:1 in 1964 to 4:1 in 1976 (Palerm and Urquiola 1993, 355), making the more expensive and riskier northward trek to California less attractive.

Although exact and reliable figures on farm employment and the farm labor supply for this period of time in California are not available, owing mostly to the high incidence of undocumented immigration and unreported employment, they appear to have remained remarkably steady from the end of the Bracero Program in 1964 to 1978. Mamer and Fuller (1978, 11) reported that the demand for labor actually declined between 1960 and 1970. Farmland was taken out of production, especially in the Los Angeles basin, where the sprawling metropolis gobbled up orchards, farms, farm jobs, and *colonias,* and farm mechanization also eliminated jobs. However, the expected impact of decreasing hired help was offset by farmers and unpaid family members abandoning farm work instead. Moreover, the loss of workers from the farm labor supply to California rural-to-urban migration was also offset by an infusion of new international rural-to-rural immigrants. More specifically, according to federal and state data, the average number of people employed on California farms declined modestly, from 316,000 in 1964 to 286,000 in 1978, owing mostly to farmers and unpaid family members exiting farm work, but the number of hired workers increased slightly, from 195,000 to 218,000. In sum, despite considerable internal changes in the operation of farms, overall employment remained largely unchanged (California Employment Development Department 1986; Palerm 1991, 12–13).

The agricultural employment stasis that followed the end of the Bracero Program came to an abrupt end around 1978, when it was observed that seasonal farm employment had stopped decreasing and by some measures had actually begun to grow again (Sosnick 1978, 17). Since then it has continued to increase by leaps and bounds, reaching levels never seen before in California. Most scholars agree that the growing labor demand has been the result of a monumental expansion of acreage devoted to labor-intensive vegetable and fruit crops combined with improved crop yields (Sosnick 1978, I; Martin 1987; Martin, Vaupel, and Egan 1988, 4–6). The subtle statistical shift, however, actually presaged a sea change involving a major restructuring of California's agricultural industry and the transformation of its rural society (Palerm 1991; Palerm and Urquiola 1993, 337–338).

The process that restructured California's agriculture, triggered by the energy and economic crisis of 1975, consisted of the replacement of capital-intensive, mechanized, and low-value field crops (i.e., sugar beets, grains, cotton, and process tomatoes) with capital- and labor-intensive, high-value specialty crops (i.e., strawberries, lettuce, broccoli, table grapes, and cut flowers). It also required a new business organization with state-of-the-art installations to process and market farm commodities, the development of improved plant varieties and cultivation procedures, and the introduction of new labor management systems. The radical transformation of an already popular California farm commodity, strawberries, is a good case in point. Cutting-edge plant science boosted crop yields from three to four tons per acre to more than thirty and extended a short spring harvest season to nearly year-round production (Wells 1996). New harvesting, packaging, cooling, and storage technology was also developed specifically for the crop. Other fruit, nut, and vegetable crops experienced similar transformations, and new crops entered the fields and marketplace: kiwi, pomegranate, and an assortment of California-grown berries. The process also saw the decline of old corporate giants—Boswell in cotton and DiGiorgio in fruits and vegetables—and the rise of new ones: Paramount in almonds and Grimmway Brothers in fruits and vegetables, including organics.

The crop replacement, in turn, greatly increased the demand for both permanent and seasonal workers, who adjusted their migration and immigration practices to the new job opportunities. Hence, more workers from rural Mexico joined the back-and-forth circuit, adjusting their time away from home to the peculiarities of the new crops, while many others settled permanently in the California enclaves, considerably enlarging the size of the resident Mexican population and transforming the host communities. California agriculture thrived, growing its annual gross cash receipts from under $15 billion in 1980 to nearly $40 billion in 2010, two-thirds of it derived from fruit, vegetable, and horticultural crops. In keeping with the trend set in the 1970s, labor-intensive kiwifruit, blueberries, and safflower showed the most notable increases in value in 2010, while mechanized cotton, hay, and oats showed the most notable decreases in value (California Department of Food and Agriculture 2010, 17).

Crop displacement has continued to the extent that, for example, cotton—once the indisputable king in the San Joaquin Valley—has practically vanished from the agricultural landscape, replaced with table grape vineyards; almond, pistachio, and pomegranate orchards; and row crops. The story of the rise and fall of cotton production in the San Joaquin Valley is illustrative of the transition. At its peak, around 1980, cotton occupied approximately 1.5 million acres of California farmland, issuing a large volume of high-quality lint and cottonseed that was exported worldwide. Cotton was concentrated in

five San Joaquin Valley counties and Imperial, and ranked third among California's top value crops. Cotton lint, moreover, was the number one export farm commodity, valued at $1.1 billion, followed distantly by almonds with less than one-half the value (McCorkle and Nuckton 1983, 31). In 2009 cotton harvested acres in the San Joaquin Valley had shrunk to 186,000—about one-tenth their peak size—and its ranking among California crops had descended to twenty-sixth place, at the same time that its export value atrophied to $253 million. Almonds, in comparison, rose to number one in exports, with a value of $1.9 billion. Although almonds do not require as much labor as many fruit and vegetable crops, they employ considerably more workers than cotton, and their extended acreage added a significant number of permanent and seasonal workers to the workforce in the San Joaquin Valley.

In the central and southern coastal valleys, fruits, vegetables, and cut flowers flourish on land once occupied by sugar beets and alfalfa, and vineyards occupy hillsides once used as open range pasture for cattle and dry wheat farming. The Salinas, Santa Maria, and Oxnard Valleys once held the largest sugar beet plantations and refineries in California. They are all gone now. In their place are a busy year-round churning of fruit and vegetable crops and nonstop cooling and shipping facilities that prepare the commodities for national and international markets. Strawberries, broccoli, and wine grapes, for example, were Santa Barbara County's top value crops in 2012, generating $662 million or one-half of the county's total farm value (Santa Barbara Agricultural Commissioner 2013). All of them, especially strawberries, are huge consumers of labor year-round. The farm output and labor use were quite different in 1970, when livestock was the top value commodity; strawberries barely occupied 550 acres, and commercial vineyards were nonexistent (Haley 1989, 15; Palerm 1991). In 2011 strawberries occupied 7,680 acres of prime farmland in the Santa Maria Valley, and vineyards for premium wines occupied 21,723 acres of hilly Santa Barbara countryside (Santa Barbara Agricultural Commissioner 2013).

In the southern deserts (Imperial and Coachella), irrigation has continued to make the desert bloom, boosting its reputation as the state's "winter garden." At first irrigation enabled a considerable expansion of mechanized field crops, which were in high demand until the 1970s or shortly thereafter (cotton, alfalfa, wheat, and sugar beets), but by 1980 field crops had begun to yield to the more valuable, profitable, and labor-intensive fruits and vegetables, especially lettuce in the winter and melons in the summer. In neighboring Coachella, large global corporations invested in the establishment of extensive vineyards devoted to early table grapes—the season's first in California—and citrus plantations, which to a degree replaced acreage lost to

urban sprawl in the Los Angeles Basin (DuBry 2007, 81–84). Other labor-intensive crops include early, off-season bell peppers, sweet corn, eggplant, seedless watermelons, and strawberries. Coachella growers are also experimenting with exotic tropical fruits, such as mangoes, as they seek to develop unusual high-value commodities for the American consumer.

Changes to farm employment regimes, dictated by the restructuring of the agricultural industry, produced an equivalent momentous transformation of the labor force and rural civil society in California. Indeed, changes in employment could not just entail a recalibration of the number of workers the industry needed but had to address new ways of handling the crops, different skill sets, and different schedules. For example, some crops' harvest changed from short, explosive bursts of activity to prolonged seasons with sporadic or sustained activity; specialized work skills emerged as crops required precise delivery of water, nutrients, and chemical products; and meticulous handling was imperative to ensure the quality the market demanded and to maintain the wholesomeness of fragile, perishable crops. Competent harvest labor had to be available on short notice, so that crops could be gathered at their prime, lest they lose their premium value or be squandered altogether, with great financial loss to the farmer. The new work regimes motivated and changed migration practices from Mexico to ensure the fulfillment of the industry's seasonal and permanent labor requirements. Many recalibrated their circular migratory schedules to fit the seasonal requirements of specific crops, while others took a unidirectional track with the intention of remaining permanently in California or over a prolonged stretch of time. For example, skilled, specialized strawberry harvesters in Mexico (*freseros*) began to schedule their annual migratory trek to hit the peak harvest in southern California, where they could make good money using piece rate contracts, then move up north to the Bay Area, Oregon, and Washington when the berry bounty waned; others, seeing the opportunity of prolonged employment in vegetables or table grapes, made the decision to relocate permanently to California. The result was increased seasonal and permanent migration to California, most of it undocumented.

Migrants were again drawn mostly from the Central Highland states, but now more *ejido* household members joined the annual northward trek, including married and single women who accompanied their husbands or parents and worked alongside them in California. And a new labor source also began to contribute to the revitalized migrant stream: the southern states of Oaxaca and Guerrero, with their impoverished Mixteco Indian population. Mixtecos were already migrant farmworkers in Mexico and provided critical seasonal harvest labor to northwestern states (Sinaloa and Sonora) and Baja California, where large private enterprises had established a California-like

farming system specializing in the production of tomatoes and strawberries. Mixtecos embodied a new wave of Mexican migrants, who came to occupy the lowest rungs of agricultural employment in California and were subjected to the usual discriminatory treatment afforded to Mexicans, in addition to that directed at them by nonindigenous Mexicans.

The settlement of a large number of Mexican immigrants in small rural towns and communities in California, located in the midst of its major agricultural regions, had an impact alike to a population explosion. Suddenly towns that had remained demographically inert or that had actually decreased in size and aged began to grow and rejuvenate with the arrival of young immigrant families. They were initially crowded with other families into the Mexican enclaves, doubling or tripling their population, but soon afterward they began to occupy other sections of the larger community. For example, the Mexican enclave in the town of coastal Guadalupe grew from 1,500 in 1970 to 2,700 in 1980, representing 74 percent of the town' population; in the San Joaquin Valley, McFarland's Mexican *colonia,* located across the tracks and Highway 99 from the town, jumped from 1,800 to 4,200 people, representing 70 percent of the town's population; and also in the San Joaquin Valley, Arvin's Mexican population grew from 1,600 to 4,000 in the same period, reaching 58 percent of the local population. More than two hundred rural towns and communities in rural/agricultural California experienced, to a greater or lesser degree, the same demographic transformation (Palerm 1989, 149–157; 1991, 20–36; 2010). Interestingly, as a result of *cumulative causation,* people from the same source towns in Mexico clustered in the settlement communities in California. McFarland, for example, has a large contingent of *paisanos* from the towns of Huanusco and Jalpa in Zacatecas, and the town of Arvin contains a significant number of people from Yuriría, Guanajuato.

These towns and communities held up to one-half of California's agricultural workforce in the 1980s; the other half resided in Mexico, from where workers migrated seasonally to California. The U.S. agricultural labor force was at the time estimated to be around 600,000 (Martin, Vaupel, and Egan 1988, 4). The California settlement sites were growing rapidly through the combined effect of the high fertility of young Mexican families and high rates of immigration, and they exhibited grave problems. They had become places of concentrated and persistent poverty resulting from low farm wages, seasonal jobs, and intermittent employment, which yielded family annual income levels that were consistently below the federal definition of poverty. The towns became overcrowded as the population grew but no new housing was added; typically, several families crowded into one dwelling in poor repair to share high housing costs. The communities' overtaxed infrastructure and public services deteriorated, overwhelmed by the population growth, and a

decreasing tax base prevented them from making repairs or improvements. Many local businesses closed, and white flight ensued, further eroding the communities' tax base. Indeed, many of these towns were near to bankruptcy. As a result, many of the new settlers' basic needs remained unmet, including health and education. Scholars observing these places characterized them in their writings as rural slums or overgrown labor camps with growing human immiseration (Palerm 1989, 1991; Palerm and Urquiola 1993; Rochin and Castillo 1993; Taylor, Martin, and Fix 1997).

Still, immigration and settlement continued unabated, driven both by the hiring surge in agriculture and by the maturing social networks that coupled California-based families with their Mexican counterparts. The Mexican economy, shaken by the 1970s crisis with high rates of unemployment and currency devaluations, motivated out-migration as the wage differential with the U.S. returned to Bracero-years levels of 10:1. In California a number of actions were taken that provided some relief to the growing farmworking population. In 1975 the state passed the Agricultural Labor Relations Act and established the Agricultural Labor Relations Board, which protected collective bargaining (unions and unionization) and imposed basic work standards in the fields. Shortly afterward farmworkers became eligible to receive unemployment compensation from the state, which provided critical income to farmworkers during the slow employment months and allowed many to bridge a cash flow gap. Also, a number of federal programs, emanating from the War on Poverty, began to reach California migrant farmworkers, providing resources and services for, among other areas, education, health, and job training (Martin and Martin 1994, 27–83). But it was the Immigration Reform and Control Act of 1986 (IRCA) that provided the greatest boost to the stability and welfare of undocumented immigrant farmworkers who had homesteaded in California.

RODINOS' RULE

The IRCA privileged agriculture and its largely undocumented workforce through various specially designed programs. Their immediate purpose was to stem the flow of unauthorized immigrants to agriculture and provide legal residence with a path to citizenship for those who were already established in the nation's agricultural landscape, particularly in California, where many had settled. Ultimately, the IRCA aspired to foster a stable (domestic), self-perpetuating agricultural workforce, capable of satisfying the industry's needs and producing the next generation of workers. This aspiration is reminiscent of Carey McWilliams's suggestion that it was possible to establish a viable domestic agricultural workforce using the Okie immigrants who had arrived

in California in the 1930s (McWilliams 1939). IRCA, for the first time, outlawed the hiring of undocumented workers and established sanctions with escalating penalties for repeating offenders to prevent another cycle of undocumented entries from starting. And border control was reinforced to keep the door closed.

The agricultural plan of the IRCA included a Special Agricultural Workers Program (SAW), a Replenishment Agricultural Workers Program (RAW), and a temporary nonimmigrant H-2A program. SAW was a generous amnesty provision that enabled existing undocumented workers to obtain legal resident status by demonstrating that they had worked in agriculture for at least ninety days between May 1986 and May 1987. The terms, requirements for eligibility, and application procedures for SAW were much easier to meet than those required for general amnesty for nonfarm immigrants. RAW anticipated the likelihood that those approved under SAW might abandon agricultural employment and would therefore need to be replaced. It authorized the Departments of Agriculture and Labor to determine if farm labor shortages existed and, if necessary, to admit immigrants to work in agriculture between 1990 and 1993. Those in RAW would become eligible to receive permanent legal residency after they had worked in agriculture for at least ninety days per year over three years. The H-2A program was also designed to meet possible labor shortages by issuing temporary visas to foreign "guest workers" for prescribed work assignments. H-2A workers were not eligible for legal residency and had to return to their home country upon completing work contracts. Employers hiring H-2A workers were required to provide housing, workers' compensation insurance, and other benefits. It was expected that the three programs would yield a stable domestic agricultural workforce by 1996, ten years after the IRCA was enacted.

The SAW Program was an instant success among farm employers and farmworkers, as undocumented immigrants enthusiastically applied for legalization and employers aided them by providing critical employment documentation and affidavits. Although the unions initially opposed IRCA provisions for farmworkers, the UFW eventually also extended assistance to SAW applicants. As a result, 1.3 million individuals applied—more than two-thirds in California alone—vastly surpassing an expected 250,000 applications and revealing the true and underestimated size of the nation's agricultural labor force (Palerm and Urquiola 1993, 350). Ultimately, the IRCA approved 1.1 million SAW applicants, including 600,000 in California (Taylor, Martin, and Fix 1997, 79; Massey, Durand, and Malone 2002, 90). Because SAW was only available for agricultural employees, excluding their dependents in the United States or abroad, Congress was obliged to approve family reunification venues to process their cases. This multiplied the number of people who

regularized their immigration situation and eventually settled down legally in California's burgeoning farm labor towns. The towns' population growth, moreover, was supplemented by many circular migrants' decision to permanently relocate to the United States with their families once they were granted legal resident status.

The RAW program was never activated because the Departments of Labor and Agriculture were unable to verify labor shortages within the required time frame, and agricultural employers did not press the matter. H-2A was not popular among California employers because of its administrative complexities and added costs, although it was more widely used in other parts of the country.

The Dawn of a New Rural Society?

Some observers have viewed the IRCA's agricultural programs as a brave social experiment without precedent (Rosenberg 1988, 13). They certainly unleashed a major makeover of rural life in California and put into high gear the demographic process that agricultural intensification had triggered ten years before. The 1990 Census, taken less than five years after SAW applicants were processed, revealed a quantum leap with respect to farm towns' growing populations. For example, the Hispanic population (i.e., Mexican origin in California) in the three sample communities mentioned previously nearly doubled in size: Guadalupe from 2,700 to 4,500, McFarland from 3,900 to 5,800, and Arvin from 4,000 to 7,000. In all of them the Mexican population became by far the majority, with rates in excess of 75 percent. These remarkable changes were repeated, with few exceptions, throughout California's small and big towns in all its principal agricultural regions (Palerm 1999, 58–60).

The IRCA agricultural programs also altered work relationships in the field. The success of SAW, for example, reversed the documented-undocumented ratio of the agricultural workforce from 30 percent documented and 70 percent undocumented to the exact opposite. Growers, apprehensive about IRCA sanctions and unhappy with all the new paperwork they were required to file, delegated hiring to farm labor contractors, releasing growers from liability and changing considerably the nature of the employer-employee relationship. The combination of new employers and hiring methods with a growing labor pool of underemployed workers and the continuing presence of undocumented workers contributed significantly to a gradual decline in wages during the 1990s, making things more difficult for Rodinos,[1] who had to provide for an increased number of family members living in California (Massey, Durand, and Malone 2002, 121–122).

Despite employer sanctions, the purported "teeth" to IRCA compliance, and strengthened border control, the new immigration law did not discourage farm employers from hiring undocumented workers, or for that matter stem the flow of undocumented workers from Mexico to the United States, which after 1990 returned to pre-IRCA levels (Massey, Durand, and Malone 2002, 91). Cumulative causation was not quelled by the relocation to California of Rodinos' dependents; rather, they further stimulated it. Farm labor contractors, looking for cheap and vulnerable labor, recruited the undocumented and kept the job door open for them. Mexico's broken economy and unrelenting population growth continued to push its working-class citizens abroad. As a result, the undocumented population in the United States began to grow again, and labor markets, not just agriculture, were flooded with a growing supply of eager workers. Endowed with a plentiful labor supply, California agriculture continued to expand and thrive on the strength of its dedication to labor-intensive specialty crops (Palerm 1999; Taylor, Martin, and Fix 1997).

Immigration enforcement intensified as the INS staged a number of military-like operations designed to discourage, interdict, apprehend, and deport unauthorized aliens as they strived to penetrate the border: Operation Gatekeeper in California, Operation Blockade (Hold the Line) in Texas, Operation Safeguard in Arizona, and Operation Rio Grande in New Mexico. These were supplemented with larger and taller fences and vigilante displays of force by private citizens. The border took on a war-like appearance as INS agents were added, physical barriers were raised, and sophisticated technology was introduced. These actions were initially only successful in diverting unauthorized border crossings from the traditional crossing points to more remote, difficult, and dangerous ones, making the crossings harder, more dangerous, and costlier for the migrants. After September 11, 2001, border control escalated as a matter of national security, and it was reorganized in 2003 through the establishment of the Department of Homeland Security and the Immigration and Customs Enforcement Agency (ICE), which replaced the Justice Department's INS. The most salient impact that these actions had upon migrant farmworkers was that they effectively disrupted the back-and-forth movement of seasonal migrants across the border. As border crossings became too expensive and risky, seasonal migrants opted to remain in the United States once they managed to get across and subsequently began to relocate family members to join them in their settlement communities. Instead of locking out the undocumented migrants, improved border enforcement had the effect of locking them in. As a result, farmworker settlement sites in California continued to grow.

Twenty-five years after IRCA, farm labor settlement communities completed a second quantum leap, again doubling their Hispanic population on the basis of high fertility and stubborn immigration. The 2010 Census evidences how the three sample communities fared: Guadalupe's Hispanics increased from 4,500 in 1990 to 6,000 in 2010, and made up 86.2 percent of the town's population; McFarland grew from 5,800 to 11,600 Hispanics, or 91.5 percent; and Arvin grew from 7,000 to 17,900 Hispanics, or 92.7 percent. Moreover, places that were once barely specks on the map and footnotes in census reports emerged as new places of farm labor settlement with vigorous population growth. For example, Mecca in the Coachella Valley grew from a village of some 1,000 residents in 1970, few of them Hispanic, to a town of nearly 9,000 Hispanics; and the tiny oil field village of Lost Hills in the San Joaquin Valley grew from a couple hundred white blue-collar residents to a small town of 2,500 Mexican immigrant farmworkers. Together, the approximately two hundred farm labor settlement sites identified in rural-agricultural California now house slightly more than two million Hispanics, mostly Mexican immigrant farmworkers and their descendants, who contribute the lion's share of the 1.1 million people employed by California farms during the course of the year (Palerm 2010; Khan, Martin, and Hardiman 2003).

Most of the workers established in communities located in the coastal valleys find nearly year-round employment in their immediate agricultural surroundings, working in strawberry and raspberry fields, vegetable crops, nurseries, vineyards, avocado and citrus orchards, and the many state-of-the-art crop-processing centers that dot the agricultural landscape. A number of specialized workers—for example, *freseros* in Oxnard—begin an annual northward trek in the summer, following the Pacific Coast through the Santa Maria and Salinas Valleys and northward as far as the Canadian border, picking berries. In the vast San Joaquin Valley, workers find nearly year-round employment by combining work in table grapes, almonds, and navel oranges and these crops' processing plants, requiring many of them to occasionally travel up to one hundred miles from their homes. And in the southern desert, the workers who people the town of Mecca in the Coachella Valley harvest early table grapes in spring and relocate to the San Joaquin Valley during the summer to continue with the same activity until the fall, often with the same employers (growers and farm labor contractors). Nearby, in Imperial County and Yuma (Arizona), resident *lechugeros* are constantly on the move tending their employers' lettuce fields and working at cooling and packing plants (i.e., Bruce Church and Bud of California) located in the desert, coastal valleys, and the San Joaquin Valley. The workforce lives in the desert but seasonally moves across large expanses of California's agricultural geography.

Today's farm labor communities are not just colossally large versions of the historical *colonias* or more recent "overgrown labor camps," populated by a uniform class of low-income farmworkers and without a substantial infrastructure, institutions, civil society, and social life. They are big and growing places, and they have also become socially complex and economically diverse, with a dynamic social, economic, political, and cultural life. They are, above all, young, fertile, and vigorous, offering a sharp contrast with aging and declining rural America. Indeed, with a median age of twenty-six, their residents are ten years younger than California's and twelve years younger than the nations median age. They are also a whopping sixteen years younger than residents of towns located in America's rural heartland, with history before, rather than behind them (Palerm 2008, 570–571). Although most inhabitants still work in agriculture, they are becoming socioeconomically differentiated thanks to a growing and widening socioeconomic ladder in agriculture that affords upward mobility. The creation of new nonfarm jobs in the community is also enabling occupational mobility (DuBry 2007). Indeed, the towns' business districts and main streets—not long ago in decline, closed and boarded up—have revived with new retail and service businesses established by Latino entrepreneurs—many of them former farmworkers—to serve a large and growing Mexican population with disposable income (Palerm 2010). Homeownership rates have increased, and substantial home improvements have been made to rickety fixer uppers to better accommodate the large extended families that occupy them. Civic participation and civil life have blossomed as locals become engaged in school, church, and club activities and create new social institutions (DuBry 2007; Santos Gómez 2010; Haley 2009). A previously disenfranchised population has become politically active and involved in local affairs, participating in electoral processes both as voters and office seekers. And the communities are cultural hothouses as the new empowered residents refashion their towns to their cultural and aesthetic preferences.

Still, farm labor communities in California continue to be beleaguered by high rates of concentrated and persistent poverty, as most inhabitants depend on seasonal and intermittent farm jobs with low wages. As a result, many farmworker families are unable to earn an annual income above the federal definition of poverty, even when they have more than one income provider. Of the community sample, only Guadalupe has a poverty rate below 20 percent, with a mean household annual income of $41,100, but it is still higher than state and federal poverty rates of 16.9 and 14.7 percent, respectively. The other communities exhibit much higher rates, from a low of 29.8 percent living in poverty with a mean annual household income of $29,800 in

McFarland, to a high of 45.1 percent living in poverty with a mean annual household income of $26,200 in Lost Hills. The U.S. Department of Agriculture defines high concentrated and persistent rural poverty as having a rate above 20 percent over the course of several census counts. Most farm labor communities in California meet or exceed this definition.

Farm labor communities in California, moreover, have a strong presence of foreign-born residents, and many of them are undocumented. In the community sample, foreign-born rates range from a low of 40.7 percent in Guadalupe to a high of 58.1 percent in Mecca. Most of the documented foreign born are Rodinos and their Mexico-born grown children. Many Rodinos, in fact, became naturalized citizens in the late 1990s after they met IRCA time, employment, language, and civic requirements. The undocumented are for the most part immigrant workers and family members who arrived after 1987 and have been unable to fix their immigration status. Their number is difficult to estimate, but it probably ranges between 25 and 35 percent of the towns' population, and up to 50 percent of the local agricultural workforce. Since IRCA employer sanctions prohibit and punish the employment of undocumented workers, they are typically employed under assumed names and Social Security numbers, using forged papers, making them vulnerable to unscrupulous employers. With the exception of public education for their children, they are shut out of most public services, and although they frequently pay income and payroll taxes, they don't receive any benefits or accrue any rights or entitlements. They are, moreover, exposed to ICE raids and local police actions that can easily lead to apprehension, deportation, and family separations. They therefore live in poverty and fear.

The present situation—without precedent in the history of California agriculture—augurs the dawn of a new, revitalized, and Latinoized rural America. Never before have so many farmworkers taken root so quickly and firmly in California's agricultural landscape. Both documented and undocumented immigrants, however, are part of a growing rural underclass that does not receive the same treatment as other workers in the labor market or before the law. As a result, they live "awkward" lives, recurring to household and *paisano* strategies and coping mechanisms that allow them to survive and reproduce in the United States with lessened connection to their homelands in Mexico. Moreover, the situation is no longer unique to California, as other states' agricultural industries have come to rely increasingly on the presence of homesteading undocumented immigrants from Mexico. There are serious questions regarding the long-term stability and sustainability of these immigrant communities, but it is also clear that the agricultural industry, as presently organized, cannot survive without them. The conundrum cannot be undone, as in the past, by forcibly removing the population that has affixed

itself in farm jobs and rural communities; a population that in 2010 exceeded two million people in California alone, and that peoples many of its rural towns and communities. Urgent action is therefore strongly advised to address the immigration status and socioeconomic inequities of the agricultural labor force and to compel agricultural employers and the state to provide appropriate jobs, income, and services. It is not only a matter of political will, but also implies overcoming the structural limitations that capitalist agriculture has historically faced regarding its use of labor. It is just possible that California's new hyper-intensified and increasingly diverse agriculture is quickly approaching the realm of that possibility.

CONCLUSIONS

The relatively short history of California's latifundia-based agribusiness provides ample and indisputable evidence that—hampered by known structural limitations—it has been unable to establish a stable, dignified, and self-perpetuating class of conventional (i.e., proletarian) workers. Instead, it has successfully and profitably operated on the basis of an unstable, undignified, and expendable class of "awkward" workers subjected to intermittent, dispersed, and multi-operational low-paying jobs. These workers have been mostly imported from abroad, are ethnically distinct, and have been hamstrung by diminished civil and labor rights that enable their exploitation, dismissal, and extradition. Socially and legally, they have constituted a class apart from mainstream American workers and a category apart from other immigrant populations in the United States. The agricultural industry and society have rarely applied counteractive measures to diminish their dependency on "awkward" workers or to lessen the hardship of these workers. Indeed, the history of agriculture and farm labor in California is seemingly one of recurring cycles of recruitment, engagement, exclusion, and replacement.

History also reveals that the U.S. government has served as the agricultural industry's labor provider by using its sovereign power to open, close, and regulate the immigration flow and to enforce (or not) immigration laws and regulations. It has done this to satisfy the specific needs of the agricultural industry. To this end, the importation of farm laborers has been handled in discrete programs—separate from the country's general immigration policies—with a much narrower set of rights, obligations, and restrictions. The state determines the preferred source—national origin—of imported workers and accordingly establishes international agreements, bilateral programs, and unilateral decisions that enable the desired inflow of workers or their departure. The state has imported workers from near and far and, because it is solely interested in the labor power that immigrants bring to address what is claimed

to be a passing labor supply shortage, it discourages or outright bars spouses and family members from joining the workers, encouraging workers to return home when they are no longer needed. To this end, a path to permanent residency or citizenship is restricted, mobility to other occupations is hindered, and social integration is blocked. The federal government, in short, regulates and controls the agricultural labor supply in ways that are absent and unimaginable in other sectors of the national economy.

Contrary to a widely held thesis, the labor supply (the abundance of cheap labor) is not responsible for the organization and structure of California farms. These are determined by other, more powerful market forces that are driven by consumer demand for distinct types and qualities of farm commodities. For example, the momentous shift from machine-run but declining-value cotton and sugar beets, among others, to labor-intensive, high-value fruits and vegetables was not made primarily because a labor supply was attainable, but because it made economic sense to the profit-oriented producer to supply the market with the commodities it demanded. The supply of labor was subsequently adjusted to the new needs of the farms by fostering or not obstructing the migratory flow from rural Mexico, which was for its part responding to a growing supply of farm jobs. Had Mexicans not satisfied the demand, growers would have surely found workers elsewhere in the world, as they have in the past. In terms of a cause-and-effect relationship, the labor supply is not so much a cause but rather the effect of production decisions taken on the farm.

In a similar vein, the supply of labor is not the principal motivator or deterrent for the adoption of technological innovations enabled by agricultural sciences and engineering. California growers are very keen and eager to apply cutting-edge technology to their farm operations, just not necessarily labor-replacement but instead labor-enhancing ones. Plant sciences have in a relatively short span of time increased crop yields several fold, extended bearing seasons, enhanced commodity uniformity and appeal, and prolonged products' shelf life (i.e., strawberries from three to thirty tons per acre, and from two to nine months of the year), but have done little to diminish the amount of labor used to handle them. Often they have increased the use of human hands to ensure the production of premium products that will elicit premium prices in the marketplace. In sum, the preferred cutting-edge technological innovations adopted in California have not decreased but rather increased the demand for labor; as a result, the labor supply line has been adjusted accordingly, affecting the volume of the migration flow, migration schedules, and the composition of the migrant pool (i.e., more women and families). Massive public-funded waterworks undertaken by the state to provide secure low-cost water for irrigation have

done more to advance the process of agricultural intensification than the maligned labor supply.

It now appears that the recurrent cycle of recruitment, engagement, exclusion, and replacement has paused. Agricultural transformations, together with immigration policies, have in recent years profoundly altered farm employment practices and thereby the migration practices of farm labor. A demand for more workers, the lengthening of employment seasons, and crop diversification with distinct and overlapping harvest schedules have multiplied opportunities for year-round farm employment that were once limited to a small number of very fortunate workers. As a result, many former transnational migrants have settled down permanently with their families near sites of intensive and transformed agriculture, bringing about a population explosion in the affected settlement communities and giving rise to a new and still unexplored rural society. At least two million immigrants—not counting those in the shadows—reside permanently in these rural settlement sites, theoretically capable of providing most of the labor needed on California farms and possibly in nearby states during at least one generation. Many of the settled families, which include both documented and undocumented immigrants, live under precarious conditions of "awkwardness" and may be configuring an American rural underclass with inferior income, wanting living conditions, insecure jobs, and fragile integration with society at large. These new farm labor communities in California and other parts of the country invite—rather, they urge—the attention of researchers and policy makers.

On the research side, this unexpected and still unappreciated development (i.e., the revitalization of rural society in California by immigrant farmworkers from rural Mexico) raises a number of theoretical and practical questions. It compels researchers, above all, to revisit the old but still unresolved question regarding the limits of capitalist agriculture, the difficulties it has in establishing a fully proletarianized class of workers, and its dependency on a source of "awkward" workers. Are we, in fact, witnessing the stabilization and proletarianization of the agricultural working class in California, capable of sustaining itself on the basis of farm wages alone and self-perpetuating by producing the next generation of farmworkers? Have the limiting conditions imposed by intermittent, dispersed, and multi-operational jobs been overcome? If this is the case, are the resulting farm labor communities sustainable, and can they become fully integrated into the social fabric of American life? If not, will they collapse, like the Mexican embryonic *colonias* in the past, and give way to the next wave of immigrant workers who will continue to supply the class of "awkward" workers that the industry has traditionally used? What would be the human cost of the displacement of the more than two million

souls currently firmly rooted in the California agricultural landscape? Ultimately, returning to American scholars who early on grappled with the many inequities of California agriculture, are we before the threshold that Cary McWilliams and Walter Goldschmidt envisioned in 1939 and 1947, respectively? One saw the abolition of a wasteful, vicious, undemocratic, and thoroughly antisocial system and the rise of a new type of agricultural economy (McWilliams 1939, 325); the other saw in the professionalization of farm labor the rise of stable, democratic, and economically sound communities (Goldschmidt 1947, 273).

Regarding public policy, there is first a need to bring to an end the isolation, marginalization, and neglect that these communities and their immigrant inhabitants experience with respect to basic public services. They need to be fully incorporated into and vested in essential county, state, and federal institutions and programs charged with the responsibility of addressing issues of persistent poverty and dealing with, among others, the educational, health, and housing needs of the population. Initiatives to rebuild community infrastructure and governance and to support existing and prospective small business owners and civil organizations would go a long way toward improving and raising up an already emerging new civil society. An urgent and necessary step in this direction is the regularization of the immigration status of many of the communities' inhabitants, who live in the shadows so that they can hold legitimate jobs and lead legitimate lives without fear of reprisal, apprehension, and deportation. An IRCA-like comprehensive immigration reform law with special provisions for agriculture and farm labor is therefore highly desired.

Previous administrations (Clinton through Bush) have put forward such proposals, but without success, including the Agricultural Job Opportunities, Benefits and Security Act of 2007 (AgJOBS), which enjoyed bipartisan support but got insufficient votes in Congress. The bipartisan Border Security, Economic Opportunity, Immigration Modernization Act of 2013, which incorporates most of the agricultural and labor provisions included in AgJOBS, may offer the desperately needed opportunity to shore up the agricultural industry and regularize farmworkers' lives. The bill, endorsed by agricultural employers and labor unions, includes a fast-track provision with relaxed application requirements that enables undocumented farmworkers to become registered provisional immigrants (blue card), which after three to five years in agricultural work can be upgraded to the more liberating permanent resident alien (green card) and subsequently, after another three years, earn eligibility for U.S. citizenship. The program, moreover, allows the immediate family members of qualified blue card workers (spouses, children, and parents) to also become registered provisional immigrants. Blue card holders

would not be able to access welfare and other public services until they became permanent residents, but would be required to pay standard income and payroll taxes. The bill also includes a relaxed and refashioned H-2A guest worker program, more user-friendly for employers, which could allow as many as 100,000 to 400,000 temporary workers annually into the United States to resolve documented labor shortages and farm labor attrition over time. Guest workers are not to displace domestic and blue card farmworkers. Finally, the bill reinforces IRCA employer sanctions to prevent the employment of undocumented workers.

It is essential that the 2013 bill, with its agricultural provisions, be approved, lest the undesired status quo remain and threaten the economic sustainability of the transformed and thriving agricultural industry, as well as the social integration, stability, and welfare of the settled agricultural workforce. The new immigration law will go a long way to further stabilize and consolidate a process that gained strength with the cohort of IRCA's Rodinos in 1987, but it is imperative that the proposed guest worker program be properly administered so that it does not undermine the development of a new but still fragile rural civil society. Based on the lessons we have learned from California's embarrassing agricultural history, it would be easy—even desirable to some growers—to return to an institutionalized system of "awkward" Bracero peasant-workers extracted from impoverished rural Mexico, or elsewhere in the world, which could easily happen with an out-of-control guest worker program and failure to enforce employer sanctions. As happened to the Mexican *colonias* of the past, the viability of the new rural communities would be compromised.

NOTE

1. Mexicans who regularized their immigration status through IRCA are known as Rodinos, after Representative Peter Rodino (Dem.), who with Senator Alan Simpson (Rep.) crafted the bipartisan compromise that led to the new immigration law in 1986.

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4

"That Could Be You": Mexicana Elder-Care Workers, Empathy, and Remoralization

María de la Luz Ibarra

> I looked at that person and said to myself, "That could be you."
>
> —Angelica, 2011

> Sometimes one sees so much suffering and also one remembers having suffered. . . . One doesn't like to talk about these things, but sometimes they have to be said. They don't recognize what the Hispanos have to go through just to be here.
>
> —Tomasa, 2011

In postindustrial societies the aging of the population has resulted in a "care crisis" that some governments and many private citizens attempt to resolve by employing third world women as companions, caretakers, and nurses in institutions and private homes. Indeed, the pattern of third world women caring for first world seniors is now increasingly important, especially in "super-aged" societies where more than 20 percent of the population is sixty-five years of age or older. Here care has transferred from daughters and wives to Latin American, Asian, and African immigrants. This outsourcing of elder care forms part of the contemporary commodification of intimacy, of being able to buy any service for every stage in the life cycle (Hochschild 2012).

The "speed-up" of life (Harvey 2005) and the feminization of the waged labor force in a neoliberal world is implicated in this turn. As first world citizens spend more time at work, and women—in particular—have joined the labor force in unprecedented numbers, there is less time for caring. This has been especially the case in heterosexual nuclear households, where the gendered division of labor has not significantly changed and women take on a double day (Hochschild 2005), while the retraction of the state leaves fewer care options available (Degiuli 2011). Thus the current era is characterized in particular by a "sandwich" generation of first world women who are hard pressed, with responsibilities not only in the workplace and in relation to children, but also for aging parents (Abel 1991; Lock 1995).

Although the United States is not yet a super-aged society, demographers predict it will become one by 2030. Currently seniors comprise almost 14 percent of the population (U.S. Bureau of the Census 2010), and following global trends, they or their kin increasingly pay for care at some stage in the latter part of the life cycle (Martin et al. 2009). The typical demand proceeds within a continuum, with more help generally desired over time. Fully 50 percent of people eighty-five years of age or older want some help, for example, in contrast to 25 percent of those between the ages of sixty-five and eighty-four. Seniors with financial resources may choose from a diverse range of long-term care services, which ranges from help with daily activities of life to more specialized care in institutions. One may in fact buy almost anything—from several hours of adult day care in a resort-like environment to several days or weeks of death vigil work, in which someone provides companionship to a dying person.

In my long-term field research site in Santa Barbara, California, Mexican immigrant women, many of them undocumented, constitute the key care-worker labor force. Their presence is so ubiquitous that I constantly feel as if they "power" the city. Everywhere I go, it seems, I run into someone engaged in care work. Sitting in a local café, I see Mexican women walking alongside their patients in strollers, carefully managing their gaits as they make their way through a busy intersection. As I sit on a bus, Mexican women speak to each other about how late they are leaving their jobs at a nursing home. At a local charity function, I run into a caretaker who sits discreetly in the back, while his wheelchair-bound octogenarian employer bids on auction items. At a local grocery store, care workers consult with their patients on food choices. On the sidewalks of the city, especially those around nursing homes and assisted care facilities, workers come to and fro, adding to the pulse of the metropolis. The hum of these workers' labors is constant and significant.

But while the interested observer can readily "see" Mexicana workers in Santa Barbara, they are virtually invisible in the public transcript. This became

particularly apparent to me when newspaper accounts of abuse in an institutional setting during the summer of 2011 focused on one noteworthy whistle-blower—a citizen of the state whose efforts to improve life for elderly citizens were highly praised. We learned that for years he had visited nursing home residents, after seeing a sign that read "Come visit us" taped to a window. Out of deep-felt empathy, he became a volunteer, and it was in this role that he became aware of abusive conditions and subsequently reported them (Rosen 2011). This citizen's efforts are indeed praiseworthy, but I had to wonder why no workers—other than the two accused male nurses—were interviewed, even anonymously? Why were Mexicana immigrant workers, who constitute the core of the elder-care industry and who regularly act proactively on behalf of their patients, so entirely absent from such an important discussion? Their invisibility in the public transcript in this case and in many others marks them as unimportant to the community in which they live and work. Their laboring bodies are there in the everyday taken-for-granted milieu, but their personhood is transformed into a remote abstraction.

In this chapter I seek to modestly counter this invisibility by addressing Mexicana worker subjectivity—"their inner life processes and affective states" (Biehl, Good, and Kleinman 2007)—through three edited case studies of informal sector workers. In these brief snapshots of workers' lives, I highlight how social suffering, resulting from neoliberal economic and social policies and violence (Kleinman 1988), shapes an empathetic imagination that allows some workers to perceive a shared vulnerability between themselves and their patients, to feel as Angelica said to herself at the opening of this article, that the Other "could be you." I argue that empathy is also a means by which Mexicana workers in Santa Barbara reorganize their inner lives. If the Other, who serves as mirror, is worthy of compassion, forgiveness, love, and dignity, then why not them? When workers narrate their suffering through the experience of the Other, it also allows for a public recounting. This act both rejects the silence that normalizes their degradation and invisibility and "remoralizes" (Kleinman, Das, and Lock 1997) them, sometimes rekindling courage and hopefulness that have been lost through the demoralizing confrontation with insecurity, separation, violence, and death. For women whose lives have been severely disrupted, to be able to engage in everyday life is no small matter.

THE INVISIBLE, DEVALUED CARE WORKER IN THE UNITED STATES

The social invisibility of Mexicana care workers is not unique to them. In the United States, women who have historically cared and cleaned for others have likewise not been seen. Scholars explain this as resulting from a set of

layered devaluations. First, the devaluation of women's gendered unpaid domestic labors, ostensibly performed "out of love" for family, leads to the conclusion that domestic work is both "unproductive" and "natural"—something that women "ought" to do in the privacy of the home. Subsequently when less powerful women, typically racialized, poor women, perform the work, it becomes doubly devalued as the labor of inferiors who "ought" to be cleaning and caring (Nakano Glenn 2012). Neither the labor nor the workers are perceived as important to society (Rollins 1985). Further contributing to worker invisibility is the long-standing ideal of a silent, undemanding domestic—in the background quietly performing service, but not taking up space in the home (Katzman in Romero 2002, 78). This ideal may in turn support what Arlie Hochschild describes as a "Western culture" of individualism, which militates against acknowledging help (Hochschild 2005).

The devaluing of care workers and their labors is also apparent in worker employment law. Domestic workers are explicitly excluded from the protections of key laws and standards, including the National Labor Relations Act and the Fair Labor Standards Act (FLSA) (Nakano Glenn 2012, 134–138). A 1973 effort to amend the FSLA to include domestic workers was diluted to exempt many workers from minimum wage and overtime provisions and, most significantly, was interpreted by the Department of Labor (DOL) to deny protection for workers in assisted living facilities, full-time housekeepers, live-in domestic aides, home health aides, and certified nursing assistants in private agencies (Nakano Glenn 2012, 142–144). The U.S. Supreme Court has upheld these interpretations, expressing concern not for the caregivers denied minimum wages and benefits but instead for the sick people potentially forced into institutions if the DOL's interpretation were struck down. Thus importance and value are given to the recipients of care, while the providers of care matter very little.

In the present period a worker's migration status also contributes to social invisibility. Mary Romero explains, "In the same way that race played a major role in positioning women in the domestic service labor market a generation ago, citizenship status has become a crucial factor in characterizing workers' experiences today" (1992, 2–3). While the ubiquitous "servants of globalization" (Parreñas 2001a) are employed through regulated means—through government-sponsored programs that provide a legal status to temporary workers abroad, for example—they are also employed as undocumented workers. This being the case, employers do not want it to be known that they hire undocumented people, and workers do not want to be persecuted for working. Thus workers are made into "illegal subjects" (Ngai 2004) who necessarily hide and become invisible (Chang 2000). Their

clandestine status in turn produces extreme worker vulnerability and an employment relationship of "overwhelming coercion" (Nakano Glenn 2012, 180). Women who are "forced to care" for other people's families thus reinforce their second-class status and further contribute to the devaluation of care work (Nakano Glenn 2012).

Most employers also do not see the political and economic links between sending and receiving countries, links that help account for the contexts of vulnerability that prompt migration and produce a ready-made supply of care workers. In Mexico specifically, the effects of U.S.-promoted neoliberal policies, especially the 1994 North American Free Trade Agreement (NAFTA), have not resulted in prosperity for most Mexicans.

In the NAFTA era, Mexico expanded the project of opening up the economy to foreign investment and dispensed with key reforms of the 1910 Revolution. The communal farmer—and the symbolic importance of the countryside with its ethos of revolutionary equality—is virtually dead (Otero 2004). The *ejidos* have been replaced by "land markets," and mostly foreign-owned agribusiness and large-scale meat farms (Watt and Zepeda 2012).

The dislocations evident in the countryside have also taken place in the cities, where economic opportunity for internal migrants has dried up and the gap between the haves and the have-nots is dramatic. Scholars describe the development of two Mexicos: one for foreign investors and the national elite and the other for a mass of (un)employed workers living a precarious existence (Cypher and Delgado Wise 2010). The middle class of teachers, engineers, nurses, and small businessmen is swinging above and below the poverty line, and fully fifty-two million people, or 46 percent of the population, live in poverty.

In a symbiotic relationship with these neoliberal economic changes is what some call the militarization of Mexican society (Watt and Zepeda 2012). As Mexico's government, with financial assistance from the United States, has intensified the "War on Drugs," especially since 2007, the presence of federal agents and state police throughout the country has expanded. This military presence is most obvious at the border, where violence between drug cartels and the government is focused, but it is also in the interior, including central western Mexican states like Michoacan, Durango, Jalisco, and Zacatecas—historically some of the most important migrant-sending states. Here both state officers and cartel members engage in "narco-extortion," demanding protection money from rich and poor and engaging in struggles over territory (Díaz-Cayeros et al. 2011). Thus human rights violations at the hands of both cartels and state police are rife on the border and in the interior of Mexico.

The end result of neoliberal poverty and militarization is "social suffering," the effect of the social violence that the social order brings to bear on people

(Kleinman, Das, and Lock 1997). People's everyday lives are laden with insecurity and fear, such that public intellectual Elena Poniatowska said of her country, "Mexicans are tired, afraid, and in pain" (2011). The rich take planes and use business visas to make their way to affluent neighborhoods in the United States, while the poor attempt to cross the border on foot. For Mexican workers this has been a common practice, one that has always been dangerous (Samora 1971; Spener 2009). But in the era of NAFTA and 9/11, the tightening of border security has made the crossing even more brutal. Under a regime of "neoliberal penalty" (Wacquant 2009), U.S. government policy and practice serves to funnel Mexican men, women, and children through increasingly treacherous terrain, like the Arizona desert (Jimenez 2009). Here the unforgiving heat contributed, by one count, to the death of more than five thousand people between 2000 and 2010 (Reynolds 2012). This number does not include the "new disappeared," those whose bodies are never found and therefore cannot become a death statistic (Stephen 2008).

Invisible to most employers as well is the terror of the overland journey that many women have to undergo to get to the United States and exchange care for wages. At the U.S.-Mexico border, Border Patrol agents, vigilantes, and organized crime syndicates are all implicated in assaults against civilians. Border patrol agents have been prosecuted for deadly shootings, rape, and sexual assault (Falcón 2007; Inda 2007), while gun-toting vigilantes physically assault men and women (MALDEF 2009). Crime syndicates make money by kidnapping migrants and extorting money from their working-class relatives in the United States. If a migrant does not have family who can pay for her or his release, "the migrant may well be tortured and killed as an example to other kidnapped migrants and their families on the phone" (Reynolds 2012). Women are especially vulnerable: they are three times more likely to die trying to cross and more than half will be raped while traveling through Mexico to cross the border. Indeed, the rape of women is so common that some have cynically said that it is the "price of crossing" (Reynolds 2012). The border is without a doubt the place where the "first world rubs up against the third and bleeds" (Anzaldúa 1987), where vulnerable human beings undergo multiple levels of trauma, including bearing witness to the violation and death of others.

Countering Invisibility: Value, Agency, and Subjectivity

An impressive body of scholarship counters worker invisibility, beginning with a refutation of the notion that domestic work is unproductive. Feminist scholars have demonstrated that women's housework not only allows for the social reproduction of the current generation of workers but

also raises the next generation. Domestic work is therefore essential to capitalism. By extension, when paid workers perform domestic labor, they likewise contribute to social reproduction. Without private household workers, life would grind to a halt for many middle- and upper-class families who hire them. Moreover, in twenty-two countries domestic worker remittances are equal to more than 10 percent of the gross domestic product, while in six countries they amount to more than 20 percent (Migration Policy Institute 2010). Thus, at a macrostructural level, women's domestic labor, paid and unpaid, is critical.

In recent scholarship a central trope that counters invisibility and devaluation is worker agency—the human capacity to act. Studies of domestic workers have since the 1980s focused on relations of power and resistance, demonstrating the ways in which workers through their own efforts contest demeaning or unfair conditions at the worksite and in the broader society. Workers' everyday resistance has included living-out, work slowdowns, strikes, professionalization, and "blowups" (Rollins 1985; Palmer 1989; Romero 2002; Hondagneu-Sotelo 2001). Other workers have taken employers to court, created worker cooperatives, participated in the drafting of a successful domestic bill of rights in New York (Department of Labor 2012), and internationally won global recognition with the adoption of the International Labor Organization's Convention for Domestic Workers (National Domestic Workers' Alliance 2013). Abroad and in the United States, third world domestic workers likewise counter the "partial citizenship" (Parreñas 2001b) that excludes them from mainstream society by occupying public space (Constable 1997; Chia-Lan 2006) and participating in public resistance, like the massive Immigrant Rights Marches of 2006, in which immigrants in the United States called for comprehensive immigration reform and an end to the criminalization of workers.

Among domestic workers who provide direct human care, work that requires "close, personal contact that is motivated partially by a concern for the welfare of the other" (Folbre 2001, 6), agency also includes engaging in practices that ensure the well-being of patients or wards. As the direct provision of services and long-term care in homes has grown in the last twenty years (Martin et al. 2009, 1), so has worker activism. In California an important source of employment is the state-funded In Home Supportive Services (IHSS) program, in which low-paid state workers have been at the forefront of union organizing (Boris and Klein 2012), fighting for a social wage but also for the needs of their patients (Decasus 2011). For some aides, in fact, good work conditions are central to the performance of good care (Solari 2006; Stacey 2011), an idea that underscores the relational nature of the work.

And yet even in these expansive and important literatures, there are gaps. There are few empirical studies on immigrant elder-care workers in the informal sector (Ibarra 2000; Degiuli 2009), and thus these workers appear mostly as a macrostructural category. And there are few studies that address domestic worker subjectivity. As Sheri Ortner has noted for anthropology, there is a tendency to "slight the subject as existentially complex" (2004). Of concern to me is the question of how workers' own suffering shapes how they feel when caring for vulnerable others.

I argue that workers often feel empathy, a form of emotional engagement that has been identified as beneficial to patient care. The term refers to "sharing the feelings of another as a means of coming to a direct appreciation of the other" (Weiner and Auster 2007, 123). Empathy is also a means by which Mexicana workers in Santa Barbara organize their inner lives. To narrate their suffering through the experience of the other allows for a public recounting, a rejection of the silence that normalizes their degradation. It may also allow for healing from some of the effects of trauma. According to Arthur Kleinman (1988) and Frank (2000), healing is the experience of remoralization, which is understood as the "building of an illness narrative that will make sense of and give value to the experience" (Kleinman 1988, 54). Kleinman says that remoralization is facilitated within an experiential space for a sufferer through empathetic witnessing by another person. Remoralization is the process of kindling hope; it suggests the recovery of some courage and hopefulness that has been lost through the demoralizing confrontations with rupture, violence, and disdain.

Santa Barbara, Mexican Workers, and Methods

Santa Barbara is located eighty-five miles north of Los Angeles. It sits majestically between the Santa Ynez Mountains and the Pacific Ocean and has long been a place where the wealthy and the privileged live and vacation. In the contemporary era, Hollywood movie stars, corporate CEOs, and famous athletes have homes here, as well as the heirs of eastern industry titans and international moguls. It is also a city that has historically attracted wealthy retirees, having from its inception as a U.S. city promoted itself as "the better Italy," extolling its mild climate on the western "Riviera." Throughout most of the city the signs of affluence are present: the high-end boutiques and Sotheby's real estate offices, the numerous restaurants, polo fields, marina, yacht and country clubs, as well as fit and cosmetically altered bodies. The dominant local architecture conforms to a Spanish fantasy, a Mission Revival style laced with bougainvillea. Philanthropy is also a characteristic of the city, as is, generally, a "counterculture" community of environmental and social

activists. Oprah Winfrey, one of the city's most notable residents, characterizes this spirit of philanthropy and activism, famously championing causes in the United States and in the new South Africa.

As a long-established retirement community, the city is also a hub for those in need of care. Fully 15 percent of the population is sixty-five years of age or older. Many make use of the burgeoning home-health care industry and state-of-the-art medical facilities. This is such an important industry for the city that there is increasing concern on the part of civic leaders about improving and facilitating services. In a 2008 Symposium on Aging, for example, "150 leaders of key stakeholder groups" were present, including members of "public agencies, local non-profits, foundations, legislators, and community residents." Given the hidden nature of the informal economy, however, there were no representatives from that thriving sector at this important meeting.

The city is also home to Mexicans, who have a long history there. Mexicanos in the post–U.S.-Mexico war period became colonial subjects segregated by race and class and a demographic minority (Camarillo 1979). In the 1970s the number of Mexican-origin people in the city began to grow, however, as they were increasingly recruited to labor not only in agriculture but also in the expanding service industry, including the nursing home industry. Ester Vargas, now seventy-five years old, arrived in Santa Barbara in 1973 and remembers quickly finding a job at one of these nursing homes. "It was easy—I just approached one of the workers [outside the home] and I asked her for a recommendation. That same afternoon I had a job." Ester, like other care workers, would become an important social link for female kin and help expand the Mexican population, which now constitutes almost 40 percent of the population of eighty-six thousand.

Santa Barbara is my long-term field research site, and I spent more than six years in the field, between 1994 and 2011. During this time I interviewed 168 informal sector domestic workers, the majority of them elder-care providers. My analysis here is based on ethnographic fieldwork that took place during the summers of 2009–2011, when I conducted open-ended and semi-structured interviews with forty female and four male elder-care workers, but it is also informed by work I did between 1994 and 2001 and 2005 and 2007. During these previous research phases, I addressed the configuration of suffering and possibility within informal domestic employment. I found that in private homes Mexicanas, in one-to-one relationships with clients, intentionally craft personalized care routines that include a complex range of emotional and physical labors (Ibarra 2002) and derive pride and spiritual rewards from their work. Women, however, also speak of too much responsibility, too much fear, and too little compensation (Ibarra 2003) and attempt to create better conditions for themselves and their patients through group-centered

care (Ibarra 2010, 2013). Throughout the different phases of fieldwork, I attended many events at which Mexican women gathered and engaged in participant observation and informal conversations with workers and their families. I used the snowball sampling method to identify hard-to-find informants and regularly visited women in their homes.

Informal Elder Care in Santa Barbara

The informal elder-care market in Santa Barbara is characterized by its variety and flexibility, and care workers form part of both collective and individual work arrangements. Collective arrangements include family-based work groups, wherein members of a biological or extended family labor to provide care for one or more individuals. Collective arrangements also include "labor contractors," typically women with certified nursing assistant licenses who are hired by patients and who then subcontract part of the work to others while they retain responsibility for the overall care of the patient. In my sample, contractors are typically individuals who have gained a reputation for good care and thus have a high demand for their services. Given this demand, they subcontract out some of the work but retain ultimate control and responsibility.

Individual care arrangements, on the other hand, involve only one worker, who is responsible for the care of one patient or who provides care for various patients throughout the week. An independent caretaker may be employed, for example, for a couple or even for a couple and their disabled adult child. Caretakers may also work for several households, alternating days and routines in different private homes. In all cases workers may live in or out and typically find work through word of mouth or newspaper advertisements.

In my sample most workers had throughout their care careers fallen in and out of informal sector employment, sometimes combining it with the formal and sometimes working exclusively within it. Mexicanas, like care workers nationally, often stitch together a variety of part-time jobs in order to make a precarious living, in jobs where the turnover rate is high and the pay low (Kemper et al. 2008). Like domestic workers nationally as well, in Santa Barbara almost half of all workers are paid an hourly wage in their primary job that is below the level needed to adequately support a family. A minuscule number of them receive benefits or health insurance, and many endure physical, psychological, and verbal abuse without recourse. Many workers fear that their immigration status will be used against them (National Domestic Workers' Survey 2012).

All workers provide highly personalized service. They do everything from providing companionship and support for time-limited tasks outside the home—such as grocery shopping and providing transportation to medical visits—to specialized care: work in the home, which may include changing

catheters, cleaning out a colostomy bag, changing bandages, or assisting a senior with physical exercises and therapy. Some workers provide massage or "healing touch" or provide hospice care. Likewise, these workers may clean homes, do laundry and ironing, as well as care for plants or animals owned by a senior person. The work is tailored to meet the specific needs and desires of employers.

Workers interact with patients whom they alternatively characterize as "good" or "bad." Good patients are those who are respectful of workers. It is for some of these patients that workers may come to feel affection, respect, and esteem, as well as empathy and compassion. The bad patients are described as disrespectful in their treatment of workers, their demands, and the low pay that they provide. Some patients for a range of reasons may also be violent. Workers have described being stabbed, spat upon, pulled, pushed, hit, yelled at, and called racist and misogynistic names. Thus, like care work in the formal sector, injury is a notable concern for many Mexicanas.

A significant elder-care arrangement in private homes is one-to-one care, wherein a Mexicana worker is the primary, often full-time and perhaps live-in, care worker for an aging patient for extended periods. In the formal sector this type of relationship is more common among wealthier clients, who are able to retain one worker from a private agency for long periods of time. In the informal sector that is likewise the case, but it is also possible for aging persons on a fixed income to hire a live-in worker, given the material vulnerabilities that many immigrant women have. In a one-to-one relationship the "good" or the "bad" patient becomes particularly relevant, since this is the only patient that the worker sees.

Over the course of fieldwork in Santa Barbara, I have been repeatedly struck by the close relationships that many workers build with their patients and by the strong feelings they express in relation to the Other. I have also more recently been struck by the many times that workers have said things like "that could be me," "that could be you," "that could be me or someone like me," or "that could be my own mother." In the short case studies that follow, I pick up on this idea and provide a window into the range of caretaking obligations engaged in by workers as well as some of the empathetic imagination that helps reveal the contexts of social suffering in workers' own lives. As I do the latter, I highlight the building of a narrative "that will make sense of and give value" to their experience (Kleinman 1988, 54).

Alma: "Like My Parents"

Alma R. is a thirty-five-year-old married woman with two children. She and her husband Roberto migrated to Santa Barbara, where he has extended

family, in 2005. They came with the goal of working for three years, in order to earn enough money to continue dairy farming on land adjacent to her parents' home in an agricultural town in Michoacan. Historically people in her community had made a living from cattle and farming, but this had become increasingly difficult. She said, "It was impossible to live—everything was everyday more expensive. . . . From being a normal family, a middle class family, we saw ourselves become a family with a lot of needs."

When they left Mexico Alma's father was fearful that she would not return. He worried about her mother's increasing care needs as her Alzheimer's progressed and the limited support that he had to care for her. Alma is the only daughter in a family of five children, and all but one of them now live in the United States. She reassured her father that her eldest brother and his wife, who still live in Michoacan, would help until she returned. Two years after Alma migrated to Santa Barbara, however, the Mexican government's frontal attack on the drug cartels made many communities in Michoacan "unsafe." "Everywhere," she said, "there are roadblocks and soldiers." This has led her husband to indefinitely put off returning to Mexico, a fact that causes Alma great anguish. Her father has asked her to come back because her mother needs more care than his daughter-in-law is able to provide. About this Alma says, "How do I do this? Do I leave my children and husband and go? Or do I stay and abandon my parents? This weighs very heavily upon me."

Alma physically bears the signs of sadness. In her interactions with me, she does not smile and often cries. She does not want to be here and angrily asks why it's so difficult to gain legal residency. If she could move easily between Santa Barbara and Michocan, she says, she would be able to see her parents and provide some help—even if she were not to live full-time in Michoacan. She says she is particularly unhappy because in order to stay and live in Santa Barbara, she has to provide care for other people. It was never her intention to work as a care provider—she wanted to work in a factory where worry over people was not an issue, where she could "forget" her own troubles in a routine. But "there are no jobs" other than domestic and care-worker jobs in the city "for Latinos."

Her sister-in-law, who is also an elder-care provider in the city, referred Alma to her current employers—a couple very similar in condition to her parents: Katherine has Alzheimer's while Tom, though "strong," needs help to care for both Katherine and himself. Alma works part-time for the couple, five to six hours a day and occasionally longer. She is paid $12 an hour to provide the couple with direct physical care, including bathing, grooming, dressing, exercise, food preparation, and housecleaning. When I asked her to describe a "typical" day of work, she said:

There is no typical day of work, because I never know when I get there what's happened the night before. Sometimes, she has soiled herself and I begin by getting her cleaned up, which takes a very long time because I have to have a lot of patience with her—that is the hardest thing for me, patience. I want to move quickly to do many things, but I can't—she requires a lot of attention because it's not easy to move her . . . sometimes I get there and he's hurt himself trying to help his wife; yesterday he had scraped his knee, and the first thing I did was to get him to sit so I could bandage it.

Tom and Katherine have two adult children who live on the East Coast, and although they visit several times a year, they are obviously not able to provide direct everyday care. Alma says she knows they are concerned about the increasing needs of their parents and have spoken to Tom about moving into an assisted care facility, but Tom does not want to. For the time being they have Alma and neighbors who look out for them. Speaking about their intertwined vulnerability, she said:

They are beautiful people, they are very thankful, and I think when I'm helping her, that this is what is happening to my mother . . . this is what is happening to my father. Here I give everything that I would want to give to my mother . . . it's difficult . . . many times I feel very badly, a lot of guilt . . . and also anger. But I tell myself that there must be a reason that I'm here and I think that it is because here I'm learning about the disease. . . . When I'm able to take care of my mother I'll know what to do.

Raquel: "We Are Abandoned Women"

Raquel is a thirty-eight-year-old single mother who initially migrated to Los Angeles with a girlhood friend in 2000. They came from Oaxaca, one of the most impoverished states in Mexico, partly because of what they saw as the lack of opportunity in their town. She said, "All the younger men and most of the women are gone—there are only old people and small children . . . there are no jobs . . . it is a very sad place." For a long time Raquel had worked at a small bakery and in her mother's storefront, but it was not earning enough to support them, especially after her stepfather came back from Mexico City to "live off" her mother's work. After a violent altercation with him, she decided it would be better for her to move away. The idea of moving was not new, only made more urgent.

Raquel and her friend Lorena had long been debating moving to Los Angeles, because here Lorena's uncle had a restaurant and had offered to help pay for the *coyote,* the human smuggler who would help them across the border, and to hire them as waitresses. From the "very first moment" she got there, though, the uncle made unwanted sexual advances and paid her very

little, with the excuse that he was deducting the cost of the *coyote.* The lack of money made her vulnerable, as she felt she had no escape, so when a "good-looking" customer began to woo her, Raquel concluded that it would be better to move in with him than put up with the uncle's constant "attacks."

She continued to work at the restaurant but moved in with Juan, who proved to be a jealous and physically abusive man who engaged in cycles of violence and remorse. For two years, she said, she became another person: she lived in constant fear of his moods and actions—"It was like he extinguished me. . . . I no longer thought about me, only about what he would do." Her subsequent pregnancy proved to be a turning point, however, as she describes finding a strength she had "forgotten" and made plans to clandestinely leave Los Angeles and go to Santa Barbara. Here an acquaintance from the restaurant told her of the possibility of a job in a nursing home and helped her relocate. Raquel worked in the nursing home for six years, until she could no longer bear "the disregard" for people, especially women. She said:

> What do you find in there if not abandoned old women? To me that is very sad—I have lived a life where men have dictated to me and abused me and I can no longer permit that—towards me or another woman. . . . And that is why I only take care of women. I don't accept male clients.

With the experience she gained at the nursing home, she opened up her own informal sector business. She initially advertised in the newspaper, but now she gets clients through word of mouth. She currently provides care for four clients, performing a range of chores for each of them during the week. On Monday, Wednesday, and Friday she has two clients—one in the morning and one in the afternoon. These are "healthy" clients who live in assisted care apartments, but she does their shopping, cleans up their houses, and when they need it, she cooks. On Tuesday she works the whole day with another client, who more than anything wants companionship: "She just likes to talk—she's very alone." Then on Thursday all day and night, and on Friday night, she works for Gladys: "the one that I most love."

Gladys, now eighty-seven, had also brought up her son alone when her husband divorced her many years before. Like Raquel, Gladys had also been a victim of violence. About this intertwined vulnerability, Raquel said, "We cried together—she told me what had happened to her, and I felt very close to her . . . here was a person from a different society who understood me, who gave me affection." Raquel says that Gladys, with "her kindness . . . her advice" also gave her hope. "I have come to realize that my purpose is to help . . . to take care of abandoned women. My life is valuable—I give life to others. I say to Gladys, 'I am your eyes, your hands, your feet—and at night when you can't sleep, I will lull you.'"

Magdalena: "To Give Her a Good Death, Not Like My Husband's"

Magdalena is a sixty-six-year-old widow who made the life-altering trek to the United States with her husband in 2006. She described her family as not "poor" but "normal . . . working people" from an agricultural area in Durango, where she and her husband had been born and raised, and where they had also raised their children on an *ejido.* Her husband had earlier in his life migrated several times to California to work seasonally in agriculture, but neither he nor she had wanted to leave Mexico. It was not until all of her children, who did not see a future in the state, had all left that she and her husband felt that they could not live this way: "We felt that what had always been most important to us, our kids and then our grandchildren, were lost to us. We felt that we needed to be here with them."

For over two years she and her husband talked and planned with their children about how they would get to the United States. They tried unsuccessfully to get visas, but were rejected three times. They eventually came to the unwelcome decision that they would have to cross the border as undocumented people, before they got any older and would not be able physically to make the crossing. They decided that crossing into Texas would be easiest, because they have a son who lives near the border. Eventually, they had imagined, they would make their way to Santa Barbara, where two daughters live.

All of their children contributed to the cost of the trip and tried to ensure as much comfort for them as possible—they paid for a plane from Durango to Chihuahua; they paid for a hotel so that their parents could rest overnight. Their son would be waiting for them "on the other side," prepared to meet them. All had been thought through as well as was possible, given the unpredictable nature of undocumented crossings. On the designated day, Magdalena remembered becoming very scared: "I felt that something was very wrong, but all the plans were in place." Then she described, in short phrases, a harrowing process of many things gone wrong: The Border Patrol was spotted, the heat was higher than normal, the walk was longer than they had been told, water became scarce, and her husband's heart gave out. Her husband, she thinks, died from a heart attack in the middle of the desert where she could do nothing for him. Here she left his lifeless body, "abandoned."

For three years after her husband's death she found it "impossible" to continue living. She said, "I became another person, I wanted to die and not even my grandchildren changed that for a long time." Eventually her daughters, fearful that she might attempt suicide, found an organization that provided grief counseling. It was through this organization that she eventually found herself volunteering to provide occasional companionship to sick, Spanish-speaking

people in a local hospital. It was here that she met Teresa, an "Italian woman," and eventually began caring for her in her daughter's home.

Seventy-four-year-old Teresa has been diagnosed with terminal cancer and had been temporarily interned in the hospital because of her physical pain. During Magdalena's volunteer visits to the hospital, she walked past Teresa's room and one day Teresa waved her in, thinking she worked at the hospital. She wanted to talk, and they began to communicate with each other in broken Spanish and Italian. It was at this juncture that Teresa's daughter came in and also met Magadalena, and over the course of three days had various interactions with her. Eventually she asked Magdalena if she'd be willing to come to her home and help care for Teresa, who the doctor predicted would not live for more than four or five months.

Magdalena has been with Teresa for two months and sees that every day she is "less strong." Magdalena says, however, that Teresa is a very lucky person because she has all of her three children in Santa Barbara, taking turns staying with and caring for her.

The most difficult part of the job for Magdalena has been to see Teresa's physical suffering, which can only be alleviated with painkillers. Magdalena says, "She has no cure, there is nothing that can be done for her but to make her comfortable, assure that she does not have so much pain and to provide her with love, with warmth and to let her talk when she has the energy. I think that maybe that is why God put me here. . . . What I couldn't do for my husband, I can now do for her."

CONCLUSION

Mexican women's subjectivities—their experience of and being in the world—have been shaped by economic, social, and political hardship and terror under neoliberalism. They are part of a Mexican society that has been radically transformed and where social safety nets, friendships, and families are torn apart by the realities of loss and necessary migration. In this process migrant Mexicans are cast into the role of refugee, victim, survivor, criminal, wage earner, and servant vis-à-vis the Mexican and U.S. states. Mexicanas come to know intimately what it is to be vulnerable, disparaged, hunted, and haunted. Such is their experience as a new social reality is unfolding on the U.S. side of the border, one in which aging and care take center stage. Here they are pulled into private homes to care for aging Americans.

As Mexicanas come into intimate contact with vulnerable older wards, workers often feel empathy for their plight, sometimes feeling as if the other could be they. By partially representing this empathetic imagination we are better able to understand not only the new and different contexts within

which women care for aging citizens and the many tasks they undertake and responsibilities that they have, but also what Mexican immigrant women have to go through to be here—to glimpse some of the systemic losses and insecurities that serve as an inherent context of their lives. The workplace thus becomes for some women an alternate public sphere for articulating and recounting experience, for making visible what is too often invisible. Perhaps as well, through the telling of their stories, they are able to remoralize themselves, to partially heal from the damage done to their bodies and spirits in a neoliberal world.

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5

The Informality of Day Labor Work: Challenges and Approaches to Addressing Working Conditions of Day Laborers

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Day labor work is considered an age-old informal economic practice whereby workers with no fixed employer contract out their labor for wages on a daily basis.[1] Day labor is generally categorized as *informal wage employment,* or employees without formal contracts or social protections being employed and subcontracted by formal or informal enterprises or households.

While the majority of day laborers in the United States today still seek employment from home owners and contractors on street corners, a significant number of day laborers are participating in a growing network of organized worker centers that facilitate job placement across the country (Fine 2011). Whether the day labor hiring practices are more loosely or tightly organized and controlled, day labor is still a response to the ever-growing informal labor markets in industries such as construction; residential home maintenance services; landscape gardening; and other technical or mechanical work related to light manufacturing, auto repair, or service sector jobs.

With a population numbering about twenty-five thousand, no group in Los Angeles County is more vulnerable to civil rights abuses and discrimination than day laborers. On any given day, tens of thousands of workers seek and obtain temporary employment from informal hiring sites on street corners in cities across the country. Because day laborers are so visible, they

have become the scapegoats for the ongoing deterioration of communities. In recent years the practice of employing day laborers has expanded across the country. The demand for day laborers and their need for employment, though mutually beneficial in an economic sense, have often been a source of conflict in Los Angeles. Day laborers seeking work have raised concerns among residents, businesses, and law enforcement in several communities. Recent local laws have limited their ability to look for work and made them subject to harassment from law enforcement officers, employers, merchants, private business owners, and residents. A study by the UCLA Center for the Study of Urban Poverty found that day laborers are routinely abused at the workplace. About half of all day laborers report at least one instance of nonpayment of wages. Other types of employer abuses include paying less than the agreed-upon amount, paying with bad checks, no breaks or water at the work site, robbery, and threats. Day laborers have become one of the most exploited and abused segments of the workforce (Valenzuela 1999).

Solutions to the informality of day labor work have included increased regulation of solicitation and employment of day laborers, the shift from informal hiring sites to formal day-laborer centers, and the development of funded community partnerships to protect workers' labor rights (Pritchard 2009). Many organizing efforts and increased public awareness campaigns have highlighted day laborers' immigration status and vulnerability, which often lead to workplace exploitation. However, the inherent informal, low-wage, at-will employment design of the day labor system still requires much critical analysis. In this chapter we review the implications of the day labor market's informality and the impact of day labor solicitation on key stakeholders, analyze the responses by municipal governments and community advocacy groups, and look ahead to key partnerships.

MID-1980s–EARLY 1990s: INFORMALITY OF DAY LABOR WORK AND RESPONSES OF KEY COMMUNITY STAKEHOLDERS

Some social scientists have viewed labor informality and the informal economy in positive terms, as entrepreneurial talent and a labor outlet during economic crises. Others see the informal economy as a structural means to reduce input and labor expenses while increasing profit at the expense of the working poor (Castells and Portes 1989). Yet others view informality even more problematically, arguing that informal laborers and employers deliberately avoid labor codes, business registration, and taxation (Maloney 2004). These schools of thought have greatly influenced how informal day labor

employment arrangements, community relationships, and advocacy initiatives are established, developed, and perceived.

As a consequence of the influx of immigrant workers and economic restructuring in many U.S. local economies, in the 1980s there were significant changes in the ways in which local governments responded to day laborer issues. The rising labor market demands for day laborers and low-income workers' intense need for employment, though mutually beneficial in an economic sense, became a source of conflict throughout Southern California. While the demand for informal workers had grown substantially in the residential construction sector, building trades' contractors and unions continued to experience difficulties in finding U.S.-born workers to meet labor demands.

Day laborers seeking work raised concerns among residents, businesses, and law enforcement in several communities. The perception of day laborers as a nuisance impacting community standards began to emerge during this time period. Municipalities were left with two options to address issues relating to day laborer solicitation: 1) enactment of local ordinances that would prohibit or severely restrict the right of day laborers to look for work and 2) the creation of city-sponsored centers or designated areas where day laborers could congregate (Cummings 2012; Dziembowska 2010). In response to this perception generated by complaints from home owner residents, businesses, law enforcement, and other key stakeholders, some municipalities became directly involved in establishing and operating day labor worker centers. However, the more common responses were the enactment of local ordinances to prevent day laborers from looking for work in public areas and the use of repressive policing tactics (Cummings 2012; Dziembowska 2010; Narro 2005–2006).

The city of Agoura Hills in Southern California was one example of this aggressive approach by some municipalities. In 1991 Agoura Hills enacted an ordinance that prohibited day laborers from soliciting work at roadside hiring points. The American Civil Liberties Union and other civil rights groups challenged the constitutionality of the antisolicitation ordinance, but a state court upheld the law in 1994. The LA County Sheriff's Department officials responded by harassing, chasing, arresting, and fining the day laborers in an effort to eliminate this informal labor market. This was an aggressive campaign, in which the expectation of law enforcement was to drive the day laborers away from Agoura Hills by all means necessary. Workers were ticketed for waiting for buses, walking down public streets, and even going to fast-food restaurants. The logic of the deputies was that they would use the antisolicitation of employment ordinance to ticket day laborers for being anywhere in the city limits as a strategy of driving them away through attrition (Cummings 2012; Dziembowska 2010; Narro 2005–2006).

Because of the demand for day laborers by the residents of Agoura Hills, a group of mostly Guatemalan workers continued to look for work there in spite of the oppressive environment created by the Sheriff's Department. This small group of day laborers, around thirty workers, organized themselves so that they could continue to look for work while evading the deputies. Many of these workers had fled the civil war of the 1980s in Guatemala, where they had participated in the insurgent movement against the military dictatorship. To avoid being apprehended and arrested by the deputies, they applied many of the same tactics that they had used in Guatemala to avoid being captured and killed by paramilitary troops and death squads. Despite the repressive and precarious nature of their employment reality, these day laborers took advantage of their informal labor circumstances and their histories to develop creative responses to the situation. Through worker decision making and a type of collective group monitoring, Agoura Hills became known as a model for innovative strategies for organizing day laborers (Cummings 2012; Dziembowska 2010).

On the other hand, cities like Los Angeles began to take a different approach. In 1986 a core group of immigrant rights advocates in LA created the Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA). CHIRLA was a community project created to implement the provisions of the Immigration Reform and Control Act of 1986 (IRCA). It received federal funding under the act to provide community outreach to and assist undocumented immigrants who qualified for legalization under its amnesty provision. Once the amnesty period ended, CHIRLA continued as a community-based organization that would advocate for the rights of immigrants in LA. As more and more day laborers sought CHIRLA's assistance with their amnesty applications, the organization began to turn its attention toward addressing issues that affected them, especially at street corners where they congregate daily. At the time CHIRLA did not have sufficient staff and financial resources to reach the more than two hundred day laborer corners spread across Los Angeles County. In 1989 CHIRLA staff developed the Adopt-A-Corner program, which relied on volunteers to visit day labor corners. They met regularly with day laborers to investigate conditions, and as appropriate, informed workers about their legal rights. The volunteers also met regularly with CHIRLA staff to share information and explore possible solutions to the harassment of day laborers by police and residents (Patler 2010; Dziembowska 2010).

CHIRLA's early efforts to educate day laborers about their rights paved the way for its role as an advocate for this workforce and a facilitator between day laborers and other community stakeholders. When the LA City Council proposed an antisolicitation ordinance in 1989, CHIRLA mobilized workers to protest, which led to the decision to forgo the ordinance in favor of a

resolution to open job centers where workers could look for work. CHIRLA also provided assistance when the city's Day Labor Program opened its first two job centers, one in Harbor City in 1989 and another in North Hollywood in 1990 (Cummings 2012; Dziembowska 2010). This LA city model would open up opportunities for the day laborer movement to create and promote worker centers as a vehicle for integrating day laborers into formal spheres of society, creating better job opportunities within the day labor market, advocating for worker rights, and elevating day laborers' status within the workforce (Dziembowska 2010).

1990s: ORIGINS AND MATURATION OF THE DAY LABORER ORGANIZING MOVEMENT

With the beginning of the wave of migration related to globalization, free trade agreements, and U.S. foreign policy, many in the immigrant rights movement began to focus on domestic issues relating to the plight of the newly arrived migrants (Bacon 2008). In California Governor Pete Wilson made Proposition 187 the hallmark of his reelection campaign in 1994. The campaign to defeat Proposition 187 energized the immigrant rights movement (Narro 2009), and the mobilizing around this legislation became a major focal point of the immigration debate. Even though the voters in California approved Proposition 187, it was successfully challenged in federal court. Although Proposition 187 never became law, it did create momentum in Congress to enact federal legislation that would replicate components of Proposition 187 in 1996 with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Welfare Reform Act, which denied benefits to legal immigrants (Milkman 2006).

In California CHIRLA worked with the now-defunct Northern California Coalition for Immigrant Rights to create a statewide effort to document and report the attacks on immigrants that were generated by the strong anti-immigrant climate created by Governor Wilson and Proposition 187. This report highlighted many of the violations of the rights of day laborers by local law enforcement officers, businesses that refused to serve them, and employers that exploited them. Proposition 187 created an anti-immigrant climate in California that had a direct impact on day laborers and the informal employment arrangements that sustain their work. At the same time that this initiative became a major focus of the gubernatorial campaign, the state appellate court upheld a lower court decision in the case of Agoura Hills that struck down the constitutional challenge. These two major factors created the climate in LA County that led to conflict in Ladera Heights (Cummings 2012).

THE HUMAN RELATIONS MODEL

As mentioned previously, during the 1980s and 1990s for many municipalities the congregation of day laborers for informal job solicitation was becoming a major issue, addressed through aggressive law enforcement measures or by enacting ordinances prohibiting day laborers from looking for work in public spaces. In Los Angeles, however, a new approach emerged to address the local impact of day labor solicitation through a human relations model of community engagement and negotiations (Cummings 2012; Dziembowska 2010; Patler 2010; Narro 2005–2006).

Two key elements for advancing the rights of day laborers began to evolve in Ladera Heights, an affluent neighborhood in an unincorporated area of LA County near West LA. These included leadership development through popular education and conflict resolution through stakeholder relations. In 1993, under pressure from the Ladera Heights Civic Association, the LA County Board of Supervisors proposed an antisolicitation ordinance that would ban day laborers from seeking work in all unincorporated areas of Los Angeles. The proposed ordinance would have limited employment solicitation in public streets and sidewalks within five hundred feet of a church, park, school, or residence. The proposal was in response to complaints that day laborers were loitering, obstructing traffic, whistling at women, drinking, and even engaging in theft (Cummings 2012; Dziembowska 2010; Narro 2005–2006). CHIRLA reached out to the workers, and after several meetings with them realized that the majority of the complaints were false or applied to only a few individuals.

CHIRLA attempted to diffuse community conflict through a process of community-based mediation. The goal was for this mediation process to reach a solution, thus preventing passage of the antisolicitation ordinance. The Mexican American Legal Defense and Educational Fund (MALDEF) sent a letter to LA County Supervisor Yvonne Burke, who agreed to mediation. CHIRLA organizers and MALDEF staff then engaged in a series of meetings with the day laborers. From these meetings, the day laborers selected three individuals who would represent them in the mediation sessions. They participated in face-to-face meetings with a core group of home owners from the Ladera Heights Civic Association. It soon became apparent that the home owners were unwilling to mediate. They rejected, without justification or explanation, every attempt by CHIRLA and the day laborers to offer possible solutions. Even the mediator assigned by the Los Angeles County Human Relations Commission became frustrated by the behavior of the representatives of the civic association. What added to this failed attempt at mediation was the growing anti-immigrant sentiment throughout California. The mediation effort

failed; however, this effort was the first documented process in which day laborer leadership development emerged as a focal point in addressing issues relating to day labor solicitation (Cummings 2012; Dziembowska 2010). In March 1994, faced with the failure of the mediation effort, the LA County Board of Supervisors approved the proposed antisolicitation ordinance. It permitted day laborers to continue to seek work in commercial parking lots, but banned them from sidewalks and streets (Cummings 2012).

Despite the fact that the ordinance passed and the formal mediation attempts did not succeed, CHIRLA and MALDEF developed positive relationships with some of the key stakeholders in the community and set up the Ladera Heights Task Force, whose goal was to create a space in which day laborers could congregate without obstructing traffic or generating other community complaints (Cummings 2012; Dziembowska 2010). The monthly meetings of the task force advanced CHIRLA's mission of fostering positive human relations through a strategy of bringing stakeholders together to resolve community conflicts and tensions. The monthly meetings included representatives from Home Base, the business property owner; the Sheriff's Department, residents; the LA County Human Relations Commission; the American Civil Liberties Union (ACLU); MALDEF; Public Counsel; and the day laborers themselves. In addition to engaging these key stakeholders to resolve tensions, the task force worked with the day laborers and Home Base to establish a designated area of the Home Base shopping center parking lot where day laborers could congregate (Cummings 2012; Dziembowska 2010). For this designated area to work, the day laborers had to be part of the decision-making process, assessing and deciding on the proposed designated area. Once they agreed, they created their own rules of conduct for self-policing (Cummings 2012; Dziembowska 2010). This process involved regular meetings at the designated area with the sheriff's deputy assigned to community relations. The strategy was to win the support of key stakeholders and facilitate direct communication between the workers and other community members.

This human relations organizing approach exemplifies popular education principles developed by the Institute for Popular Education in Southern California (IDEPSCA). By engaging the workers in a process of reflection and critical analysis, they begin to understand that they are able to create change; they can defend their rights and people can't simply exploit them. During this critical period, CHIRLA and IDEPSCA engaged key stakeholders in an effort to gain community support for day laborers and empower the workers at the same time. They employed popular education to develop leadership and help workers gain the skills to analyze their situation, reflect on their reality, and formulate and propose solutions. As a consequence of these efforts in Ladera Heights, complaints about traffic, harassment, drugs, and

loitering gradually dissipated and gave way to the human relations approach of community problem solving (Cummings 2012; Dziembowska 2010).

As CHIRLA and IDEPSCA took over the City of Los Angeles Day Laborer Program in 1997 and expanded their organizing work with day laborers, they replicated the Ladera Heights human relations model. From 1998 to 2000, CHIRLA and IDEPSCA began to connect with groups around the country that were organizing day laborers and dealing with community conflicts not unlike that in Ladera Heights. CHIRLA and IDEPSCA organizers traveled to Long Island, for example, to meet with organizers at the Workplace Project to help implement a human relations meeting with vocal stakeholder groups that were trying to get rid of the day laborers. During the same period, advocates from Casa Latina, CASA Maryland, the Denver Day Laborer Program, and other groups spent time with CHIRLA and IDEPSCA to learn about the Ladera Heights model. This process of sharing information and best practices became a key factor in the founding of the National Day Labor Organizing Network (NDLON) in 2001 (Dziembowska 2010).

Throughout the efforts to change the hearts and minds of key community stakeholders in their perception of day laborers, the organizers from CHIRLA and IDEPSCA realized the need for an impartial academic survey of day laborers in Los Angeles. They decided that a university-based study of day laborers would be a helpful tool in educating stakeholders, in particular residents and lawmakers, and dispel any strongly held misconceptions and stereotypes of day laborers. The organizers could also use this study to engage day laborers in popular-education-based workshops on how local communities perceive them and about their own self-perceptions as laborers looking for work on street corners. They reached out to UCLA Professor Abel Valenzuela, who had been studying day laborers in Southern California. Through UCLA's Center for the Study of Urban Poverty, Valenzuela was able to secure Ford Foundation funding to launch a major study profiling day laborers in Los Angeles. Valenzuela worked with the organizers from CHIRLA and IDEPSCA to create and train a team of surveyors composed of UCLA graduate students and day laborer leaders. Every day for a three-month period teams of surveyors would travel to day laborer corners and established centers throughout LA County to interview day laborers. The result was a UCLA report on day laborers in Southern California (Valenzuela 1999; Dziembowska 2010), the first-ever academic study on day laborers. It was a significant development in the history of day laborer organizing, because it provided the advocates with a useful resource to educate stakeholders, including the workers themselves. This report became an important organizing tool for day laborer advocates, enabling them to promote the human relations model, address day laborer issues with key stakeholders in a more humane

way, and legitimize the work and contributions of day laborers (Valenzuela 1999; Dziembowska 2010).

In this case, the promotion of a human and economic rights model with informal wage earners facilitated a process by which the community-employer-employee relationship could become more transparent through dialogue and political/community organizing. Informal wage employees traditionally are involved in a disguised, ambiguous, or multiparty employer relationship. By facing the complaints of the community and engaging in a popular education and know-your-rights approach, workers were able to garner local and national community support. This support, in turn, influenced the public and employer domain through local politics, media exposure, and community advocacy on behalf of the workers.

CREATION OF A SOLIDARITY NETWORK AMONG DAY LABORERS

Worker centers began to emerge during this period to reach out to immigrant workers in nonunion industries (Fine 2006). The employer sanction laws of the Immigration Reform and Control Act (IRCA) of 1986 created an environment of exploitation of undocumented workers in many low-wage industries (Fine 2006; Dziembowska 2010). The day laborer organizing movement took a major step forward when CHIRLA hired its first organizer, Pablo Alvarado, to begin organizing day laborers in the previously mentioned Ladera Heights. In Long Island, Jennifer Gordon founded the Workplace Project to begin organizing day laborers and domestic workers in that area. In Maryland and Washington, DC, Casa Maryland began to increase its educational and outreach programs for day laborers. At the same time, IDEPSCA's Day Laborer Association in Pasadena began addressing issues related to creating a hiring center (Dziembowska 2010).

With popular leadership development emerging as the heart of day laborer organizing, intensive outreach efforts continued to evolve at informal hiring sites. Increasingly, workers united to defend their rights. The maturation of local day laborer organizing in various parts of the United States coincided with the recognition that organizations engaged in local struggles were confronted by shared challenges and that these disparate efforts would benefit from exchanges of organizing philosophy and practice (Dziembowska 2010). As CHIRLA and IDEPSCA were able to generate more resources for day laborer worker centers and organizing projects, they launched a process of informal exchanges between organizers that led to the sharing of organizing and leadership development models. These models were quickly disseminated and replicated across the country. By the end of the decade, attempts were

made to create a more formal collaboration between day laborer organizations (Dziembowska 2010).

The first known effort to create solidarity among day laborers from different cities, which would become the foundation for the creation of the National Day Laborers Organizing Network (NDLON), took place in 1996 with a soccer match between day laborers from San Francisco and Los Angeles (Dziembowska 2010; Narro 2005–2006). Soccer turned out to be a critical space for implementing the human relations model, utilizing popular education as a tool for building solidarity among day laborers. Applying such a model created a sense of shared experiences and interests across workers and had the potential for unifying worker centers regionally and nationally.

Coordinating soccer matches among day laborer organizations, worker centers, and street corners was a natural way to organize given the sport's popularity among Latino immigrants. Integrating these dynamic social spaces to further develop worker trust, friendship, and solidarity became an essential strategy in the day laborer movement (Dziembowska 2010; Narro 2005–2006). On the street corner day laborers contended for jobs to survive daily, but on the soccer field they were engaged in a competitive match in which they were able to relate to one another in a different way. Soccer facilitated camaraderie and provided workers with many opportunities to relate outside the competitive environment of the job market (Dziembowska 2010; Narro 2005–2006). The workers and organizers discovered that many day laborers migrated up and down the West Coast to seek work in cities from San Diego to Seattle. Through a series of dialogues facilitated by the organizers, day laborers began to understand that the conditions and types of work in all locations were the same, but that the reactions by cities and treatment by employers were different (Dziembowska 2010; Pritchard 2009; Narro 2005–2006).

As mentioned previously, CHIRLA and IDEPSCA decided to collaborate in 1997 to manage and operate the City of Los Angeles Day Laborer Program. Over the next few years CHIRLA and IDEPSCA created an innovative strategy to use the program funding to expand beyond North Hollywood and Harbor City and open up new day labor worker centers throughout Los Angeles. They opened the Hollywood Community Job Center in 1998, the West LA Day Laborer Program in 1999, the Downtown Community Job Center in 1999, and the Cypress Park Day Laborer Center in 2000 (Dziembowska 2010; Narro 2005–2006).

INTER-CORNER CONFERENCES AND LEADERSHIP SCHOOLS

On March 16, 1997, day laborers from all over LA County gathered at the first *encuentro interesquinal* (inter-corner conference) at CHIRLA to discuss

and analyze the social, political, and economic issues affecting them and to develop strategies to confront the issues identified. The workers came from the City of LA program centers in North Hollywood and Harbor City, the Malibu Labor Exchange, Glendale Day Laborer Program, Agoura Hills, El Monte, Ladera Heights, Pasadena, and other centers. The worker participants made detailed drawings to describe the corner or center locations and explain their situations, including specific problems they faced, such as police abuse or tensions with residents and local businesses. Workers also discussed solutions to various problems that they were implementing, such as challenging commonly held misconceptions about day laborers by a process of self-policing themselves at the corners and connecting through a formal network. The first *encuentro interesquinal* concluded with the recognition that workers needed to organize (Dziembowska 2010).

In the next two years CHIRLA and IDEPSCA hosted five more intercorner conferences. Involving workers in decision-making processes and engendering a culture of participation were key principles applied in these conferences. CHIRLA and IDEPSCA organizers participated in the conferences as facilitators. Each *encuentro* focused on a specific issue decided on by the day laborer leader participants. The idea of self-organization was the primary topic under consideration at the second gatherings. Workers brainstormed what kind of an organization they would form and analyzed different models of organizational structures. The outcome of these *encuentros* was the creation of the *Asociación* (also referred to as the *Sindicato*). In a special worker assembly in 1998, the day laborer leaders from the various worker centers and organized corners participated in a historic election to elect the first board of directors for the *Asociación.* From 1998 to 1999, the *Asociación* would become the major vehicle for day laborer organizing in Los Angeles. The movement in creating the *Asociación* demonstrated the power of connecting different groups of day laborers with one another. This realization became the spark that led to the creation of NDLON in 2001 (Dziembowska 2010).

The Escuela Política was modeled after the *escuela de cuadros,* common throughout Mexico, Central America, and Latin America. Through this leadership school, day laborer leaders learned how to facilitate meetings, create agendas, and use computers. The school used a popular-education-based curriculum designed to develop critical thinking skills and teach workers how to engage in political analysis. As a consequence of these popular education workshops, a strong day laborer leadership emerged that would become the strategy of day laborer organizing. The participants integrated the school with the newly formed *Asociación* to become a leadership development program for its new leadership. Out of these efforts the idea of forming a national network of day labor organizations eventually arose. During the same time,

organizers from CHIRLA and IDEPSCA engaged in a series of exchanges with their counterparts from CASA Maryland in Washington, D.C, Workplace Project in Long Island, Casa Latino in Seattle, Worker Organizing Committee in Portland, and others. They shared their popular education curricula for day laborers and provided significant insights for the day laborer organizing movement in LA. This process of exchanges and relationship building would become the nexus for the creation of the National Day Laborers Organizing Network (NDLON) (Dziembowska 2010).

CREATION OF A SOLIDARITY NETWORK AMONG DAY LABORER ADVOCATES AND WORKER CENTERS

In addition to creating a strong solidarity network among day laborers from various cities, CHIRLA and IDEPSCA responded to requests from advocates and organizers in other states to assist them with organizing day laborers (Dziembowska 2010). The association created an informal apprenticeship program; organizers were sent to Los Angeles for two weeks to one month. CHIRLA and IDEPSCA trained organizers from Casa Latina in Seattle, the Workers Organizing Committee in Portland, Denver, and groups from other cities in the process of setting up day laborer worker centers. Participants shadowed CHIRLA and IDEPSCA organizers at worker centers and corners in a hybrid apprenticeship and technical assistance program that also provided workshops and hands-on technical assistance for community groups that were creating day laborer centers or worker projects. CHIRLA and IDEPSCA organizers also met with day laborer organizers from CASA Maryland in Washington, D.C., and the Workplace Project in Long Island, visiting each other's projects and exchanging organizing strategies. Through strategic planning and a solidarity support program, CHIRLA and IDEPSCA helped set up day laborer worker centers in Portland, Seattle, Austin, Denver, New Jersey, and Long Island (Dziembowska 2010).

Once these organizations were able to set up their day laborer programs, CHIRLA and IDEPSCA created a system of ongoing support and communication. Through this process they began to shift the focus to creating and sustaining a solidarity network of information sharing and ongoing support to address strategy and capacity development issues (Dziembowska 2010). This network development created a need for capacity and for more resources to sustain it. Consequently, CHIRLA and IDEPSCA made a strategic decision to change their organizing strategy and phased out the resources devoted to the movement building around the association. Instead, they prioritized working with these new groups to form a solidarity network in which they could support one another (Dziembowska 2010).

CHIRLA and IDEPSCA set up more visits with these groups to carry out a needs assessment of their internal and external capacity. This became the basis for a series of conference calls to connect these groups for the first time (Dziembowska 2010). The conference calls focused on sharing internal and external challenges and best practice approaches on how to address the challenges workers were facing. After a year-long process of conference calls and a few face-to-face meetings, the organizers from the groups within this network began to realize the potential for formalizing their structure to create a national network that would forge a national agenda to promote and protect the rights of day laborers (Dziembowska 2010). In addition, this group of organizers understood how a strong network could help them address internal and external capacity issues. Given the lack of worker center funds and limited human capacity to meet frequently, national conference calls offered this informal worker sector the opportunity to create a relationship-building process that led to the first-ever national gathering of day laborer advocates and worker leaders in Los Angeles in August 2001. It was at this historic gathering that more than 150 day laborers and organizers created NDLON (Dziembowska 2010).

The period from 1997 to 2001 marked the first systematic efforts to enhance the leadership skills of the day laborer workforce. Through retreats and intensive leadership trainings, day laborers were encouraged to recognize their innate leadership abilities and to see themselves as a force for community change. As the leadership trainings and workshops connected day laborers from different corners and hiring sites, the organizers themselves engaged in sharing their best practice models (Dziembowska 2010). Since this process of interconnection and relationship building began in 1997, day laborer organizers have developed into a unique group of low-wage-worker advocates. Through their efforts to improve the lives of day laborers, they have woven together elements of community and labor organizing with delivery of services, training, and political advocacy (Theodore 2011). Day laborer organizers are often underpaid and overworked, they come from diverse backgrounds, and they bring a rich history of community organizing through popular movements from their home countries. The more recent entries in the world of day laborer organizing are current or recent university students who combine talent with a passion for social and economic justice. The experienced day laborer veteran organizers of the past twenty years have become mentors for these new organizers in the movement (Theodore 2011; Dziembowska 2010). Another unique quality of day laborer organizing that grew out of the early efforts to empower the workers is the ability to pull day laborer leaders out of the leadership development process and mentor them so that they can become organizers. This approach to facilitating the workers' own leadership

capacities has helped establish a core group of organizers who came from the street corners (Theodore 2011; Dziembowska 2010)

NDLON has collected the variety of leadership development approaches of the past twenty years to create a road map for how to organize day laborers. The network's efforts to create a collective strategic framework for organizing work has solidified the relationships between the organizers and worker leaders from its member organizations. This effort has laid the groundwork for continuity in creating the next generation of day laborer organizers and leaders (Theodore 2011; Dziembowska 2010).

DEVELOPING WORKER CENTERS AND DESIGNATED AREAS

Since NDLON's founding, day laborer worker centers have continued to evolve and adapt to changing environments. Historically, as mentioned previously, these worker centers have created a more humane and just environment for the hiring process within the day labor market. Today, however, they face enormous challenges, including the need for greater administrative and development capacity, diversified and sustainable funding sources, balancing of service and organizational priorities, and political support.

NDLON's greatest strength is its ability to connect what would have been isolated worker centers and day laborer organizations so that they can replicate effective local strategies, share institutional wisdom, and effectuate changes that they could not otherwise accomplish on their own (Dziembowska 2010). With the changes in the political and economic landscapes, NDLON has been able to adjust its strategies to best support its member organizations by strengthening and consolidating centers and designated areas as workers' rights organizations, workforce development centers, and community-based social change institutions. Through NDLON's efforts, its worker center members and organized corners have developed the capacity to establish general assembly of workers, organize leadership worker committees, and incorporate worker leaders into the NDLON regional congresses. As it moves forward to the next stages of its historical development, NDLON plans to develop the worker centers and designated areas to promote and improve the services of day laborers through workforce development and marketing strategies to increase good job opportunities for day laborers. Related to this effort, NDLON will continue to duplicate its human relations approach model to working with community stakeholders—police officers, business owners, neighborhood groups, community groups, elected officials, and so forth—to foster trust and mutual agreements in addressing issues relating to day labor solicitation. NDLON plans to continue promoting the integration and engagement of day laborers in their local communities through community service day initiatives and

related work in the neighborhoods where they look for work. The network will continue to spearhead campaigns to address wage theft, health and safety violations, and other workers' rights issues while it is engaged in larger social justice efforts, such as the fight for comprehensive immigration reform, expansion of labor protections for all workers, health care reform, and other major issues.

STRATEGY TO DEFEAT ANTI-DAY-LABORER ORDINANCES AND PROMOTE FIRST AMENDMENT RIGHTS OF DAY LABORERS

Although the power to exclude immigrants resides with the federal government, anti-immigrant forces have fought to exclude them at the local level in cities with a high number of immigrant residents (Cummings 2012). In this fight, the workplace is an important battleground, both because it is often work that attracts immigrants and because labor law protections offer legal rights to immigrants otherwise denied to them (Cummings 2012). For those immigrants who labor and live in the shadows—in homes, garment factories, restaurant kitchens, and other "invisible" spaces—advocates have fought to expose their exploitation in order to make them more visible. They have sought to deprive employers of the ability to shield their abuses from the reaches of labor and employment laws (Cummings 2012).

The case of day laborers, however, has followed a different trajectory. Day laborers' practice of seeking employment in public areas makes them, unlike many other low-wage immigrant workers, one of the most visible immigrant groups in the country's economy. They are as a result uniquely vulnerable to extralegal repression and even violence (Cummings 2012). Day laborers have been the frequent targets of harassment by anti-immigrant activists and vigilantes, who treat day labor sites as the frontline of their vigilantism. At the local level, vigilantism has combined with other forms of opposition to day labor: residents claiming that day laborers intimidate them and create a dirty public space, businesses claiming that day laborers drive away customers and drive down prices, and public officials claiming that day labor snarls traffic and increases the risk of car accidents (Cummings 2012).

These perceptions and views culminate in the social perception of day labor as a public nuisance, which imposes a burden on a locality by disrupting normal patterns of business, traffic, pedestrian walking, and residential neighborhood norms (Cummings 2012). As mentioned previously, to remedy this nuisance, local jurisdictions have adopted a common strategy of enacting legislation, known as antisolicitation ordinances, designed to remove day laborers from the street corners—thereby undermining their ability to earn a

living. In this way, day laborers have become the target of state-sponsored repression, placing them at the forefront of the broader movement to mobilize for local government laws to criminalize immigrants (Cummings 2012).

In response to this situation, NDLON has prioritized addressing the deprivation of day laborers' civil right to seek work, rather than the economic hardships suffered by the workers during their employment. Doing so has meant challenging these ordinances on their own terms through litigation and organizing strategies grounded in the First Amendment right to free speech, which does not invoke immigration status as a factor (Cummings 2012; Dziembowska 2010; Narro 2005–2006).

As mentioned previously, NDLON and day laborer advocates have used the First Amendment as the framework through which to advance the long-term goal of helping day laborers build power to become key stakeholders in their efforts to look for work in public areas, create worker centers, and influence the day labor market to improve working conditions (Narro 2005–2006). Through a well-orchestrated and coordinated effort of combining impact litigation with an organizing strategy, NLDON has created a model of empowering and building power for workers. By framing the organizing strategy as the fight for the fundamental right under the First Amendment to solicit work in public areas, the NDLON organizers created a strong legal framework to advance the day laborer movement (Cummings 2012; Dziembowska 2010; Narro 2005–2006).

REGULATING DAY LABOR AS A PUBLIC NUISANCE

During the beginning in the 1980s, the growth of day laborers fueled local complaints that their presence constituted a threat to community safety and injured local businesses. These complaints suggested that day laborers constituted a public nuisance (1) to public safety (based on claims that day laborers created traffic congestion and accidents), (2) to public welfare (based on claims that they littered, urinated in public, bothered women, and generally intimidated residents), and (3) to private economic interests (based on claims that they undercut legitimate businesses and scared away customers) (Cummings 2012; Narro 2005–2006; Dziembowska 2010).

This perception of public nuisance categorized day laborers as outsiders intruding into a local community where they became incompatible with the social and economic qualities of their immediate surroundings. This status of day laborers as outsiders and intruders was reinforced by the perception among anti-immigrant factions that they were undocumented immigrants with no legal right to be in the community and that they were there to take jobs away from local residents (Cummings 2012; Narro 2005–2006; Dziembowska 2010).

Against this backdrop, the nuisance frame not only fed the growing local opposition to day laborers by key stakeholders, it also gave municipalities a legal avenue to regulate them (Cummings 2012). The argument made by local jurisdictions was that localities could use their land use authority to restrict the congregation of day laborers on street corners (Cummings 2012). By enacting antisolicitation ordinances restricting day laborers' access to public spaces, municipalities claimed to regulate conduct—rather than status—thus avoiding the controversy over the local enforcement of immigration law (Cummings 2012). Accordingly, the emphasis on fighting for the rights of day laborers shifted from enforcing labor protection laws to protecting civil liberties—though the two were inextricably linked (Cummings 2012; Narro 2005–2006). Ensuring day laborers' civil right to seek work became a political precondition to protecting their labor protection right to be treated fairly while actually engaged in the act of working (Cummings 2012; Narro 2005–2006).

FIGHTING FOR THE FIRST AMENDMENT RIGHTS OF DAY LABORERS

When the Day Laborer Association was created in 1999, MALDEF had successfully litigated against Proposition 187 and was preparing for a legal challenge to the LA County antisolicitation of employment ordinance. MALDEF met with CHIRLA and IDEPSCA to formulate an innovative strategy of using the litigation to help strengthen the Day Laborer Association and promote the First Amendment right of day laborers to look for work (Cummings 2012; Dziembowska 2010; Narro 2005–2006). The Day Laborer Association became the key plaintiff in this lawsuit. The organizers at CHIRLA and IDEPSCA used the lawsuit as a tool for promoting and advancing the goals of the Day Laborer Association. They integrated the litigation into their leadership development strategy for day laborers, using popular education methodologies to train workers on the U.S. Constitution and their First Amendment rights. The creative lawyering behind the legal approach of challenging the constitutionality of this restrictive ordinance became a well-integrated organizing strategy for empowering day laborers. The goal was for the day laborers to use the federal court victory and the First Amendment to defend themselves against violations of their civil liberties and to legitimize day laborers as residents of the community where they sought work (Cummings 2012). One year later, this litigation resulted in a major federal court victory; the federal judge struck down the ordinance as unconstitutional and in violation of the First Amendment rights of day laborers. This court victory affirmed the organizing strategy of day laborers based on their right to look

for work under the First Amendment (Cummings 2012; Dziembowska 2010; Narro 2005–2006).

CITY OF REDONDO BEACH CAMPAIGN

For at least twenty years day laborers have congregated at two main intersections in Redondo Beach, California, to seek employment to feed their families. On any given day, between 20 to 150 men wait there for work. Day laborers are not the only people to occupy and utilize these locations: hundreds of subcontractors, entrepreneurs, and small business owners make a regular practice of meeting and hiring workers to do a variety of work, including construction, demolition, lawn care, masonry, carpentry, tiling, painting, roofing, drywall construction, and landscaping, among others (Narro 2005–2006).

NDLON staff first met with the day laborers in Redondo Beach in September 2004. Together with MALDEF, NDLON compiled a list of cities in Los Angeles County that have dormant antisolicitation ordinances. NDLON organizers visited the corners in Redondo Beach as part of a survey of the Los Angeles area to determine whether local police were enforcing, or threatening to enforce, their respective ordinances. During the visits, workers assured NDLON staff that there was no police harassment. Relations on the corner were relatively harmonious, and workers reported extremely high rates of employment.

On October 6, 2004, one month after NDLON completed its survey, the City of Redondo Beach initiated a massive crackdown on day laborers. During the course of a month-long effort, more than sixty workers were arrested, detained, and charged with violations of a municipal law forbidding the "solicitation of employment from streets." Through a series of sting operations, local undercover police officers dressed as contractors posed as potential employers of day laborers. They offered to hire the day laborers, and when the workers got in the unmarked police trucks, they were driven straight to the police station and placed in custody. In an initial two-day sting operation, undercover police officers arrested thirty-seven men for seeking work on a public sidewalk in violation of a local municipal ordinance (Cummings 2012; Narro 2005–2006).

The organizing and litigation response that followed marked a historic turning point not only in the advocacy work for the rights of day laborers, but in the exercise of power by an organization that had only been in existence for three years. Several day laborers in Redondo Beach called NDLON to ask for help, and NDLON organizers immediately began to assist Redondo Beach day laborers in responding to the police crackdown. During several daily

meetings on the street corners, NDLON staff provided "know your rights" training for workers to prepare them for their criminal hearings and for future police encounters. In addition, NDLON organizers discussed the history and mission of the national network with local workers and offered a long-term commitment to stand with the local day laborers if they decided to organize and fight the police crackdown. Local day laborers were encouraged to take ownership over their struggle. If they decided to fight back, they would receive organizing support from NDLON staff and civil legal representation from MALDEF attorneys (Narro 2005–2006).

Many of the arrested workers were recently arrived immigrants who were unaware of efforts to organize and work collectively to defend their rights. After prolonged discussions about whether it was worth the effort to assert their rights, workers on the corner voted unanimously to join together and form the Comite de Jornaleros de Redondo Beach. The Comite decided to serve as plaintiff in the federal lawsuit and act as the vehicle for collective action and responses. NDLON staff accompanied the day laborers to their criminal hearings to translate and to assist workers in requests for public-defender representation. Before NDLON staff were present, workers in almost all instances were not aware of their right to request public defenders. In fact, those previously arraigned often thought the prosecuting attorneys with whom they made plea arrangements were their public defenders. After NDLON provided linkages between arrested workers and public defenders and oriented them to the criminal court process, all of the workers began to request continuances for their hearings for the same date so they could return together for future hearings (Narro 2005–2006).

While the workers sought extensions on their criminal charges, NDLON and MALDEF staff quickly gathered testimony and evidence from local day laborers to prepare a lawsuit against Redondo Beach. Through this process and during a series of "corner meetings," workers were consulted about the preparations for litigation challenging the "anti-day-laborer solicitation" ordinance on First Amendment grounds. In a few weeks the federal complaint was ready, and the workers prepared for a march to announce the filing of the lawsuit. Meetings were held in a nearby Catholic church, where workers prepared protest signs and informed each other about developments in the campaign (Narro 2005–2006).

On November 17, 2004, Redondo Beach day laborers publicly launched their response against Redondo Beach city officials. Approximately 250 day laborers, union supporters, community organization representatives, and others staged a march down the Pacific Coast Highway. Local attorneys served as legal observers for the march, which was held without a permit. NDLON member organizations from around Los Angeles brought carloads of day

laborers from their centers to march in solidarity with the arrested workers. For two miles, workers walked and chanted "*trabajo si, policia no*" ("work yes, police no") (Narro 2005–2006).

The march ended with a press conference and rally in front of Redondo Beach City Hall, where a group of day laborers symbolically served the lawsuit complaint to the city, initiating the legal battle. Arrested workers gave speeches and testimonials to denounce their treatment by local police. Attorneys from MALDEF explained the basis for the lawsuit, that solicitation of work in public areas is protected free speech under the First and Fourteenth Amendments. NDLON members from around the country sent e-mails and letters demanding that Redondo Beach cease enforcement of its antisolicitation law. During the press conference, a clear message for the campaign emerged: looking for work is not a crime. Media coverage of the story was extensive. In a city where day laborers are a familiar sight, the protest garnered major media and public attention. Almost all of the local television, radio, and print media outlets and affiliates picked up the story. Workers from Redondo Beach, briefed on the specific details of the complaint and the campaign, provided interviews on television and on radio talk shows. The city defended its actions to the press by asserting that the day laborers littered, urinated in public, and threatened passersby. Workers responded by noting that if those accusations were true, the city need not arrest them for merely seeking work. In a very short period of time, the workers had shifted the terms of the debate from one about the concerns of local businesses to one highlighting the human right and First Amendment right to seek jobs in public areas to earn a living (Cummings 2012; Narro 2005–2006).

On December 6, 2004, the Redondo Beach day laborers won a major victory in federal court. Federal District Court Judge Consuelo Marshall issued a temporary restraining order to halt future citations and arrests by the city. The judge found "serious questions" about the constitutionality of the ordinance and noted that the balance of hardships in the lawsuit favored temporarily siding with the day laborers. Shortly thereafter, NDLON and the Comite scored a second court victory when Judge Marshall issued a preliminary injunction to allow the day laborers to continue seeking employment while the litigation continued. In her decision, she expressed her concerns over the constitutionality of the ordinance (Narro 2005–2006). The City of Redondo appealed the decision to the Ninth Circuit Court of Appeals. The Ninth Circuit Court of Appeals overturned Judge Marshall's decision. NDLON immediately petitioned for a hearing en banc before a panel of all the judges of the Ninth Circuit Court of Appeals. The hearing was granted (Cummings 2012).

On September 16, 2011, the Ninth Circuit Court of Appeals reversed its prior decision and overturned the ordinance, finding that day laborers have a

First Amendment right to solicit work along California roadsides and that the ordinance was geographically overinclusive. Redondo Beach officials indicated that they would appeal the Ninth Circuit Court of Appeals decision to the U.S. Supreme Court. On February 7, 2012, in a historic decision for the rights of day laborers, the Supreme Court denied Redondo Beach's petition for review, which allowed the Ninth Circuit Court of Appeals finding to become final (Cummings 2012). This decision came out on the first day of the seventh NDLON national assembly in Los Angeles.

Currently in Redondo Beach, NDLON organizers and the workers continue to meet together to seek a long-term resolution to the conflict. The Ninth Circuit Court victory has provided them with the opportunity to establish the strategic analysis and framework for a political and community organizing campaign in Redondo Beach. The legal victory also created tremendous leverage for day laborers to negotiate possible solutions with city officials, police, businesses, and community residents (Cummings 2012).

In terms of the impact of this local campaign, the organizing effort and court victory in Redondo Beach garnered much local and national attention. They influenced the approaches of other municipalities and local governments in addressing day-laborer issues. In Los Angeles, for example, a city council member introduced an ordinance that would require all new Home Depots and other home improvement stores to provide funding for the creation and operation of day laborer centers on their property. The proposed ordinance did not prohibit day labor solicitation in any way and is the first such law requiring home improvement stores to create and support day laborer worker centers (Narro 2005–2006).

AFL-CIO WORKER CENTER PARTNERSHIP

NDLON developed an impressive ability to work through the media to shape the day laborer and immigration debate while backing its stories with concrete data gathered through research endeavors in collaboration with academic institutions. The maturity of day laborer organizing, and NDLON's ability to combine grassroots efforts with policy advocacy to protect migrant and worker rights, set the conditions for NDLON to enter into a historic partnership agreement with the AFL-CIO. This accord brought more legitimacy and recognition to NDLON nationally and also enabled the AFL-CIO to play an increasingly crucial role in the federal immigration debate.

During the summer of 2006, a delegation from the AFL-CIO came to Los Angeles to meet with NDLON, which took them to the Agoura Hills day labor site, where the white union officials watched the day laborers

deciding whether to increase the minimum wage at the corner from $12 to $15. When eighty-five out of one hundred day laborers raised their hands to increase the minimum, the AFL-CIO officials said, "That's how the unions began!" Discussions about a formal affiliation began as the two sides realized the benefits of helping one another. The AFL-CIO officials were moved by a desire to build support among immigrant workers. They were interested in connecting the growing worker center movement with organized labor. For NDLON, the motivation was to create a strong political alliance that would enable the network to further protect the rights of day laborers, who at that time were the main targets of a growing local and national anti-immigrant movement. NDLON realized that the AFL-CIO could become a formidable political ally in its efforts to influence the immigration reform debate so that day laborers were not left out of policy reforms or singled out for attacks. Furthermore, NDLON believed that in time the relationship with the AFL-CIO could enhance ties with local unions, thus enabling day laborers to benefit from construction apprenticeship programs and become union members themselves. The AFL-CIO felt that a national partnership agreement with NDLON would be the best starting point to launch its new initiative, known as the AFL-CIO National Worker Center Partnership. On August 9, 2006, at the AFL-CIO Executive Council meeting in Chicago, the AFL-CIO and NLDON signed a national partnership agreement to support the rights of day laborers. The historic agreement was part of a process of dialogue and negotiations that took place both with the AFL-CIO and among NDLON members during that summer. Under this agreement, the AFL-CIO and NDLON would work together for state and local enforcement of labor rights as well as the development of new protections in areas including wage and hour laws, health and safety regulations, immigrants' rights, and employee misclassification. They would also work together for comprehensive immigration reform that supports workplace rights and includes a path to citizenship and political equality for immigrant workers. NDLON members and other worker centers will benefit from the labor movement's extensive involvement and experience in policy and legislative initiatives on the local, state, and national levels. This partnership would also benefit AFL-CIO unions and local labor bodies by establishing channels to formally connect with local worker centers to expose abuses and improve workplace standards in various industries, to the benefit of all workers. Under this partnership, worker centers would be able to join the local central labor councils of the AFL-CIO through a solidarity membership process.

The AFL-CIO and NDLON partnership has resulted in integration of NDLON groups in central labor councils as solidarity members. Also, the

partnership has provided NDLON members with an invaluable ally in the political fight against local, state, and federal initiatives targeting day laborers. The fight against a federal initiative in 2008 backed by Home Depot Corporation highlights the importance of this political alliance with the AFL-CIO.

CONCLUSIONS

Day laborers as an informal workforce are exposed to a series of daily hardships such as employer exploitation and wage theft, police harassment, community repression, and health and safety dangers, to name a few. This reality has required day laborers and worker centers to develop new and innovative strategies that take into account the nature, physical space, and employment status of this workforce. While the informal wage employee has historically been stripped of basic labor and civil protections, this chapter has attempted to offer various examples of cases in which, despite informal sector limitations, day laborers and worker center leaders have been successful in organizing around legal and constitutional issues, human relations and community building, institutional sustainability, and leadership and capacity development.

The right to organize and be represented is at the core of any labor rights organizing, but it is also at the center of a human and economic rights agenda for working people. To ensure that these rights are appropriately framed and properly enforced, informal economic actors need to build representative voices in the processes and institutions that determine the policies that affect them. This requires building organizations of informal workers and extending membership in existing trade unions and other worker organizations to informal workers. Ultimately this requires making rule-setting and policy-making institutions more inclusive and ensuring that representatives of the informal sector have a visible seat at the table.

NOTE

1. According to Chen (2009), the International Labour Organization has expanded its definition of the informal economy to include the *self-employed in informal enterprises* as well as the *wage employed in informal jobs* in both urban and rural areas.

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6

Undocumented Immigrants and Self-Employment in the Informal Economy

Steven J. Gold

INTRODUCTION

Undocumented immigrants' entry into the United States is frequently motivated by their desire to obtain employment. Yet their lack of legal status stands as a major obstacle to finding work and makes them subject to abuse by employers who know that they have little recourse if they are exploited. Accordingly, to avoid difficult and risky interactions with employers, a considerable number of undocumented immigrants become self-employed. As the number of undocumented immigrants in the United States has increased in recent decades, so has their self-employment in the informal economy.

Research demonstrates that informal economic activities are well suited to contemporary economic realities. For example, informal firms are efficient, keep costs down, permit innovation, and allow owners to avoid restrictive regulations associated with wage levels, hours, environmental protection, occupational safety, benefits, taxes, zoning, and the like.

While it is difficult to collect accurate information about the informal economy, research shows that it is quite large and economically important. Popular stereotypes suggest that the informal economy is the province of very small businesses, unskilled and marginal workers, and low wages. However,

systematic investigation reveals that this view is largely unfounded. Rather, the informal economy is more dynamic and more economically significant than many experts have assumed.

Further, while it is true that undocumented immigrants are among the groups active in the informal economy, its participants are not limited to marginal and unskilled personnel. It also involves persons with professional skills, legal status, and access to investment capital. These include engineers, entrepreneurs, skilled craftspeople, and purveyors of luxury merchandise (Sassen 1988).

Whether those involved are immigrants or native born, living at the subsistence level or with middle-class comforts, the behaviors of participants in the informal economy challenge widely held assumptions about "one man (person), one job." Instead, several reports indicate that those active in the informal economy generally engage in multiple ventures to maximize income and flexibility, try out new activities, and participate in multiple social networks. In other words, they often "moonlight." "The fact that informal activities are not captured when conventional labor-force status items are used suggests that immigrants' economic activities are underreported in most national surveys" (Raijman 2001; Williams 2007).

Immigrants may combine employment in the formal economy with several forms of informal self-employment; they may receive government benefits while supplementing their income with informal activities to avoid jeopardizing their eligibility; or, like students, the retired, or housewives, they may generate income but do not consider themselves to be employed.

Despite their informal status, such enterprises sometimes do contribute to public coffers, through the payment of fees and taxes via the use of an Individual Taxpayer Identification Number (ITIN)—often at higher rates than required for formal businesses or W-2 employees. (Though the total amount contributed is unknown, according to the IRS, about 1.5 million new ITINs were assigned annually from 2006 to 2011.) Such funds do "contribute to the overall solvency of Social Security and Medicare." Informal entrepreneurs pay taxes out of a sense of obligation to the larger society, in order to maintain eligibility for obtaining citizenship at a later date or to avoid legal trouble (Associated Press 2008; Almendral 2013). Because they seek to conceal themselves from public view, such businesses and their owners are much less likely to consume public services than is the case among merchants in the formal economy (Sassen 1988).

As noted by sociologists Müller and Arum (2004) and Raijman (2001), growing numbers of persons in both the formal and informal sector are forced into informal self-employment by employers, even as they continue to perform the same duties. By making employees into independent contractors

who are paid to perform specific services, large companies limit their responsibility for workers and reduce their culpability for violations of labor laws and other regulations. Because such persons continue to work for large corporations, sociologist Rebeca Raijman refers to them as "disguised wage labor," produced by the *demand side* of the informal economy (2001). At the same time, *supply side* motives for informal self-employment are associated with the growing number of workers who seek earnings in the informal sector, either because of particular advantages for doing so or because work in the formal economy is not available (more on this below).

Academics, policy makers, and law enforcement officials often blame immigrants, disadvantaged minorities, and regulation-skirting entrepreneurs for the existence of the informal economy. However, a growing number of scholars and social activists acknowledge that while certain marginal populations are especially active in the informal economy, they cannot be held responsible for its existence. Rather, the informal economy endures and even flourishes because of social, financial, and legal patterns reflected in contemporary economic conditions—including global competition, high rates of unemployment, costly and restrictive regulations, and the inability of established firms to adapt to ever-changing environments—which make unregistered ways of doing business more rewarding, efficient, flexible, and responsive than is possible among regulated endeavors.

CURRENT PERSPECTIVES ON INFORMAL ENTERPRISE

Prior to the 1970s social theorists noted the existence of the informal economy, but linked it to underdevelopment (Geertz 1962). They assumed that with the passage of time and with economic modernization, government planners and major enterprises would have enough skill in managing economic growth and extending its benefits throughout society that small, community-based enterprises—including informal operations—would become both unprofitable and unnecessary (Cross and Morales 2007; Bonacich and Modell 1980).

After the economic shocks of the 1970s—which combined growing unemployment with escalating inflation and fiscal austerity—this view began to change. Scholars acknowledged that informal economic strategies based on kinship and community were not limited to preindustrial settings, but were viable in postindustrial locations as well (Gaughan and Ferman 1987, 24). We now recognize the prevalence and importance of informal economies in locations epitomizing economic development, including New York, London, Los Angeles, Paris, Tokyo, and Amsterdam.

Saskia Sassen sees the informal economy as vital to satisfying needs associated with groups at opposite ends of the urban economic hierarchy. In a series

of activities associated with immigrant and minority communities identified as the *isolated sector,* it delivers basic consumables to marginal groups who cannot afford to fill their needs through established businesses. On the other hand, the *integrated sector* of the informal economy caters to the specific and just-in-time production demands of major corporations and cutting-edge firms and allocates the luxury goods and services prized by the high-income populations that work for them (1994).

Economists and policy makers sometimes object to informal enterprises on moral grounds, viewing them as deviant, socially destructive, and of limited economic impact. In recent years, however, many pragmatic scholars and bureaucrats have abandoned such judgments and instead have evaluated their social benefits and costs on an empirical basis (Portes and Haller 2005; Miller 1987). Reflecting this perspective, a growing body of theorizing and research acknowledges the importance of informal entrepreneurship in the global economy. While earlier analyses assumed that the informal economy consisted of inconsequential enterprises like babysitting, selling matches, or collecting scrap, theorists now realize that the informal economy plays essential roles in allowing large-scale and cutting-edge industries to function. Further, patterns of work associated with the informal economy, including its low cost, creativity, and openness to unorthodox ways of doing business, make it vital to many forms of innovation that benefit large-scale firms and stimulate economic growth (Light 2004; Sassen 1991).

For example, using subcontractors, who are often members of immigrant or ethnic groups, permits major firms to manufacture products within global cities rapidly and inexpensively. The existence of such manufacturing schemes allows firms to combine the low cost and labor discipline of third world settings with the proximity and control of local production in centers of finance, media, and culture (Bonacich and Appelbaum 2000). Informal businesses also provide a wide array of services such as cooking, cleaning, child care, delivery, moving, security, transport, remodeling, dog walking, plant care, sex work, clerical services, and health care. They also staff hotels, restaurants, airports, industrial parks, and other locations, which are essential to cutting-edge corporate and governing processes.

Defining the Informal Economy

A major challenge confronting scholars and policy makers who are interested in examining the impact of informal entrepreneurship is definitional. How can one distinguish between benign forms of unregulated commerce, on the one hand, and socially destructive criminal enterprises, on the other?

While there are a variety of schemes for categorizing the informal economy, Castells and Portes provide a simple distinction among formal, informal, and illegal businesses (1989). The *formal economy* includes enterprises that deliver goods and services in conformity with laws and regulations. The *informal economy* consists of unregulated and unrecorded economic activity that occurs off the books and pays no taxes.[1] Finally, the *illegal economy* encompasses the production and distribution of legally prohibited goods and services, such as drugs, prostitution, and illegal gambling.

Because of the stigma associated with the illegal economy, most analysts who emphasize the positive impact of informal entrepreneurship exclude such activities from their analyses (Losby, Kingslow, and Else 2003, 20). Nevertheless, research by economist Robert Fairlie demonstrates that entrepreneurial skills (and investment funds) acquired in the illegal economy are applicable to the running of legitimate enterprises (2002). Of course there is significant overlap in these three subcategories. Finally, sociologists realize that categories such as normal, deviant, criminal, and illegal are socially defined and subject to change (Light and Gold 2000; Becker 1963).

Measuring Informal Entrepreneurship

Measuring the size of the informal economy is difficult because its participants seek to conceal the income it creates. However, researchers who have developed various techniques for estimating its size generally conclude that it is considerable and has important economic and social impacts. True, some fraction of those involved are members of marginal and disadvantaged groups, such as undocumented immigrants, racial and ethnic minorities, people with few skills or educational credentials, and ex-convicts. Conversely, well-educated persons from relatively high-status backgrounds, with significant education and skill and access to capital and those currently employed in the formal economy are also involved.

A census-based estimate found that informal employment and entrepreneurship accounted for 9.4 percent of the U.S. economy in 1980 and 8.1 percent in 2000 (Portes and Haller 2005). A study by the U.S. Internal Revenue Service found that 47 percent of workers classified as independent contractors did not report any of their income for tax purposes. Hence, almost half of independent contractors can be considered informal entrepreneurs (Molefsky 1981, 25). Another means of measuring the size of informal entrepreneurship concerns concealed unemployment. Several economists have concluded that about 20 percent of those officially listed as unemployed in the United States are actually active as workers or entrepreneurs in the informal economy (Portes and Haller 2005, 413).

An estimate of involvement in the U.S. informal economy, based on data collected by the Survey Research Center of the University of Michigan, found that over $72 billion was spent on informal purchases in 1985, an amount representing almost 15 percent of all expenditures that year. The same source found that 83 percent of all households made use of at least one informal supplier. Home repairs and improvements, food, child care, other personal and domestic services, and auto repairs were the leading areas of informal spending (McCrohan, Smith, and Adams 1991). The U.S. Bureau of Labor Statistics estimated that some 260,000 workers seek employment on street corners throughout the country (U.S. Bureau of Labor Statistics 2001).

With respect to specific localities, the value of untaxed street corner sales in Los Angeles County was estimated to be $250 million in 2002 (Barrett 2002). A 2002 study of informal employment in Los Angeles estimated that the region had 500,000 more employed residents than jobs reported by employers and that in Southern California, "self-employment has often been associated with the informal economic activity because it offers more flexibility and is typically less accountable than waged and salaried employment. In fact, a number of researchers have used self-employment as an estimate of the informal economy" (Joassart-Marcelli and Flaming 2002, 6). Finally, Valenzuela counted between twenty thousand and twenty-two thousand day laborers at ninety-five sites in Southern California in 1999 (Valenzuela 2001).

In 1993 a *New York Times* article cited an estimate from the New York City comptroller that the unreported economy was $54 billion, or 20 percent of the city's retail sales. The same article estimated that street vending in New York—which included some ten thousand unlicensed vendors—was a $300-million-a-year industry; that illegal industrial homework, involving garment work and the assembling of goods in private homes, generated $1 billion worth of business annually; and that there were some five thousand informally run apparel sweatshops in New York's five boroughs (Sontag 1993).

Earnings of Informal Entrepreneurs

Individual earnings from informal self-employment vary considerably and are not always small. In a study of informal economic activities among twenty documented and eighteen undocumented Latinos in New Jersey, Edgcomb and Armington (2003) found that earnings ranged between $27 and $4,600 each month, with the average revenue being just under $800 a month. These thirty-eight respondents owned a total of fifty-one businesses. Sixteen respondents claimed that their economic activities in the informal sector were necessary for survival rather than being the result of personal choice.[2]

Among Southern California day laborers, the mean yearly income was slightly above the poverty threshold for a single family in 1999. The mean hourly wage of $6.91 was about $1.75 higher than the federal minimum wage and about $1.15 higher than the California State minimum wage. At this rate, full-time, year-round employment would earn a day laborer about $14,400, almost 175 percent above the federal poverty threshold for a single person in 1999. However, because day labor is unstable, workers are likely to earn less than that amount. That being said, being a day laborer in Southern California "is certainly comparable to other types of low-skill and low-paying jobs in the formal market, and the mean yearly income is about $200 above the federal poverty threshold" (Valenzuela 2001, 347–348).

The Appeal of Informal Entrepreneurship

Researchers offer several reasons that workers become involved in informal self-employment. Perhaps the most commonly cited reason is that other sources of income—including work and public assistance—if available at all, are so small that they must be supplemented to ensure recipients' survival (Edgcomb and Armington 2003, 21). According to sociologist Rogers Brubaker, undocumented immigrants' concentration in the informal economy is generally a consequence of their low level of skill, not of their lack of legal status:

> The low economic status of noncitizens results not from their lack of citizenship but from such factors as their geographic concentration in declining industrial areas, their relatively low educational attainment, their relative lack of the skills that are highly rewarded by the job market, their lack of seniority, their difficulties with the native language, and the ethnic or racial discrimination on the part of employers in firing, promotion, and hiring decisions. (1989, 154)

Since the loss of well-paid, unionized manufacturing jobs in the 1970s and 1980s, positions available to less-skilled immigrants have been characterized by undesirable features: "Noncitizens are overrepresented in jobs that are dirty, dangerous, exhausting, menial, unpleasant, strenuous, monotonous, insecure, badly paid, low status or low skilled" (Brubaker 1989, 154). Therefore other means of earning a living are actively sought.

Some employers seek out and even recruit the undocumented because of their desire to minimize wages and augment control over labor (Gold 1994a; Delgado 1993; Krissman 2000). For example, historian Mae Ngai demonstrates that representatives of big business and big agriculture have traditionally favored the easy entry of immigrants for this purpose (2004). However,

several studies point to supply-side explanations for migrants' involvement in the informal economy. Such findings suggest that some fraction of undocumented immigrants intentionally seek positions in it without being compelled to do so. For example, a study of undocumented immigrants' participation in ethnic restaurants found that "owners insisted that there was no conscious and purposeful targeting of illegal immigrants [as workers] per se, rather they simply turn up fortuitously in the course of general recruitment procedure" (Jones, Ram, and Edwards 2004, 106).

As sociologists Daniel Bell and Robert Merton have argued, there is generally a demand for various goods and services that are illegal or excessively expensive to obtain legally (Bell 1960). Accordingly, ambitious persons lacking the resources required to earn a living in the formal economy will often accept the risk involved in filling such demand. Informal enterprises provide a mobility ladder for those with high aspirations but limited ability to obtain legitimate income:

> Certain subgroups and certain ecological areas are notable for the relative absence of opportunity for achieving these (monetary and power) types of success. They constitute in short, sub-populations where the cultural emphasis upon pecuniary success has been absorbed, but where there is *little access to conventional and legitimate* means for attaining such success. . . . [T]he result is a tendency to achieve these culturally approved objectives *through whatever means are possible.* These people are on one hand "asked to orient their conduct toward the prospect of accumulating wealth [and power] and on the other, they are largely denied effective opportunities to do so institutionally." (Merton 1957, 77)[3]

Due to their origins in cultural contexts different from those of the mainstream United States, members of immigrant and ethnic groups often desire goods and services, ranging from cockfights to Peking duck (which is prepared under conditions that violate established food safety regulations), that cannot be legally sold in the United States (*Nation's Restaurant News* 2000). Accordingly, if they are to acquire these commodities, they must do so via unregulated sources.

Lacking the assets needed to open businesses, including investment capital, business experience, education, familiarity with the mainstream culture, language skills, and legal status, but immersed in family and community networks, impoverished immigrants and minority group members find the informal economy particularly well suited to their economic needs and resources.

Immigrant workers often draw on premigration experience when seeking income in the U.S. society. As Fairlie and Woodruff found, the self-employment rate in Mexico is considerably higher than in the United States (2007). Accordingly, when faced with economic problems, Mexican immigrants are likely to

turn to self-employment. They may be unaware of various regulations associated with working in the host society and may expect to work under nonchalant conditions associated with personal agreements. For these reasons, Valenzuela attributes the motives of informal business owners to both disadvantage (they lack other viable means of earning a living) and values (they enjoy greater independence and realize benefits from being self-employed that would be unavailable under other work conditions).

Sociologists Marta Tienda and Rebeca Raijman (2000) discovered that in Chicago's Little Village undocumented Mexican men and especially women are extensively entrepreneurial. Describing these patterns of work as "quasi-employment," these scholars observed that Little Village residents combined multiple forms of entrepreneurship (such as child care, food preparation, street corner sales, and home repair) with regular and informal employment, bartered exchange of domestic services (like sharing food and taking in boarders), and occasionally collecting government benefits. These manifold forms of income generation enhance earnings and levels of consumption, help group members cope with a slack economy, allow customers to acquire basic services at a low price, and assist budding entrepreneurs in amassing both the skills and the investment capital required to transform informal businesses into formal ones.

The Community Context of Informal Businesses

Undocumented immigrants often have skills and resources that allow them to fulfill coethnic consumer needs in low-income communities that members of other populations cannot satisfy. Social and economic relations within such communities follow distinct norms, sometimes clearly unlike those predominant in other realms of society. In many cases, resources are based on family or communal relationships, location of residence, or other factors and are difficult for outsiders to access. In contrast, living close to customers and maintaining relatively small stocks of goods, coethnic vendors can gauge shifts in demand and adjust their inventories accordingly and thus respond to changing conditions faster than established firms can (Austin 1994, 2119). Within such environments, norms regarding cooperation that have developed to ensure mutual survival can also allow individuals to make use of one another's resources in ways that downplay economic individualism and encourage the distribution of money and other goods collectively (Levitt 1995).

Research by Small and McDermott suggests that low-income, nonimmigrant black neighborhoods with shrinking populations in poor cities of the northeastern and midwestern United States are associated with few local enterprises. In contrast, densely populated, low-income immigrant neighborhoods

in more affluent cities of the South and West are likely to have more small-sized businesses, but relatively few large ones (2006, 1716).

Consumer Markets and the Color Line in Informal Entrepreneurship

At least since the late nineteenth century, discriminatory practices have largely prevented African American entrepreneurs from providing goods and services to white customers (Gold 2010; Woodard 1997). In contrast, nonblack ethnic groups have had greater access to majority consumers (Butler 1991). This pattern is evident within the informal economy. Nonblack immigrants often direct enterprises (formal and informal alike) toward other ethnic populations and whites as well as coethnics. For example, in their study of Latino informal entrepreneurs in New Jersey, Edgcomb and Armington (2003) found that cleaning and remodeling work were most often targeted toward the mainstream market. Similarly, Hondagneu-Sotelo (2001) and Valenzuela (2003) describe Latino immigrants as providing numerous services to other ethnic and racial groups.[4]

There is some evidence that this pattern varies by locality. For example, Kaufman's research on child care finds that in Philadelphia, African American women are active in providing this service to middle-class whites. In New York City and Los Angeles, however, which have much larger foreign-born populations, immigrant women generally dominate this niche. Several factors may be involved in these differing patterns, including the wage levels sought by workers, customer preferences, and the means by which employers and workers contact each other (Kaufman 2000; Hondagneu-Sotelo 2001).

RELATIONS BETWEEN FORMAL AND INFORMAL BUSINESSES

Existing in the same market, formal and informal businesses often compete for customers, locations, and other economic advantages. Such competition can be destructive. However, in many instances the worst-case scenario of violent discord between formal and informal enterprises is not realized. Because of their distinct resources, disparate goals, and contrasting relations with the institutions of the larger society, informal and formal businesses often maintain complementary relations, such that each benefits—at least partly—from the existence of the other (Lee 2002). Many forms of collaboration are spontaneous and don't involve an actual agreement between formal and informal entrepreneurs. In some cases, however, informal entrepreneurs and legitimate merchants do develop cooperative and mutually beneficial arrangements.

As part of a campaign to establish community control and ethnic self-determination, residents of minority communities often oppose shops owned by out-group members. Austin describes the legal context of such conflicts.

> On one side are the vendors, their loyal customers and those who are interested in the welfare of recent immigrants or the marginally employed. On the other side are city authorities concerned about taxes, congestion, sanitation, aesthetics, and property values; fixed location merchants, who must compete with vendors whose only overhead concern is the weather; producers and distributors who want to know how their wares wind up on vendors' tables; and middle class residents who prefer streets marked by order and decorum. . . . Naturally, the interests of these contending forces are balanced differently in every instance, the outcome being determined according to the relative political clout of opposing parties. (Austin 1994, 2121)

Direct Competition

When legal and informal enterprises compete for customers, established firms offer freestanding premises, name-brand goods, and loans. In contrast, informal enterprises frequently provide consumers with greater convenience by doing business in their homes or other accessible locations. They are generally familiar with customers' life patterns, work routines, tastes, and language. This contrasts with out-group entrepreneurs, who may have "very little understanding of the social context of . . . business practices, especially the ways through which inner city merchants interact with their environment and the role of informal, underground and illegal economies in the lives of these businesses" (Venkatesh 2006, 98).

Studies of Latino immigrants' involvement in the underground economy show how entrepreneurs satisfy coethnic needs in a familiar and intimate manner that out-group members would be incapable of duplicating. In the course of his fieldwork, anthropologist Christian Zlolniski (2006) met Laura, an undocumented Mexican woman who lived in an apartment complex with her husband and daughter in a largely Latino neighborhood in Silicon Valley. When her husband was unable to find stable employment, Laura (who had been involved in informal entrepreneurship prior to migrating) learned from a relative how to prepare traditional Mexican food like corn on the cob and *chicharrones* (pork rinds) and became a street vendor.

Unfamiliar with the city, fearful that she might be caught, and initially ashamed of what she felt was a lowly occupation, Laura nevertheless had ambitious plans. She expanded her inventory to include a broader menu as well as soft drinks and candy, matched her work schedule with that of her husband Alberto to care for their daughter, and became a successful entrepreneur. She further enlarged her business by feeding single men in her home

and offering customers amenities including water for hand washing and bags for their purchases. By becoming involved in the parents' association of the local elementary school, Laura became well known in the neighborhood. Consequently, she was able to sell treats after school to neighborhood children on credit, confident that she would be repaid by their parents, with whom she was well acquainted. This increased the volume of her operation.

As Laura's business expanded, Alberto took on tasks related to both the business and housekeeping that Laura had originally done herself. What began as a short-term solution to Alberto's unstable employment became a permanent, albeit informal, income-generating strategy for the family. In terms of conflict with legitimate firms, Laura's business does probably drain customers from established restaurants and food stores. However, she also creates additional income for groceries through her purchases of meat, produce, soft drinks, and candy for resale (Zlolniski 2006).

While informal entrepreneurship commonly involves activities such as food preparation, domestic service, and residential construction, skilled workers and even professionals also conduct their careers in this manner. Zlolniski describes the case of an immigrant dentist from Latin America who maintained a practice among a community of undocumented workers in a garage jury-rigged with a dentist's chair. Unable to acquire the necessary credentials to work legally in the United States, he provides dental care for those who cannot afford to buy it from the established system.

With little access to defensible space and lacking in legal protection, street vendors find themselves subject to harassment and shakedowns from criminal gangs or corrupt police, who sometimes collaborate with shop owners to drive them out of business. In this way, legal enterprises use a variety of resources and techniques to reduce competition from informal businesses. Historically, legitimate business owners have demanded the passage of ordinances to ban the sales of goods and services by those without a permanent store location (Saloutos 1964). Locations where groups of day laborers congregate often provoke complaints from neighbors, law enforcement officials, and local merchants that result in crackdowns (Valenzuela 2003, 322). In addition, food safety regulations, requirements for licenses and fees, and mandates that firms withhold sales and payroll taxes are commonly used to justify the closing of informal businesses.

Relatively powerless groups engaged in the informal economy find themselves subject to legal restrictions on their enterprises. In contrast, sociologist Donald Light notes that established and powerful industries employ advocates—commonly known as lobbyists—to challenge regulations that limit their profitability. They demand the easing of environmental or health regulations and push for the legalization of formerly banned goods and services. Accordingly,

influential entrepreneurs and powerful trade associations arrange to "move the goal posts" and have laws changed, "as major industries do so that they can openly enjoy today what were illicit means yesterday" (2004, 710).

Despite confronting actions intended to prevent their existence, informal entrepreneurs fight back by appealing to customers, by avoiding opponents, and through sheer tenacity. Most informal entrepreneurs pursue their trades because they must in order to survive. Consequently, they resist regulation. Because their premises involve minimal investment, they can easily be reestablished even if police or toughs confiscate or destroy their assets (which may consist of little more than a blanket to sit on and a basket of sandwiches).

Legal scholar Regina Austin asserts that by patronizing coethnic informal business, disadvantaged groups make a political statement about self-support and solidarity. In so doing, they refuse to cooperate with an alien legal system that has played a significant role in their oppression. "The lesson of economic advancement through economic cooperation must be taught with words and deeds and delivered at every level. . . . There is no better place for the instruction to begin than in the streets. . . . [It] presents an opportunity and a site where ordinary, everyday black people, whether sellers or consumers, can engage in the political struggle to build a more viable black public sphere and actually experience firsthand the results of their labor" (1994, 2131).

Cooperation between Formal and Informal Enterprises

Although informal and formal businesses in ghettos, immigrant neighborhoods, and other disadvantaged locations are involved in economic competition, these entities often engage in various forms of cooperation as well. A prevalent form of cooperation between informal entrepreneurs and formal business owners involves day laborers and the sellers of construction materials. It has become common practice for male day laborers to congregate near stores that trade in supplies associated with labor-intensive jobs like painting, landscaping, moving, and home improvement, where they offer their services to contractors and home owners. In this way, job seekers are brought together with those in need of their skills, while store owners are able to increase sales to customers who can readily locate inexpensive workers to assist them (Malpica 2002). While privately owned stores may welcome day laborers, so do sites sponsored by municipalities and nonprofit organizations. These locations generally provide amenities like shelter, bathrooms, tool rental, dispute resolution, and some regulation of wages (Valenzuela 2003).

Not all workers who frequent these sites are uneducated, unskilled, and recently arrived single men desperately seeking employment, however. Some

are skilled, educated, and have many years of residence in the United States. They exchange business cards, cell phone numbers, and e-mail addresses with employers and fellow workers to advertise their skills and access to tools and vehicles. Though most are Mexican, Central Americans, whites, African Americans, and others also seek employment this way.

For example, Israeli building contractors in Los Angeles told me that they acquired employment by posting business cards in Southern California tile warehouses (Gold 1994b). In the following quotation Betty, a Hebrew-speaking employee of a school that provides test preparation for the California State Building Contractor's License examination, describes patterns of cooperation between undocumented Israeli subcontractors and the Israeli American real estate developers who employ them:

> They are mostly young guys, age 25–32. The big majority are Sephardic or Eastern [Jews whose families are from North Africa and the Middle East]. Whatever their background, they meet each other, become friends and sit together in class.
>
> They enter contracting because it is the easiest field to work in without knowing English. They don't have to deal with Americans. They get orders from [Israeli] general contractors and that's it. Working with hammers and saws and wood doesn't require any specific language skills.
>
> The weird thing is that they complain about each other but they will always work together. They like each other but will always compete. They like to cooperate because they share the same language and outlook. They all work very hard, they help each other, they work long hours. They cut some deals and cut some corners which they could not do if they worked with American general contractors. They understand each others' approach. (Gold 2002, 82)

Dan, an established Israeli American real estate developer, describes his reliance on Israeli subcontractors:

> There is no question that with Israelis, there is some kind of a connection. No question about it. A lot of my subcontractors are Israelis. I mean, you would sometimes go through one of my developments and you think you're in a Kibbutz somewhere because you hear so much Hebrew spoken. (Gold 2002, 87)

In this relationship, the subcontractors' work increases the developers' profits and control. At the same time, by working for coethnics, Israeli subcontractors earn much more than most undocumented laborers in the region.

Relations between formal and informal entrepreneurs in the construction trades are not always cooperative, however. In the following interchange, Yossi, an Israeli building contractor, describes how conationals sometimes move beyond the subcontractor role and compete directly for customers. This

has caused him to stop working with them and, instead, to employ out-group workers:

> Yossi: Well you see, Israelis, I find most of them are like me. They took me as an example for them. They want to also become self-employed. I think it's just the nature of the Israeli.
>
> So there was sometimes friction and they care too much about the details of how I run my company, and I don't like that. I don't want to say that they are spying, but they copy me which is perfectly okay, but only as long as it helps me.
>
> Investigator: Yeah. They'll open their own business and then make it harder for you.
>
> Yossi: Right. But I understand that and I accept that as long as they are not cheating on me that's fine with me. But if I need to be somewhere else for a while and a [potential] customer comes to the work site and asks for a contractor and they give their card or leave their number—that's cheating. I don't accept. So I need to be careful of Israelis and now I hire Mexican workers more.
>
> A dishonest [Israeli] guy like that, I will eventually get rid of. I will just throw them from the job. Many times it has happened and I have been hurt. I would not hire another Israeli. I'd hire a Mexican instead. That's very unfortunate, but they can't stop me from hiring someone that needs the money. (Gold 2002, 77)

Other patterns of cooperation between formal and informal coethnic businesses include the ubiquitous displays in ethnic shops of advertisements for services ranging from child care and dance lessons to livery services and translation. In poor neighborhoods, local residents often agree to watch over parked automobiles for a fee. This provides the merchant and customer alike with assurance that the customer's car will remain safe, thus permitting the patronage of a business in an otherwise risky location.

I found patterns of informal entrepreneurship during fieldwork among recently arrived refugees from Vietnam and the Soviet Union in California during the early 1980s (Gold 1992). Unfamiliar with the U.S. economy, but with their survival skills sharpened by years of living under communism and in refugee camps, refugees were able to combine various income sources to earn a living.

Refugees who were active in the informal economy tended to speak little English and maintained minimal contact with American society. Some wanted their businesses to be inconspicuous in order to conceal income from agencies that provided Refugee Cash Assistance, AFDC, food stamps, unemployment insurance, or welfare. Operations were hidden because they were thought to be illegal by their proprietors. For instance, several Vietnamese

refugees involved in informal credit and banking arrangements and rotating credit associations believed that such activities were akin to "pyramid schemes" and hence against the law. Others who did not understand tax or licensing laws or health codes tried to remain inconspicuous for fear of being cited for violations (Leba 1985). Accordingly, informal businesses were often located in refugees` homes or other inconspicuous locations. Members of both groups prepared food; assembled clothing; repaired electronic equipment or automobiles; taught a variety of skills; and ran translation, photographic, and videotaping services out of their apartments. Because many Soviet Jews had backgrounds in building and engineering, several were involved in unlicensed construction businesses (Losby, Kingslow, and Else 2003).

A *Los Angeles Times* article confirmed refugees' involvement in this employment pattern: "The underground economy is found in Southeast Asian communities throughout the state. Officials estimate that as many as half of the state's Southeast Asian families on welfare—about 22,000 families numbering 100,000 refugees—are earning illegal income." Much of this is derived from working in sweatshops, selling at swap meets, and the like (Arax 1987, 3).

Finally, several studies suggest that immigrant entrepreneurs straddle formal and informal sectors (Raijman 2001). Sociologist Sudhir Venkatesh observes that when formal businesses on Chicago's South Side confront hard times, they may become active in the informal economy: "When they patronize a loan shark or pay for cheap labor under the table, they participate in a common system of exchange that integrates state-regulated entrepreneurship and off-the-books commerce . . . irrespective of their commercial acumen, the shady economy lends them flexibility and quick access to resources, thereby enabling them to develop and sustain . . . ventures in an entrepreneurial landscape that changes quickly and unexpectedly" (2006, 94–95).

Similarly, formal businesses may supplement their income by selling homemade foods, individual cigarettes, or drug paraphernalia; legitimate building contractors may employ undocumented workers or provide cash-only services on evenings and weekends; and licensed cab drivers may turn off their meters and offer customers transportation for a fixed price (Williams 2007). Several reports suggest that inner-city merchants sell outdated food products (Moore 2004; Sturdivant and Wilhelm 1969). Similarly, skilled workers, including cooks, artists, computer engineers, musicians, photographers, furniture makers, and the like, often make arrangements through contacts established in "legitimate" jobs to perform after-hours services directly for customers (Sassen 1988).

In these situations, formal and informal enterprises both rely on extralegal tricks to reduce business costs and increase earnings. While profits can be enhanced through these practices, they involve risks as well, including fines

and legal action. Hence, while combining formal and informal activities may keep a business alive, it may also prevent it from growing. In either case, the mixing of legitimate and unregulated business practices by the same operator shows that the distinction between formal and informal entrepreneurship is not a hard and fast one.

Benefits from Informal Businesses

Theorists and policy makers have come to realize that informal businesses can provide economic benefits. They support poor people, provide employment, and fill needs that are not satisfied through formal enterprises. By ignoring zoning laws they permit certain services—such as manufacturing—to be done much closer to the location of end use, saving on transport costs and leading to the economic development of otherwise neglected neighborhoods.

Several observers note that informal enterprises are well suited for dealing with times and places of economic transition. For example, informal subcontractors have been extensively involved in the movement of manufacturing activities from inner-city areas to outlying regions in New York, San Francisco, and Los Angeles (Chin 2005; Gold 1994a; Sassen 1988).

Such activities, which are embedded in communal relationships, group values, and specific neighborhoods, build social capital. As Valenzuela asserts, "where street vendors, day laborers, domestic workers and food cart merchants abound . . . survivalist entrepreneurs produce goods and services that enhance . . . their community's wealth" (2001, 339).

By providing a means of earning a living, distributing goods and services, and encouraging street traffic, informal enterprises can improve neighborhood conditions. They create performance space for public discussions, spiritual communion, and the pleasure of shopping. "Street vendors lend the flavor of an African marketplace to otherwise drab stretches of empty stores and barred facades." They provide public safety for customers and legitimate merchants. Informal businesses also increase the number and influence of coethnic businesses in minority neighborhoods, thus lending community control to populations lacking a viable business class (Austin 1994, 2124–2126).

"The growth of the day labor market in Los Angeles and Orange County is related to the recent increase in small immigrant businesses that have developed in the area. . . . Most of these businesses do not have the necessary resources to support a large employee base, but can hire cheap temporary labor when labor shortages occur or when extra workers are needed. To adjust to business cycles and an unstable workforce, small businesses use the day labor pool" (Valenzuela 2001, 342). In addition, informal enterprises offer local residents the goods, services, and equipment required to take jobs in the

formal economy. These include clothes washing, food preparation, transport, work attire, tools, child care, and language and skill training.

Proponents of informal entrepreneurship point out that street vendors can deliver needed products and yield economic growth and neighborhood revitalization when formal sector businesses fail to do so and public funds are too scarce to accomplish the goal. Accordingly they have fostered the implementation of public policies to establish sidewalk vending areas, urban enterprise and empowerment zones, and abatements on taxes and regulations, as well as programs that offer technical assistance and microloans for informal enterprises in a manner nearly identical to that of enterprise and empowerment zone policies. All of these seek to encourage the growth and normalization of informal entrepreneurship (Cross and Morales 2007; Greenhouse 1992; Hebert et al. 2001; Woodard 1997).

Realizing the potential value of informal enterprises, policy makers and foundations have commissioned a number of studies that seek to assist, expand, and legalize such endeavors (Edgcomb and Armington 2003). Some pundits may object to the lack of regulation of street vendors, home remodelers, and garment assemblers in the informal economy. Paradoxically, however, by allowing disadvantaged people to support themselves, informal entrepreneurship entails a market-based solution to economic needs and allows governments to minimize welfare expenditures in a manner that is encouraged by neoliberal economics (Portes and Haller 2005). In fact, committed to free market economics, seeking to encourage job creation and economic growth, and lacking personnel sufficient to enforce existing regulations, many local governments are reluctant to discourage the growth of local economic activities even if they are known to be informal (Raes et al. 2002).

Further, it is important to point out that very large-scale enterprises, such as hedge funds—secretive, high-risk investment instruments that cater to the very rich—are also partly free from audits, taxation, and other forms of regulation. Moreover, a number of regulatory policies, involving worker safety, pollution control, and homeland security—which apply to some of the largest corporations in the United States—are also voluntary (Wayne 1998). If a lack of regulation is seen as an acceptable incentive for some of the largest businesses in the country, why shouldn't it also work as an inducement for small enterprises run by immigrants?

Informal Entrepreneurship Is Not Without Drawbacks

Despite the many positive attributes of informal businesses, such firms are not free of liabilities. They deny local governments tax revenues. In addition, they exclude businesses, workers, and consumers from a host of regulations associated with the legitimate economy. These include consumer protection

and public health and food safety requirements. Accordingly, such firms may exploit workers and/or owners who are economically desperate—yielding a Dickensian work environment. Finally, informal enterprises are often associated with illegal activities. Second-hand sales can easily function as fencing operations for stolen goods. Unregistered business owners who seek to avoid detection are unable to call the police when robbed or harassed. Hence, they are prone to victimization.

Because proponents of informal businesses sometimes become unrealistically optimistic about the potential of market-based economic development programs, they fail to appreciate the difficulties involved in running informal businesses and assume that such enterprises can solve economic problems that lie beyond the capability of even large, established, and resource-rich formal enterprises. Finally, as Gregg Kettles points out, programs that regulate informal vendors by permitting their operation only in restricted locations tend to be both costly and ineffective (2007).

As a consequence, policy makers try to develop schemes through which the benefits of informal entrepreneurship can be realized while discouraging negative practices. Such programs can be helpful, especially when they provide informal entrepreneurs with technical assistance, loans, and recognition. However, efforts to turn informal businesses into conventional firms can also undermine the social and economic basis that allows them to be successful. In the introduction to their book on street entrepreneurs, Cross and Morales warn that policy makers must attend to "the features that make markets and merchants successful—the spirit of survival and flexibility that attracted scholars to this activity in the first place" (2007, 9).

CONCLUSIONS

By recognizing the extensive amount of informal entrepreneurship that exists and the unique ways that such activities function, we can better understand the ways that undocumented immigrants survive. In so doing, creative policy makers can work to develop approaches that capture the financial and social benefits of informal entrepreneurship, rather than enforcing laws to curtail such practices.

The alternative—imposing ever more restrictions on the informal economy—will make life more difficult for disadvantaged groups, who are without alternative means of survival. Such prohibition further alienates them from mainstream norms and gives them less of a stake in the economic and social system of the larger society (Anderson n.d.).

In addition to their being subject to low wages, poor working conditions, and limited means of addressing exploitation or abuse, the proprietors of enterprises in the informal economy must often endure the moralistic

judgments of members of the larger society, who condemn their groups for supposedly being lazy and lacking initiative and a work ethic. As the many case studies I have reviewed in this chapter demonstrate, rather than being nonentrepreneurs, marginal populations including undocumented immigrants are often highly entrepreneurial and rely on multiple business activities to survive in circumstances where earnings and jobs are hard to come by.

What distinguishes their entrepreneurship from that of classic immigrant entrepreneurs is not the propensity to run businesses per se. Rather, it is the fact that informal businesses are not included in official enumerations. By acknowledging that informal entrepreneurship is among the only ways that undocumented immigrants and other disadvantaged groups' members are able to survive, and that such endeavors can provide significant social and economic benefits to the larger society, we can move toward the creation of economic conditions that are both more dynamic and more equitable than has previously been the case. In addition, rather than labeling undocumented immigrants and members of disadvantaged communities as lacking the potential to be part of the economic life of the larger society, we recognize that they are already demonstrating the possession of these very attributes.

NOTES

1. Sassen defines the informal economy as "income-generating activities that take place outside the framework of public regulation, where similar activities are regulated" (1991, 79). Most people in the informal economy are self-employed (Light and Gold 2000).

2. Tienda and Raijman (2000) found that Mexican immigrant households in Chicago with one or more members involved in the informal economy derived 19 percent of their family income from such activities.

3. Italics in original.

4. Valenzuela 2001; Hondagneu-Sotelo 2001. An exception to this trend is the resale of tickets for sports events and concerts. African Americans involved in this enterprise often ply their trade in largely white environments (Mano 1987).

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7

Rethinking Remittances for Undocumented Immigrants in the United States

Jeffrey H. Cohen

Migrant remittances are defined generally and popularly as the money movers send home. While the funds channeled to sending households are critical to the economic well-being of these households, remittance practices are quite a bit more complex for documented as well as undocumented movers. Remittances are one part of a complex process that is best thought of as the flows of goods, services, information, and more that occur between movers and nonmovers over space and time. And while we might typically think the flows in question are mediated by the knowledge movers and nonmovers have of each other, their legal status, and their destination, we should remember that movers and nonmovers may have very little or limited knowledge of each other. In this chapter I explore the meaning and role of remittances, in particular as they relate to undocumented movers settling in the United States, and explore why they are more than simply the "money that migrants send home."

DEFINING REMITTANCES

Remittances are typically defined as the money that flows from movers to nonmovers over time. The importance of these flows and remittances to the economic well-being of immigrant workers, their sending households, and

their natal communities cannot be overestimated. According to a recent report by the World Bank, remittance flows globally (including developing and developed nations) topped an estimated $529 billion in 2012.[1] Yet this estimate is based on legal monetary flows that move through banks, wire services, and other formal institutions (Amuedo-Dorantes and Pozo 2005). It is probably low, because it does not include transfers that follow informal, unofficial, and extralegal routes, flows that take place outside of the purview of banks and the often culturally defined pathways that circumvent legal systems and link movers to nonmovers regardless of their status (Shehu 2004).

There is a popular assumption that remittances drive migration and motivate movers. This is perhaps even more strongly held when we think about undocumented migrants and the motivations behind their sojourns. We might go so far as to assume that the undocumented suffer more than do the documented when migrating, that the undocumented fare far worse in terms of income, and that the very precariousness of their situation (as undocumented) means that there are few reasons beyond remittances to migrate.

It is true that movers remit to support their households and in the process their sending communities; however, the act of migration comes with costs, as does the choice to remit whether they are documented or undocumented.[2] The costs of migration and the pressures to remit can place a great deal of stress on movers and nonmovers regardless of their legal status. In fact, as Stoll (2013) notes, legality is not an issue for most movers and has little overall influence on migration choices and remittances rates. And while in the aggregate, monetary remittances are critical for national development (Sirkeci, Cohen, and Dilip 2012), the needs of the nation and the demands of movers, nonmovers, their households, and their communities are not the same. To better capture the place of remittances in the migrant household, our discussion must emphasize the direct as well as indirect influence a mover's status has on outcomes. Perhaps the most important direct costs are associated with border crossings. As the U.S. border has become militarized and secure, the costs of crossing have risen. In the 1990s movers (regardless of their legal status) tended to describe crossing the border as a game of "cat and mouse," and most encountered very few problems on their way into the United States. Typically, migrants knew people throughout their journey and were able to access low-cost social networks as they negotiated borders and established new homes in their destination. More recently, the costs of border crossing have risen, as have the challenges of a more secure frontier (Cornelius and Lewis 2007). Undocumented migrants can face charges in the thousands of dollars from smugglers (or *coyotes*) who will assist in crossing from Mexico into the United States (whether coming from Central America, Asia, or somewhere else). There are also expenses associated with

the organization of paperwork (including Social Security numbers) once a migrant has settled.[3]

The social and personal stresses that mark most undocumented movers also add to the indirect costs of movement and over time can translate into increased health expenses and limited opportunities (McGuire and Georges 2003; Plascencia 2009). The actions of undocumented migrants are in violation of state laws and typically create stressful situations for movers and nonmovers as they negotiate borders, work, and life in their destination communities. In addition, the undocumented mover will not be able to freely move, access health care, and engage with others, creating a situation in which abuse can be extreme. Finally, there can be pressures around work as undocumented movers take jobs that do not use their education or training and provide little opportunity for advancement (Cameron, Cabaniss, and Teixeira-Poit 2012).

While status can influence outcomes, there are few direct costs beyond those noted that are associated with a mover's ability to remit. In other words, a mover's status as undocumented does not disadvantage her or him in terms of what can be returned to a sending household. The difference in wages between most sending communities and destinations is so great as to render the differences in incomes for documented and undocumented movers nearly meaningless. Finally, we want to explore the range of sociocultural and economic costs and benefits that come with remittance practices and how those benefits reach beyond the sending households to include communities and nations. Again, there are few direct and specific differences between documented and undocumented movers. While documented movers will have an easier time negotiating borders and engaging with the larger destination community in which they have settled, they still face discrimination, harassment, and abuse (Cohen and Chavez 2013).

WHY REMIT?

Remittance practices do not motivate the decision to migrate, and migration does not motivate remitting. The outcomes of remittance practices are not defined positively or negatively by the legal status of the mover, her or his origin country, or the pull of higher wages and new opportunities in new destinations. Furthermore, they are not limited by personal failures, failures in the labor market, risky moves once a mover has settled, or the establishment of a new family.

Rather than a kind of hardwired response to a specific set of circumstances, remittance practices are dynamic, socially motivated acts framed by cultural beliefs, influenced by myriad conditions, and largely defined by the choices of an individual. Influencing and defining outcomes are the strengths and

weaknesses of movers, their households, and their communities. The history of mobility in a region is critical, as movers build upon the success of earlier sojourners to create a tradition of mobility and remitting (Massey 1990). Finally, national as well as global forces (ranging from the ecological to the social) define and frame migration decision making and remittance practices for movers and nonmovers (Cohen and Sirkeci 2011). In this dynamic setting, defined by social expectations rather than a hardwired response to a specific stimulus, remittance practices are one of the many flows that link movers and nonmovers, as well as sending and receiving communities, through time and across space.

Approaching remittance practices as social acts that are rooted in the choices of individuals allows us to appreciate how flows shift over time and space and as life changes. Movers, and particularly movers who do not access formal banking systems to transfer their funds, typically return small but critical amounts of money to their origin communities. And while movers may average a specific amount of remitting over time (i.e., undocumented Mexican immigrants from the southern state of Oaxaca tend to remit on average hundreds of dollars monthly to their sending households), over several years those remittances can start, stop, and shift (Cohen 2005). Furthermore, there are movers who leave (or exit) their networks and communities and turn their backs on sending households and communities (Qian 2003), while other movers make such insignificant contributions that they have little value to a household's reproduction (Cliggett 2005). Nevertheless, the connections that link movers and nonmovers are usually vital to the well-being of all involved, including their households and potentially their communities.

Movers who remit are not driven by some biological force to act in the social worlds they inhabit; rather, they remit because they choose to do so. Much of the give and take that goes on between movers and nonmovers around remitting is part of (and reflects) the construction of relationships over time. There may be a socially defined way of giving that is part of a larger system of kinship or belonging. Yet while kinship may motivate giving, it does not guarantee remittances.

There may also be a local or indigenous system of giving or gifting that is used to encourage consistent remittance practices over time. This is the case among Somali immigrants regardless of their legal status in the United States. Somali immigrants, most often young Somali women, will remit to support relatives they do not know as they follow the tradition of *ayuuto* and send money to Somalia as well as to refugee camps in places like Kenya (Shaffer 2012).

Movers who remit to their sending households, families, and communities can gain socially through their actions; this can be especially important for

undocumented movers who are confronted by extremely negative images of themselves in the press and popular media.[4] There is status that comes (whether it is legitimate or not) to the mover who is celebrated for his or her perceived successes. The nonmovers cheer on the movers whom they see as successful, earning a high wage and living a new life that is assumed to be full and engaging in their new home.

There is also status that comes as the mover remits to her or his sending community, household, and family. Working together, movers can collectively fund big-ticket items for sending communities and secure their status and importance in the process. Other movers cover expenses associated with business, education, and home improvements (Cohen and Rodriguez 2005). Even the mover who does nothing more than send home small gifts and support minor expenses can earn status vis-à-vis the expectations and actions of nonmovers (Cliggett 2005). The mover also stands to earn status in his or her new home and community. The investments made "at home" translate into care and effort and may count for less than respectable work, extralegal activities, or perhaps even the illegal activities in which movers find themselves involved.

While movers are celebrated for their efforts and earn status in their sending and destination communities, they also face and incur costs. The most basic of these costs may be the sacrifices that the mover makes and that take a toll on her or his well-being over time. Movers may live in a setting that is quite marginal or have several roommates to mitigate expenses. They may lack access to utilities, and due to overcrowding and less than hygienic living conditions, have to cope with diseases that would not otherwise be a threat. These are choices that movers make, sometimes in response to the limits that their undocumented status creates, but in general, even documented movers will forgo their own well-being for the good of people they may not know, and as Heyman notes, movers often take a "long-term" approach to their moves, finding work that is well below their training, expectations, and sometimes even pay to create a foundation for future familial support (2005). The costs of these choices cannot be overestimated. They also can contribute to the expectation that a certain wage or effort is associated with a certain kind of work. Throughout rural sending regions the expectations for labor and income combine with an overall decline in support for agriculture to push and marginalize family farming.

To create a more balanced perspective, Lucas and Stark argue that we should approach remitting as tempered altruism or enlightened selfishness (1985). While migrants remit to and support their sending households and communities, they are compensated for their efforts—burnishing their social status, amplifying identities, and negotiating new destinations.

A key to understanding remittance practices as enlightened self-interest and tempered altruism is to understand the flows that link movers and nonmovers and that track goods, services, and more between sending and destination communities.[5] Returns can take many different forms: a return in kind (a transfer of cash from place of origin to the mover) or a transfer of something else, such as food, information, or social support. The mover may learn a new way to think about the world and to engage with other people at the destination. At the same time, the nonmover represents home, tradition, and a shared past. And while some movers reject those traditions and exit home and the shared past, the patterns can be critical to the reinvention and creation of a new and hybridized identity. This is clear among Peruvians who use the traditions of their sending communities, including the celebration of saints, to reinvent rituals for their new communities in North America (Paerregaard 2008). Rios (2012) notes a similar process among Oaxaqueño immigrants from southern Mexico, who reinvent basketball as their own sport and use it as a rallying point to create a sense of belonging and identity throughout their communities in North America.

It is clear that remittances are critical to sending countries. They typically influence the balance of trade between nations and support internal, national investments; they may also encourage local economic growth as funds are directed into local start-ups and improve the business climate in small rural communities (Durand, Parrado, and Massey 1996). Nevertheless, remittances are more than the unidirectional flow of funds from movers to nonmovers in origin communities. The act of moving, in and of itself, supports economic health as movers spend to cover their expenses in their new homes. The flow of goods and knowledge further supports economic growth and the incorporation of rural communities into increasingly global markets as demands change in sending communities. Finally, remittances indirectly support growth as movers and nonmovers find the funding necessary to put to work the skills they have learned through programs and experiences.

The importance of remittances to a mover's sending country and hometown are clear. In fact, remittance rates tend to outpace other kinds of investments around the world (Shaffer 2012). And while the importance of remittances for nations is clear, the funds returned by movers are also quite critical to sending households. First, remittances support sending households and cover the expenses of daily life. Following daily expenses are the funds to cover building and home improvements, the purchase of big-ticket items (appliances, automobiles and so forth), education, health care, and ritual investments (Cohen and Rodriguez 2005).

For rural Oaxacans, the majority of whom were undocumented (more than 90 percent), funds were used to cover daily life, but also ritual life. Movers

built a sense of value and belonging, creating a social identity in small rural villages even when they were living in the United States. Thus while the remittances were critical for nonmovers who lacked regular work and the opportunities to earn the money needed to cover large purchases and the costs of education as well as investments, they were also critical for movers, who used the funds, knowledge transfers, and so forth to build an identity from afar that was invested in the social life of the village (Cohen 2004).[6]

The space between movers and nonmovers and destination and sending households defines how remittance practices occur and how they play out for households and communities. This space reproduces, creates, and confronts the social universe and cultural traditions of the sending households and community, the realities of the movers' lives, the migration process, and their reception. It reproduces the social inequalities that define the differences that are some of the core reasons we find movers traveling from South to North and from East to West rather than the other way around. Migration also creates new space around which social beliefs are constructed as movers reimagine their world around the outcomes of their moves. Those reimagined worlds, given status through the movement of goods, services, information, and so forth, between movers and nonmovers, also confront the very beliefs that define the world and suggest that movers and the nonmovers they support are effective and responsible humans (Eversole 2005).

We don't typically think about migrants when we consider remittances; nevertheless, movers face challenges as they are asked (sometimes again and again) to remit. Their abilities, mobility, destinations, work, countries of origin, and the barriers that impede movement define their challenges. For example, young Latina women moving from rural hometowns in Mexico or Central America face a series of unique challenges that differ from those that confront young men moving from the same towns (Cohen et al. 2009; Naber 2012). These challenges can range from the imagined to the real and include sexual violence, an assumption of skills (or their lack) by employers, the belief that women can be paid less than men for similar work, as well as the assumption that women will work harder and complain less than men (Curran et al. 2005; Kanaiaupuni 2000).

The skill set of the mover also influences outcomes. The highly skilled migrant is often welcomed (and may even be sought out) by a destination country and is well paid for his or her economic contributions to the nation (Cornelius, Espenshade, and Salehyan 2001). On the other hand, the unskilled migrant who often crosses the border without documentation may find that he or she must negotiate relationships around the border that can be costly and will remain outside legally defined labor structures, taking low-wage work and risking arrest and harassment (Millard and Chapa 2004). The

skilled mover who earns higher wages than her or his unskilled compatriot can be an important source in the transfer of funds over time (Mani 2012).

Regional and internal movers also face a different set of challenges than do international migrants (Trager 2005), and this includes undocumented movers who travel from one destination to another within a country of destination (Galvez 2007). Undocumented movers who are relocating may remit less over time; this is particularly true for movers who seek to leave the ethnic bonds and boundaries of their original destination. Nevertheless, new potentially conflictive sociocultural systems, labor markets, and legal codes also confront these movers. In other words, an internal sojourn can be destabilizing for movers who lack status equal to that of locals before the law. This is true for the undocumented Chinese immigrant whose original move to a community of coethnics on the West Coast and work in service (particularly restaurant work) gives way to a relocation in the Midwest or East, places that may hold opportunities but cannot be a base upon which a mover (or his or her children born outside of the United States) can petition for permanent residency and citizenship (Olivas 2004).

Ethnic minorities and other marginalized groups moving within countries also typically confront localized racism and discrimination that is expressed not only by the larger national population but by conationals who grew up making assumptions about internal ethnic differences. This includes the rural, southern Mexican from Oaxaca or Chiapas who cannot find work in Mexico City that is equal to her or his training and status due to the perception that Oaxaqueños, like Chiapanecos, are neither smart nor able to perform complex labor (Viqueira 2008).

Undocumented movers are not refugees and carry specific unique qualities related to remittance practices. While refugees may struggle and face many unique challenges to their personal and cultural well-being, they are not illegally in the United States. Thus, the challenge to remitting for them is not that faced by undocumented movers. Furthermore, unlike the undocumented mover, the refugee may receive federal support as well as funds from nonmovers who will support mobility from afar, potentially with the hope that they will follow in the future (Moret, Baglioni, and Efionayi-Mäder 2006). In addition, refugees who are settled and organized in their new homes with state, federal, and NGO support may be more able to remit and can relocate more easily.

Migrants move and remit for myriad reasons—some travel and remit freely, others have few choices and hope to find opportunities. Yet all movers make their decisions in relation to households; even those who decline to remit are making a decision that impacts households and communities left behind. There are sending households that are never satisfied, but there are

also movers who cannot or will not remit. Furthermore, it is critical that we be aware of the way remittance practices change over time. Movers engage in new jobs, establish new relationships, and enter new stages of their lives. Demands and needs also change over time. The goods that a sending household needs change, and the costs of daily life shift as well. Technologies change, as do prices and expectations. In the 1980s and 1990s we would ask migrant households about the money they spent on radios, "boom boxes" or large cassette tape stereo systems, and televisions. Telephone lines were extremely expensive and rare. More recently, we asked whether a household has a computer available and subscribes to cellular phone service, both of which are now quite prevalent (Horst 2006). Furthermore, the connections created through cellular phone service can become a foundation for further growth, as savers link to formal financial programs and invest in local development (Gupta, Pattillo, and Wagh 2007).

The children left behind by movers are a unique challenge for nonmovers and the community, not to mention the movers, who probably have not made their decision lightly. Nevertheless, the undocumented mover tends to travel without family and without the burden of children. There are several reasons to leave children behind. They are an expense and a liability, as well as a burden that the mover may need to literally carry across a border. Furthermore, children move through different stages in their lives, and as they do, they experience different needs and demand a variety of resources. And while no amount of money can replace the affection that may be lost when a migrant crosses the border as an undocumented immigrant, there is a real possibility that the nonmovers and children left behind will be safe from abuse and violence (Moran-Taylor 2008b). The costs of education shift as grade school can give way to technical training and universities and confront movers and nonmovers with expenses that may be unanticipated. Finally, the mover can suffer. He or she is away from family, relatives, and friends, and remittances may come to be one of the only links that binds individuals over space, particularly when social relationships become stressful around responsibility, irresponsible acts, and legal systems that often limit mobility and opportunities for contact (Ryan and Sales 2013; Vogel and Korinek 2012).

Time changes how a mover remits. Movers have expenses to meet before they can begin to remit. These costs can include things like rent, utilities, and food, but also unanticipated costs such as those associated with smugglers who guide movers to their new homes (Kyle and Koslowski 2011). Movers with young children typically earmark a good deal of their remittances to support everyday expenses, even as they meet their own expenses. Settled immigrant workers who hold reasonably steady jobs often earn more money and earn that money more consistently; this often translates to more consistent

and larger remittances. Returns from these movers cover more than the costs of daily life and the purchase of consumer goods (Cohen and Rodriguez 2005). Households with many movers, or with movers who are well established in their destination communities, can use their remittances to make investments that create new opportunities (Conway 2007).

Some researchers argue that remittances will follow a standard growth model over time, rising in the short term and over about five years as incomes rise and work becomes more regular, before a slow but steady decline occurs. Remittances decline as the ties linking movers and nonmovers are strained, and perhaps more important, as the migrants' stay in a destination country increases in length and as new families are established or the families that were in an origin community join the mover in the new destination (Amuedo-Dorantes, Bansak, and Pozo 2005).

Tempered altruism on the part of the mover can mediate a decline in remittance rates and contradict the expected decline in remittance rates over time. In fact, we find that support of a community's traditions and family pressures to continually remit often counteract any decline. The undocumented, short-term mover who typically has entered the United States without family, as well as the undocumented migrant who has targeted her or his efforts, also tends to remit regularly over time and in contrast to expectations.

Remittances not only spur the creation of small businesses and investments; they also challenge the way individuals think about themselves and the work they do. Nonmovers often rethink their work in ways that can lead to demand for higher wages at home and the rejection of internal forms of inequality. Where remittances are invested locally, economic growth can open new opportunities for nonmovers. At the same time, remittances encourage growth in human capital as nonmovers use the returns made by immigrant workers to rethink familial organization and economic opportunities.

Remittances, particularly large remittances, create opportunities and support local development schemes and investments, yet there are many migrants who cannot afford to return large sums to their homes. Some of these migrants are internal movers who earn relatively little as part of national workforces in regions of the United States with low wages and restricted job markets. In a weak labor market where low wages are paid, the internal migrant may remit, but at a rate far lower than compatriots who cross international lines and find higher wages in foreign countries.

We have seen that remittances are part of a system that links people over space and time and around diverse cultural practices (Moran-Taylor 2008a). Remittances reflect and build the social status of the sender as funds flow to support not just family, but also community, local government, development and traditional practices, as well as celebrations (Paerregaard 2008; Cohen 2004).

The connections created through remittance practices are sometimes surprising and beg the question of why immigrant workers continue to return funds to their households, particularly when they may be second- or third-generation children of migrants with few ties to their homeland. The reality is that while remittances track from an immigrant sender to her or his home and community, they are about more than economics. The children of movers, who can be adults, often continue to remit and support their homeland (a homeland that will often grow more mythical with time), because they are pressured or coerced by tradition, expectations, and demands. They may also want to declare their value and worth vis-à-vis their receiving country's cultural traditions (Shaffer 2012). This can be particularly true for undocumented immigrants who remit to sending communities to counter the assumption that they are criminals with little social value (Cohen 2004). In this sense, remittances are celebrated as they create social roles that counter misrepresentations by the destination community and nation and create obligations among individuals who may not know one another. Further, because the flow of remittances is often returned in a variety of ways (from food to financial support when necessary), connections are not only maintained, but also rebuilt over time between movers and nonmovers.

Returned goods, gifts, and services, regardless of their real value, are a repayment or sign of the effort made by the remitting mover, and they have both direct and indirect effects. The returns motivate and connect movers and nonmovers around ideas of support and shared traditions. The returned resources are also a part of an elaborate reciprocal system built upon kinship and origins to build linkages between movers and nonmovers over time and space. The bonds created are typically long lasting and can move in and out of importance as needed and as necessary over time for both movers and nonmovers.

The circular flow of remittances, goods, services, and information reassures and refocuses efforts so that movers and their children do not lose their connection over time, as is the case for second-generation children of migrants connected through family, friends, and traditions to hometowns they may never visit (Foner 2002). These connections are often formalized around hometown associations (HTAs),[7] which are organized around shared ethnicity as well as food, sports, music, and traditions (Fitzgerald 2004). The reach and influence of HTAs can include support for development initiatives that establish schools and universities (Mohan 2002), health clinics, sports facilities, and the expenses that are associated with the premature or unanticipated death of a mover (Page 2007). Restaurants, clubs, and sports leagues can be critical to undocumented movers who have few if any rights in their destination community and rely upon HTAs for their physical support and well-being as well as a place to organize community building.

While remittances flow from movers to nonmovers and back, there are few ways that sending households can match the value of the remittances that migrants return. Nevertheless the gifts, goods, and information that nonmovers return to movers are essential. For undocumented migrants who face criminal prosecution if they are caught, the goods and phone calls from family and the support that comes from a sending household and community are critical to psychological well-being. Even small gifts can serve to invigorate links between movers and nonmovers, and the information and connections that nonmovers share with movers can help them as they search for jobs, friends, and support. These connections can even serve to help a migrant manage her or his remittance schedule as family in origin communities share news of their needs, status, and the challenges they face. Finally, remittances can be repaid when migrants face economic challenges themselves, as when family in origin communities send money to support children living across national borders who encounter new hardships due to global economic crises.

CONCLUSIONS

Remittances are more than economic. They are critical to the social and cultural well-being of movers and nonmovers of small rural communities and nations, and remittances must be understood for their benefits as well as their costs. They are of fundamental importance to many migrant-sending households as they cope with poor local economies, limited job markets, and low wages. The pull of opportunity in destination countries like the United States tends to relieve some of the pressures on sending nations to improve labor practices and wages and develop local economies. Yet success can drive an increase in overall migration rates that leaves nonmovers in an increasingly dependent position and challenges movers who cannot meet their own or others' expectations. Because remittances do not flow equally, there is also a risk of increased inequality locally as households with movers differentiate themselves from nonmovers. Remittances are not thrown away on consumer goods and luxury items. Rather, they are critical in unanticipated ways to local economies as the members of sending households improve their households; spend on education, health care, and rituals; engage in local politics; and invest in small business. While migration rates shift and movers appear from new and heretofore understudied sending regions, the role of remittances will likely continue, as will the need for ethnographic and anthropological research that can follow new ways of connecting migrants and nonmigrants and of understanding the flow of goods, services, information, and money.

NOTES

1. The World Bank noted in 2012 that India received $69 billion in remittances. The total for China topped $60 billion, with $24 billon flowing to the Philippines and $23 billion to Mexico (http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20648762~pagePK:64257043~piPK:437376~theSitePK:4607,00.html).

2. It is also important to remember that a mover's status can change. The undocumented migrant may find a path toward legalization (as occurred following IRCA reforms in the United States); a documented migrant may fall out of compliance when he or she overstays a visa or moves from one status to another. Finally, some migrants who arrive as refugees may find themselves moved into the category of undocumented alien over time—an issue that faces El Salvadorian immigrants who arrived as refugees but have seen their legal status change.

3. Many migrants who are in the United States and undocumented believe that they are legally in the country once they have paid a smuggler or go-between for a legal ID or Social Security number.

4. Returned movers in Oaxaca often described not understanding why they were demonized by the press in the United States and why it was assumed they were criminals rather than parents supporting their children. The same sort of imagery is created around Muslim immigrants, who must contend with anti-Muslim and anti-immigrant rhetoric in the United States (see http://www.aclu.org/blog/tag/anti-muslim-bias for examples).

5. The general assumption is that a mover would not invest in her or his sending household and community if there were no return of value.

6. In fact, while I expected to find that migrants neglected their responsibilities to their villages, there was no difference in the social participation of movers and nonmovers.

7. Movers organize and join hometown associations (HTA) to maintain ties with sending communities. HTAs are organized around the voluntary support and efforts of their members as well as the shared concerns of those members. They are critical to movers as they settle and adapt to their new homes and serve to organize and transfer funds to sending communities and support development efforts.

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8

Activism and Advocacy

Shannon Gleeson

This chapter provides a broad overview of the immigrant rights movement in the United States, including the various groups that are involved, the tactics they have adopted, and the coalitions that have emerged. While the immigrant rights movement has taken up a number of issues, here I focus on four major arenas of action. First, I examine the national movement against the criminalization of immigrants, the mass deportation of undocumented immigrants, and efforts to enact comprehensive immigration reform. Second, I highlight the increasing role of state and local actors in immigration enforcement and immigrant integration, demonstrating how local coalitions have pushed back against punitive policies over the last two decades.

In the last two sections I focus on two of the pillars of the immigrant rights movement: students and workers. In the third section I discuss the evolution of the movement of "DREAMers," which contributed to several key partial victories, such as attaining in-state tuition and financial aid in some states, and the president's Deferred Action for Childhood Arrivals (DACA) prosecutional directive. Finally, I turn to the role of immigrant workers in the labor movement. Although organized labor is now a major proponent of immigration reform, I recall the storied history of its opposition to undocumented labor and union support of employer sanctions.

Today unions play a major role in promoting immigrant worker rights, the repeal of employer sanctions, and the passage of immigration reform. Immigrant workers too have been crucial to many of the key union victories, and the rights of immigrant workers have been integral to nearly every major labor victory in recent years.

The chapter ends with a discussion of the current mobilizations for comprehensive immigration reform and the continued fight for immigrant rights across the country.

FEDERAL IMMIGRATION ENFORCEMENT

El Gigante Awakens: HR 4437 and the 2006 Marches

In December 2005, amid a thick cloud of anti-immigrant sentiment, a match was lit. Senator Jim Sensenbrenner of Wisconsin introduced House Bill 4437 (the Border Protection, Anti-terrorism, and Illegal Immigration Control Act). Among other punitive measures, this act would make illegal presence a felony and would establish stiff penalties for anyone found to be housing a removed "alien."[1] Six months later an unprecedented movement of immigrants and their allies took to the streets. Far exceeding even the proportions who hit the streets during the civil rights era and anti–Vietnam War era mobilizations, an estimated 3.7 to 5 million immigrants and their allies turned out in more than 160 cities between February and May 2006. The largest marches were documented in major immigrant destinations such as Chicago and Los Angeles, with mobilizations documented in forty-two states (Voss and Bloemraad 2011, p. 3). The huge turnout for these protests can be attributed not only to a well-organized coalition of immigrant rights advocates, but also to Spanish-language radio, TV, and newspaper outlets such as *El Piolin de la Mañana*, Univision, and Telemundo. Community organizations regularly held press conferences, and evidence reveals a coordinated and concerted effort to craft the face of the movement (Pallares and Flores-González 2010).

Key symbols included white T-shirts; Mexican and U.S. flags; and slogans such as "Today we march, tomorrow we vote," "We are workers, not criminals," and "No human is illegal." Messages about family reunification were also an important aspect of the marches, though this framing of immigrant rights often relied on heteronormative and nuclear conceptions of family formation (Pallares 2009). For example, the case of Elvira Arellano, who took refuge in a Methodist church in Chicago for a year after receiving deportation orders, provided powerful moral cover to the immigrant sanctuary movement. As a single mother, Arellano and her young son were an

inspiring symbol of the harmful effects of U.S. immigration policy on families. Her defiance revived the New Sanctuary Movement, which followed the tradition of resettling Central American immigrants fleeing U.S.-fueled civil wars during the 1980s. Elvira ultimately returned to Mexico, where her son rejoined her, and in March 2014 would attempt to cross the border again with a group of activist mothers.

There are an estimated 16.6 million people currently living in mixed-status families, and a third of U.S. citizen children of immigrants live in mixed-status families (Dreby 2012). A quarter of all deportees are parents of U.S. citizen children (205,000 between July 1, 2010, and September 30, 2012). In some cases these children stay with appointed guardians, but thousands of children face barriers to reuniting with their detained and deported parents (Weesler 2012). The case of Felipe Montes gained national notoriety when a North Carolina judge placed his children in foster care after he was deported and their U.S. citizen mother could not care for them. Following a concerted online petition effort, Montes was ultimately granted permission to take his children back to Mexico. However, in many other cases full parental rights are never restored (Menjívar and Abrego 2012).

Based on research on the marches in Los Angeles, Baker-Cristales (2009) argues that the Spanish-language media promoted an "extremely limited model of citizenship and political agency particularly suited to neoliberal, post-9/11 tactics of governance and control." Consequently, some aspects of the mobilization were valorized, while others such as the high school protests and walkouts received far less coverage. The author shows how pro-immigrant protesters themselves in turn adopted this framing of immigrant rights, largely as a defensive reaction to xenophobic messages in the broader media that framed undocumented immigrants as criminal, anti-American, and terrorists. In response, typical May Day protest signs read, "We are workers not criminals," and the more provocative, "We are workers, not terrorists." One of the consequences of this approach was to contrast "good immigrants" with "bad immigrants," highlighting the labor function that low-wage Latino immigrants perform in the United States (Gleeson 2012).

The historic immigrant rights protests of 2006 were reminiscent of previous mobilizations during the mid-1990s wave of anti-immigrant welfare reform. During this period, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which provided a massive influx of resources for border enforcement, and the Anti-terrorism and Effective Death Penalty Act of 1996 (AEDPA), which streamlined and accelerated the removal of noncitizens with criminal records by restricting judicial review of administrative removal orders and limiting alternatives to deportation. Simultaneously, the Clinton-era welfare reforms cut the access legal permanent

residents had to programs such as food stamps and Supplementary Social Security Income. Fujiwara (2005) describes how the movement against the immigrant exclusions in the 1996 Personal Responsibility and Work Opportunity Reconciliation Act frequently relied on claims-making strategies that appealed to common beliefs about aging, frailty, disability, and the obligation of the United States to its veterans. A central strategy of the "immigrant rights are human rights" frame was to humanize these disenfranchised immigrants and make them familiar to an American public who could relate to the profound needs of an elderly or disabled family member, as well as appeal to the U.S. sense of responsibility to postwar Southeast Asia (91).

The actions on May 1, 2006, also included a boycott of businesses, calling on workers to stay home from work and for students to walk out of schools. Although they had little effect on the economy, the boycotts raised important questions about the importance of Latino immigrant labor and the massive role of Latinos in the U.S. consumer market. These provisions were controversial, and advocates were divided on whether or not workers should stay home. Though some employers supported their immigrant workers who chose to join the late afternoon march, others openly threatened workers who missed work with being fired.

Students across the nation also joined the protests (Bogado 2006). While some school administrators "touted the events as great lessons in civics," others argued "education is the most important political resource and should not be wasted" (Pantoja, Menjívar, and Magaña 2008, 500). Nevertheless, thousands of students defied lock-down orders and left school. Student protesters included first- and 1.5-generation immigrants, as well as second-generation students motivated by the challenges their parents and broader community faced. Social media such as Myspace and text messaging galvanized youths, who turned out en masse, often with siblings, parents, and other family members (Getrich 2008, 545)

Previous survey research finds that Latinos are less likely to participate in "unconventional politics" such as protests than their non-Latino counterparts, and that significant national origin differences exist (Martinez 2005). However, the May 2006 mobilizations garnered widespread support among all Latinos, including Puerto Ricans, who are U.S. citizens, and other U.S.-born and naturalized Latinos (Barreto et al. 2009). But one of the key questions of the 2006 marches is whether this was a spontaneous movement or the culmination of years of planning and organizing. Several factors suggest that a combination of factors mobilized this unprecedented level of protesters, including the role of Spanish-language media; key coalitions with labor unions, student activists, and grassroots immigrant rights organizations; binational migrant civil society; and the crucial role of the Catholic Church (Voss and Bloemraad 2011).[2]

Bada, Fox, and Selee (2006) similarly describe how these coalitions relied on this grassroots mobilization of Mexican migrants in particular. They argue that this mobilization is the result of ongoing transnational organizing, which was often ignored by mainstream analyses of migrant civic and political life, but which ultimately culminated in the unprecedented marches of 2006. However, not all mobilizations were created equal, and local context was extremely important to shaping the size and direction of protests across the country. For example, mobilizations in traditional immigrant destinations such as Los Angeles, Chicago, and San Jose differed from those in new destinations such as Omaha, and vibrant immigrant rights communities in cities like Tucson contended with powerful anti-immigrant forces (Bada et al. 2010)

The 2006 mobilizations challenged existing theories of political participation. Noncitizen and limited-English learners are often assumed to have lower levels of political participation. Yet Ramirez (2011) argues that use of the Spanish language, and the massive outreach role played by ethnic media, facilitated access to social and community resources that mobilized even traditionally marginalized segments of the Latino community. Further, while canonical theories of political socialization tend to assume that parents shape the political behavior of their children, Bloemraad and Trost (2008) reveal that in many cases it was immigrant children and the children of immigrants who activated their parents' mobilization.

One of the lasting questions following the 2006 marches is what impact, if any, these demonstrations of civic engagement would have in the electoral sphere, as evidenced by the "Today We March, Tomorrow We Vote" slogan. There were in fact massive naturalization campaigns, such as the "*Ya Es Hora: Ciudadania*" program, aimed at transforming the civic engagement of Latinos into political mobilization. *Ya Es Hora* (Now Is the Time) was launched in Los Angeles in 2007 to mobilize eligible legal permanent residents, who turned out for the protests to naturalize and make their voices known at the polls. Prominent national groups such as the National Association of Latino Elected and Appointed Officials (NALEO) and the Mexican American Legal Defense and Education Fund (MALDEF) invested substantial support in a broad-based communications strategy. Ayón's (2009) analysis reveals an immediate increase in nationwide naturalization applications of about 59 percent in the first quarter of 2007, with an astonishing 123 percent increase in Los Angeles alone (13). The slow U.S. Citizenship and Immigration Service bureaucracy, however, muted any resounding impact in the 2008 presidential election. Another important impact of the campaign was the ability to formally engage a broad range of local community-based organizations, which were ultimately responsible for distributing more than 100,000 citizenship packets or naturalization guides.

Stop Deportation Now

The years since the failed efforts at comprehensive immigration reform, last spearheaded by Senators John McCain (R-AZ) and Ted Kennedy (D-MA) in 2006/2007, have focused on stemming the steady increase of deportations in the new Obama administration. Initially, the immigrant rights community applauded the 2008 election of Democratic presidential candidate Barack Obama, who had promised the passage of comprehensive immigration reform in his first term. Since 1997, following the passage of IIRIRA and AEDPA, the United States has deported four million people. By 2014 more individuals will have been deported during the Obama administration than the total deported before 1997, a pace far greater than under his Republican predecessor, George W. Bush (Golash-Boza 2013b).

Several mechanisms have fueled this increase in deportation, most significantly the massive influx in funding for the Department of Homeland Security ($56 billion in FY 2011), over half of which was directed at border security and immigration law enforcement (Golash-Boza 2013a). According to the Migration Policy Institute, the United States has spent $187 billion on federal immigration enforcement over the past twenty-six years, more than what was spent on the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), Secret Service, and all other federal criminal law enforcement agencies combined (Meissner 2013). The post-1996 changes in immigration law have also limited the role of the judiciary, denied due process to detainees, and simultaneously increased the involvement of state and local law enforcement through programs such as 287(g) and Secure Communities (Capps et al. 2011; Golash-Boza 2012a, 2012b; Armenta 2012).

The now outgoing 287(g) program was one of the first flashpoints of controversy surrounding local law enforcement's cooperation with federal immigration control. Directly challenging the "sanctuary city" policies of many major immigrant destinations, the 287(g) program deputized local officers at the point of arrest and jail detention. The "task force" models use street-level officers as immigration agents, while "jail enforcement" models screen individuals arrested and booked into jail. Immigrant advocates such as the Tennessee Immigrant and Refugee Rights Coalition and the American Civil Liberties Union in Nashville advocated, along with faith leaders, labor organizers, and other immigrant rights groups, for the termination of the program (Meador 2012). These groups pointed to negative effects on community policing efforts; the waste of limited law enforcement resources on minor traffic-related offenses; the promotion of racial profiling; and a chilling effect on immigrant communities, which became reluctant to report crimes (American Civil Liberties Union 2012).

A particularly egregious case stemming from 287(g) enforcement was the 2008 arrest of Juana Villegas, an undocumented woman who was pregnant at the time she was pulled over for a routine traffic violation. While in jail for nearly a week, Villegas gave birth in shackles and in the shadow of a sheriff's officer, with no right to see or speak to her husband (Preston 2008). A rally was held in her name, and one hundred marchers descended on the Tennessee Supreme Court. Charges were ultimately dropped, and a judge awarded Villegas $200,000 in damages and eligibility for a U-visa (Haas 2012). Tennessee protesters have also directed their ire against the nationally prominent private prison company Corrections Corporation of America, which runs many immigration detention centers and is headquartered in Nashville.[3] Protesters called attention to allegations of mistreatment of immigrant detainees and launched a national divestment campaign against CCA.[4] Ultimately, all street-level 287(g) agreements were scheduled to expire December 31, 2012 (Immigration Policy Center 2012).

The calls to end the voluntary 287(g) program have since transitioned into the movement to end the mandatory Secure Communities program. S-Comm's purpose is to identify deportable immigrants who have been booked by state and local police on criminal violations by checking their fingerprints through the Department of Homeland Security (DHS) databases. Immigrant rights groups such as Presente.org have circulated online petitions and promoted the slogan "End It! Don't Mend It!,"[5] pointing to the problems associated with pretextual arrests, racial profiling, and a flawed database. Advocates also highlight the removal of noncriminals who have been caught up in the program despite the 2010 Morton memo, which assured that the agency would prioritize criminal removals (Center for American Progress 2011; Waslin 2011; National Immigration Forum 2013). Though Immigration and Customs Enforcement (ICE) claims that the vast majority of removals through state and local enforcement programs reflect its top criminal enforcement priorities, the American Immigration Lawyers Association conducted an in-depth study of 127 cases and found that "nearly every case in this survey fell well outside of DHS's stated priorities (2011).[6] Immigrant rights leaders and key allies such as the U.S. Conference of Catholic Bishops have called for comprehensive immigration reform, and in the interim, for the complete overhaul of these local cooperation agreements (2011).

Alto Arizona: Contesting State and Local Immigration Restrictions

The reaction of immigrant rights advocates to this new irony—the election of a purportedly progressive Democrat who has fueled historic levels of deportation—has dovetailed with draconian measures at the state and local

levels. For example, in 2010 Arizona passed SB1070. Among its most controversial provisions was not only the further criminalization of undocumented persons, but also penalties for harboring, transporting, or employing undocumented immigrants. A long list of immigration advocates submitted *amicus curiae* briefs to the U.S. Supreme Court, including the American Civil Liberties Union, the American Immigration Lawyers Association, the National Council of the Raza, the Anti-Defamation League, the AFL-CIO, the U.S. Conference of Catholic Bishops, several state and city governments, and the governments of eighteen Latin American countries (National Immigration Law Center 2012b). The court ultimately only struck down the provisions requiring legal immigrants to carry proof of documentation, allowing state police to arrest any individual on suspicion of illegal status, and the further criminalization of undocumented immigrants applying for or holding a job in the state. The "show me your papers" provision, which enables local enforcement to demand proof of immigration status, and which critics argues facilitates racial profiling, was ultimately upheld by the U.S. Supreme Court (*Arizona et al. Petitioners v. United States* 2012).

Soon thereafter Arizona also passed HB2281, a ban on ethnic studies, which prohibited the "instruction of classes in any Arizona public or charter schools designed primarily for students of a particular group." In practice, this targeted the Mexican American Studies Program at the Tucson Unified School District. This move mobilized students and teachers in Tucson, as evidenced in the documentary *Precious Knowledge,* which demonstrates the positive impact of the curriculum on students, who had a 93 percent graduation rate.[7] Despite a series of protests against the school board, the program was ultimately canceled, and its director, Sean Arce, was dismissed. The ban catalyzed several innovative education activists, including a group of self-described *librotraficantes*, or "book smugglers," who vowed to return banned texts—which included works by award-winning authors such as Rodolfo Acuña, Sandra Cisneros, and Rudolfo Anaya—to the state. The 2012 *librotraficante* caravan traveled from Houston to Tucson, joining an informal network of artists, activists, scholars, and the business community (see *librotraficante* Web site).

Immigrant rights protesters have also mobilized against Maricopa County sheriff Joe Arpaio, who, along with Governor Jan Brewer and former state senator Russell Pearce (the sponsor of SB1070), was seen as a major figure generating anti-immigrant hatred and exploitation. A fervent supporter of the increased cooperation of local law enforcement in immigration control, Arpaio is also notorious for his "Tent City," which has been likened to a concentration camp and where prisoners are required to sleep outside in tents and wear pink underwear. An investigation by the U.S. Justice Department into

allegations of civil rights violations resulted in a scathing report that uncovered "discriminatory policing that was deeply rooted in the culture of the department, a culture that breeds a systematic disregard for basic constitutional protections."[8] Though Arpaio was ultimately cleared of criminal wrongdoing, a federal judge allowed the U.S. Department of Justice to proceed with its civil lawsuit against Arpaio (Sanchez and Kiefer 2012). Meanwhile protests against the Maricopa County sheriff continue through the *Alto Arizona* movement, which has brought together a long list of partners, including the Arizona human rights organization PUENTE and the National Day Labor Organizing Network (see altoarizona.com). Although Arpaio was reelected in 2012, Pearce lost his seat during a recall election in November 2012. Respect Arizona, a political recall committee in Maricopa County, continues its bipartisan efforts to recall Arpaio, despite countermobilizations by conservative groups such as Citizens to Protect Fair Election Results. In June 2012, the DHS revoked all its 287(g) task force agreements in Arizona (Duda 2012).

Undocubus: No Papers, No Fear across the Southern United States

Five other "new destination" states—Alabama, Georgia, Indiana, South Carolina, and Utah—have followed Arizona's lead and generated copycat bills.[9] This has in turn catalyzed further mobilizations in these states. Marchers led by a group called *Somos Tuscaloosa* rallied in front of the Alabama state senate to protest HB56.[10] This law, penned by Secretary of State Kris Kobach, a Republican, not only prohibited the transporting of, harboring of, or renting to undocumented immigrants, but also required Alabama businesses to use E-Verify and state license applicants (such as nurses) to be first screened through the Systematic Alien Verification for Entitlements (SAVE) database.[11] The bill also barred undocumented immigrants from attending public colleges/universities and required school officials to verify the legal status of students. Flanked by faith leaders and other immigrant allies, the group chanted "Una Familia, Un Alabama," "Undocumented, Unafraid," and "No Papers, No Fear, Dignity Is Standing Here!" (Morton 2012).

The Southern Poverty Law Center (SPLC) has also condemned Alabama's "war on immigrants" (2012). In August 2012 the Eleventh Circuit Court of Appeals invalidated parts of HB56. However, calls to a hotline run by the SPLC revealed that the bill had already created "a damaging environment of racial profiling by law enforcement officials"; promoted "state-sanctioned discrimination that, in turn, encourages private citizens to discriminate against and abuse people they suspect may be 'foreign'"; and "discouraged attendance and encouraged discrimination based on students' appearance and perceived ethnicity" (National Immigration Law Center 2012a).

As in Arizona, the courts have upheld the "show me your papers" provisions in Alabama, as well as in South Carolina (SB20) and Georgia (HB87). In both states, Christian faith leaders have been at the forefront of many of the mobilizations. The South Carolina Christian Action Council, for example, held marches and prayer meetings in major cities such as Columbia and Charleston to protest the implementation of the law. The South Carolina Immigration Coalition joined the National Faith Call-In Day for Humane Immigration Reform in January 2013 and has applauded congressional efforts to create a road map for citizenship.[12] The Georgia Immigrant and Refugee Rights Coalition has fought against the implementation of HB87, as well as the draconian SB458, which would have prevented undocumented students from attending any of the sixty public colleges in Georgia.[13]

These draconian state provisions, as well as the ongoing deportation efforts by the federal government through the creation of Secure Communities, precipitated unprecedented immigrant rights mobilizations such as the "Undocubus" and the "No Papers, No Fear" Ride for Justice. Recalling the mobilization of the 2003 Immigrant Workers Freedom Ride from San Francisco to Washington, D.C., and the Freedom Riders of the 1960s, the Undocubus tour began in July 2012 in Phoenix and continued through key southern states. Riders included students and documented allies, as well as undocumented activists, who placed themselves at high risk for deportation.

One blog entry for the bus profiled the Unzueta family from Chicago, which included an aspiring undocumented law student, Tania, and her sister and parents. They wore shirts that proclaimed "*Sin Papeles/Sin Miedo* (No Papers/No Fear)" and "We Will No Longer Live in the Shadows."[14] The ride culminated in a series of actions at the Democratic National Convention in Charlotte, North Carolina, in September 2012, forty-eight years after civil rights leaders led a similar action. During these actions in the heavily policed shadow of the convention, a group of ten Undocubus riders were arrested; they chanted "Undocumented, Unafraid" and "Organize!" alongside several high-profile supporters, including Latina actress Rosario Dawson (J. Knefel 2012). The ten arrested were booked, then later released with all charges dropped. Throughout the week "artivists" also plastered immigrant rights images such as "Migration Is a Human Right" all over Charlotte (M. Knefel 2012).

Artivists and the Immigrant Rights Movement

Art has been central to the immigrant rights movement. A key aspect of the student-centered artivist movement has been to draw connections between various experiences of "coming out." For example, Oakland-based print artist

Favianna Rodriguez weaves her messages of women's empowerment alongside bold calls to protect immigrant rights. A co-coordinator of the immigrant rights magazine *CultureStrike,* Rodriguez traces her activism back to Proposition 187, the anti-immigrant legislation advanced under then California governor Pete Wilson. Most recently she has teamed up with a group of other visual artists and hip-hop musicians in a short film called *Migration Is Beautiful,* which uses the image of the butterfly as a metaphor to highlight the natural cycles of migration. Rodriguez has referred to her work as that of a "cultural organizer," where art is not a tactic for communicating the movement's message, but rather a strategy for social change.[15] Her works are frequently seen at the forefront of major immigrant rights and women's rights mobilizations and include slogans such as "Tu Lucha Es Mi Lucha," "Legalización Ahora," "Black Latino Unity," "Politicians Off My Poontang: My Uterus Is Mine," "Occupy Sisterhood," and "Make Out, Not War."

These artists have not only targeted politicians who have either supported anti-immigrant legislation or failed to take leadership on comprehensive immigration reform, but have also shamed corporations and groups that have perpetuated anti-immigrant statements. For example, although American Apparel and its CEO Dov Charney have taken a very pro-immigrant stance in their "Legalize LA" campaign, Julio Salgado's work highlights the racial and class divisions inherent in the company's advertising. In one American Apparel ad, a thin white college student poses provocatively next to a working-class farm laborer, who critics argued was used as nothing more than an accessory or prop (Rivas 2012). In his "Undocumented Apparel" series Salgado also laid bare the deep class divisions between the rank and file of the immigrant rights movement and the relatively more affluent and privileged supporters of the Occupy protests. One series of vignettes read: "Things don't get better. We get stronger." "You went to an Occupy protest because you have a bachelor's and can't find a job? My parents had masters and worked at gas stations. We are the 0%." "You backpacked across Europe and they called you adventurous. I crossed a border to save my daughter's life and they called me a criminal" (Kennedy 2012).

Both Rodriguez and Salgado, as well as several other *CultureStrike* artists allied with the immigrant rights movement, came together in 2012 to launch the "Undocunation" tour.[16] Billed as an "artistic response to the immigration crisis," Undocunation has brought together artists, musicians, and performers across the country.[17] A key element of the event is to highlight the intersectionality of the undocumented experience and parallels between different processes of coming out. "Undocuqueer" activists such as Rodriguez and Salgado highlight not only the inequities facing undocumented communities, but also the

exclusion of LGBT binational couples from the U.S. immigration system. Beyond "the unrelenting pressure to hide" and "the indignity of having to live underground," the alienation of undocumented status is compounded by the discrimination within immigrant communities and mainstream U.S. society against queer individuals (Chen 2012). These experiences have been given voice by Salgado's "I Am Undocuqueer" poster series, the Undocumented Queer Youth Collective, and the Queer Undocumented Immigrant Project.[18]

FROM THE STREETS TO CONGRESS: DREAMERS AND THE STUDENT MOVEMENT

One of the most dynamic aspects of the immigrant rights movement has been the mobilization of undocumented students and their allies. Volumes have been written about the "nightmare" undocumented students face when they leave the relatively protective realm of K–12 schools and confront the barriers of higher education (see, i.e., Abrego 2008; Negron-Gonzales 2009; Gonzales 2011; Gonzales and Chavez 2012; Seif 2011). Groups such as the DreamActivist network, Dreamers Adrift, and student alliances at colleges and universities across the country have lobbied their home campuses and states for change, while also pushing for increased rights for undocumented individuals (such as driver's licenses and health care) and ultimately a federal path to legalization.[19] Key victories have included the California Dream Act and the 2012 Deferred Action for Childhood Arrivals (DACA), which as of February 2013 had approved nearly 200,000 applicants (U.S. Citizenship and Immigration Services 2013).

Mobilizations for these victories have ranged from online petitions, to sit-ins at congressional offices, to mass marches, and even to a 540-mile bike ride from UCLA to UC Berkeley to raise scholarship money for undocumented students and push for immigration reform. Social media such as Facebook and Twitter have been crucial to this student-led movement, which has not only facilitated the coordination of mass mobilizations, but also allowed movement members to challenge elite frames of the political debate (Zimmerman 2012).

One of the central questions emerging from the undocumented student movement has been whether individuals who were brought to the United States as children should be "punished for the sins of their parents." This tension has created at least a symbolic rift between the efforts to legalize high-achieving students and the more politically fraught proposals for comprehensive immigration reform. Yet many DREAMers have fought to reframe the typical labeling of undocumented students as innocent versus the undocumented parents who brought them as criminal. Recent mobilizations have

further complicated the image of high-achieving DREAMers as the only subjects worthy of rights. In addition to engaging in civil disobedience to push for legislative reform and launching petitions to protest the detention and deportation of fellow DREAMers, activists have also highlighted the tragedy of family separation and the devastating impact of ongoing deportation for entire communities.

High-profile detentions, like that of Maria Arreola (mother of prominent immigrant rights activist Erika Andiola of the Arizona Dream Act Coalition and Presente.org), have galvanized the movement. Arreola and her son were both taken in a nighttime raid in January 2013, which supporters denounced as retaliation for Erika's persistent activism. In a tearful YouTube message, Andiola pled: "We need to do something, we need to stop separating families. . . . This is real, this is so real. This is not just happening to me. This is happening to families everywhere."[20] Supporters swiftly responded to Arreola's detention with a protest outside the DHS in Phoenix and a massive e-mail and phone call campaign, all advertised through Facebook.[21] Andiola's mother and brother were ultimately released.

DREAMers have benefited from several high-profile supporters, perhaps most notably Jose Antonio Vargas, who in 2011 came out as an undocumented immigrant and has since been rallying in support of the DREAM Act. He is today the founder of the group Define American, which purports to shine a light on "the growing 21st century Underground Railroad: American citizens who are forced to fill in where our broken immigration system fails."[22] In June 2012 Vargas was also on the cover of *Time* magazine, which read "We Are Americans," alongside dozens of undocumented students. In February 2013 Vargas testified before a Senate Judiciary Committee meeting, flanked by his family and supporters, at which he challenged congressional representatives to explain, "What do you want to do with us?"[23]

Key philanthropists have also given student organizers substantial support and legitimacy. For example, Laurene Powell Jobs (widow of Apple cofounder Steve Jobs), in collaboration with filmmaker Davis Guggenheim, launched the site TheDreamIsNow.org, the goal of which is to "build an interactive documentary that will send a clear message to Washington: ACT NOW on the Dream Act—create a path for undocumented youth to earn their citizenship." In 2012 the Evelyn and Walter Haas Jr. Fund gave $1million to support financial aid for undocumented students at the University of California, Berkeley, where the California Dream Act provides undocumented students with some of the most comprehensive rights in the nation (Gordon and Chang 2012).

Meanwhile, in less progressive states like Georgia, professors and allies have mobilized to mitigate the legal exclusion of undocumented students

from the most prominent institutions of higher education in Georgia. Freedom University (FU) was founded in 2011 by volunteers dedicated to providing "rigorous, college-level instruction to all academically qualified students regardless of their immigration status."[24] Freedom University faculty come from a range of Research 1 universities and teach classes at undisclosed locations. Supporters view FU as a form of protest and have framed the exclusion of undocumented college students in Georgia as a modern example of "separate and unequal" access to higher education, likening these underground courses to schools set up to teach African Americans in the Deep South during the civil rights era (Lohr 2012).

THE LABOR MOVEMENT AND IMMIGRANT RIGHTS

In addition to creating the country's last historic amnesty, the 1986 Immigration Reform and Control Act instituted employer sanctions, which established penalties for employers who hire unauthorized workers. Although the actual enforcement of employer sanctions has waned considerably in the last two decades (Brownell 2005), the workplace has become a primary site of immigration enforcement. In 2008 workplace raids hit an all-time high, with high-profile operations such as those in Postville, Iowa (382 arrested); Laurel, Mississippi (592 arrested); and Greenville, South Carolina (330 arrested). However, during the Obama administration enforcement efforts have largely shifted instead to "silent raids," which make use of controversial workplace screening mechanisms.

One of these programs is the DHS's Social Security No-Match Letters, which alert employers to discrepancies in the information provided by employees and their federal records. Activists were able to successfully disable the use of these notices through ongoing demonstrations, in which opponents argued that employers used these letters to harass and threaten workers. For example, an October 2012 action included twenty-five thousand people marching through downtown Milwaukee, where protesters delivered a giant protest "No Match Letter" to the Social Security Administration offices.[25] These protests supplemented a union-backed litigation strategy that culminated in a court injunction against the use of these letters, which led the DHS to rescind the policy (Chisti and Bergeron 2009). Despite arguments that citizen and other documented immigrants would inevitably be disadvantaged by an error-laden database, the use of the letters was resumed in 2011 (National Immigration Law Center 2011).

Labor activists have also protested the increasing use of E-Verify, a workplace-screening program that federal contractors are required to use, but which is voluntary for most private sector employers. As with the Social

Security Administration's No-Match letters, activists have argued that rather than strengthening the employer sanctions provisions under the 1986 Immigration Reform and Control Act, these notices hand employers undue power to control workers (Griffith 2011; Lee 2011). Beyond the increased use of E-Verify by private businesses, several states have also moved to make the controversial screening system mandatory. As of July 2012, eighteen states required E-Verify to be used with some sector of the labor force, with nine states targeting all employers (National Immigration Law Center 2012a). In 2011 the Supreme Court upheld Arizona's universal E-Verify law targeting all employers (National Conference of State Legislatures 2012).

Individual unions have also taken a stand against the increased use of E-Verify and in favor of comprehensive immigration reform. Though unions were originally major proponents of employer sanctions during the passage of the 1986 Immigration Reform and Control Act, they have since reversed their position. In 2000 the AFL-CIO announced support for the removal of employer sanctions and for comprehensive immigration reform. This shift was a result of years of internal organizing on the part of the Labor Immigrant Organizing Network (LION), a group of labor and immigrant rights activists based in the San Francisco Bay Area (Hamlin 2008).

Today the AFL-CIO and Change to Win (the two major coalitions of labor unions in the United States) have rallied against the increased use of E-Verify and the abuses facing undocumented workers. In 2012 the United Food and Commercial Workers, for example, launched a boycott of the popular ethnic food market *Mi Pueblo* in October 2012, as a part of their organizing campaign.[26] According to a 2010 Government Accountability Office report, the current E-Verify system remains costly and error prone (U.S. GAO 2010). Opponents further argue that making this system mandatory would negatively impact small businesses and farms in particular and is likely to drive employers to pay workers under the table (American Immigration Lawyers Association 2013; DeWitt 2011). Similarly, as a part of the Hyatt Hurts campaign, UNITE-HERE organizers in Santa Clara, California, have pushed the hotel to back down on its use of E-Verify, which accounts revealed was being improperly used to verify existing employees.

Beyond union organizing campaigns, immigrants have been at the center of new forms of labor organizing throughout the country. Though the number of immigrants in unions has increased substantially over the years, and immigrants have become a crucial demographic for union membership, union representation overall has declined. Furthermore, those industries and occupations where unions are most absent, such as residential construction and the restaurant industry, are also industries where immigrant labor is most

dense and workplace violations most rampant. To address this challenge, local labor organizers have created worker centers, nonunion organizations with the goal of providing services to, organizing, and/or advocating on behalf of individual workers (Fine 2006). One of the most common types of worker centers has focused on day labor, a flashpoint for anti-immigrant sentiment. Though some cities have supported the creation and operation of these centers, municipal support has become politicized and too difficult to sustain in many others.

Beyond these grassroots mobilizations, the labor movement has also focused on policy change within immigrant-dense industries. The Agricultural Job Opportunities, Benefits and Security Act (AgJOBS) was first proposed in 2000 and continued to be reintroduced unsuccessfully throughout the first decade of the twenty-first century. The proposed law would "provide agricultural employers with a stable, legal labor force while protecting farmworkers from exploitative working conditions" (Immigration Policy Center 2008). Key supporters such as the United Farm Workers have sponsored petitions, at one point even garnering the support of comedian Stephen Colbert, who delivered controversial mock testimony to Congress in 2010. In addition to fighting for a path to legalization, the farmworker movement in California also pushed for key rights such as overtime (SB1121), collective bargaining (SB126), and improved shade and water protection (AB2346). The heat stroke death of seventeen-year-old pregnant farmworker Maria Isabel Vasquez Jimenez in Merced, California, shone a light on the lax enforcement of California's existing heat regulations. Supporters, including Jimenez's fiancé, responded with a fifty-mile march from Lodi to Sacramento bearing coffins and crosses with the names of other heat-related death victims.[27]

Worker centers have also mobilized immigrant workers in industries where unions are almost absent. The Community Labor Environmental Action Network (CLEAN) Carwash Campaign, for example, has worked with the United Steelworkers to negotiate union contracts for workers at a handful of establishments in Los Angeles, while simultaneously boycotting a list of car washes with documented rights violations. In January 2013 the campaign applauded the efforts of the Santa Monica city attorney to bring criminal charges against a company accused of rampant wage theft. The Carwash Worker Organizing Committee has broadened the work of the campaign by providing identification cards and medical treatment to workers, as well as a platform for leadership development.[28] A similar model of service, organizing, and policy advocacy has been undertaken in industries such as the National Domestic Workers Alliance, the Taxiworkers Alliance in Los Angeles and New York, the Restaurant Opportunity

Centers, and the Interfaith Worker Justice, which has recently launched anti-wage-theft campaigns in cities across the nation (see also Jayaraman and Ness 2005).

THE ROAD TO COMPREHENSIVE IMMIGRATION REFORM

As Barack Obama moves into his second term, immigrant activists applaud a range of hard-fought victories, such as deferred action for undocumented students, prosecutorial discretion for binational LGBT couples, and the embattled passage of the Violence Against Women Act. Yet advocates remain vigilant, holding Obama to his promise, reiterated in January 2013 in Las Vegas, that he would make comprehensive immigration reform a top priority. Advocates have rejected measures such as the ACHIEVE Act, proposed by Senators Kay Bailey Hutchinson and John Kyl of Texas, which would provide temporary renewal work permits to only about 1.2 million undocumented youths brought to the country as children. When asked what path to citizenship would remain for these immigrants, the senators responded glibly that immigrants could simply marry U.S. citizens. They were reminded by the American Immigration Lawyers Association that since 1996, most individuals who enter the country illegally face at least a ten-year bar on reentry before they have any chance of adjusting their status. Further, LGBT individuals, who don't qualify to marry under current federal immigration rules, could not pursue this route, and current wait times for individuals from some major countries of origin can be up to two decades.[29]

Consequently, advocates such as the Coalition for Human Immigrant Rights of Los Angeles have continued to emphasize the importance of an immediate path to legalization and the importance of family reunification as a guiding principle.[30] Building on well-honed organizing legacies, CHIRLA and others have focused on lobbying key congressional representatives, such as Senator Dianne Feinstein, to get the congressional votes needed to pass a meaningful reform package. Meanwhile, progressive policy advocacy groups such as the Center for American Progress continue to support policy research to highlight the impact of current immigration policies on immigrants and their families.[31] Labor advocates such as the National Employment Law Project and the National Immigration Law Center also made a push in early 2013 to ensure that improved enforcement of immigrant worker rights is at the center of any upcoming reform.[32]

Immigrant advocates also continue to work on state-level campaigns in support of immigrant worker rights, such as bills that would provide workers in immigrant-dense industry access to wage and hour protections, workers' compensation, and other industry-specific protections such as the right to

uninterrupted sleep. The National Domestic Workers Alliance landed a major victory in 2010 when the governor of New York signed into law the Domestic Worker Bill of Rights. A similar bill has passed both houses of the state legislature in Hawaii, and NDWA and its allies are also waging battles in California, Illinois, and Massachusetts.[33] A central base for these campaigns has been immigrant women. The American Community Survey has estimated that 93 percent of domestic workers are women, 73 percent are foreign born, and 67 percent are Latina (Appelbaum 2010).

Beyond workplace rights, California immigrant advocates also vow to push for driver's license rights in 2013, after several failed attempts by state legislator Gil Cedillo (Los Angeles) over the last decade. Advocates came close to restoring these rights, which were a casualty of the post-9/11 immigration law overhaul, in 2003 when Governor Gray Davis signed the bill before his recall. Incoming governor Arnold Schwarzenegger subsequently vetoed the bill. In 2012 Assemblyman Luis Alejo (Watsonsville) championed AB60, which would add California to the short list of states (New Mexico, Utah, and Washington) that currently provide driving privileges. California governor Jerry Brown is an uncertain factor, however. Having vetoed a similar bill in 2010, he nonetheless supported driver's licenses for the newly "DACA-mented" students who benefited from Obama's prosecutorial discretion. Brown also signed the California Dream Act, which along with AB540 now provides undocumented California high school graduates access to in-state tuition and financial aid. These measures nevertheless remain contested by California's conservative representatives from the Central Valley and Orange County. The demographic reality of the Latino electorate and the results of the 2012 election, however, are a constant reminder of the demand for reform (Sanders 2013).

In some states conservative politics has spawned interesting alliances in places where the demographic reality of immigration is undeniable. For example, in 2005 only ten of the thirty-two Texas congressional representatives voted against the anti-immigrant bill HR4437. In Houston, Texas's largest city and soon to be the third largest city in the nation, only three congressional representatives opposed the bill.[34] Gubernatorial politics also seem to provide an opening for some state-level change. Both former governor George W. Bush Jr. and his successor, Rick Perry, were known for taking relatively moderate stances on immigration, compared to their conservative counterparts. During Republican campaigning, Perry had to defend his position in favor of the Texas Dream Act, opposition to the mandatory use of E-Verify for businesses, and calling the building of a massive border fence "idiocy" (Gabriel 2011). Major Texas business groups have also demonstrated the connection between fair business practices and immigration reform, citing the ills of unfair competition posed by unscrupulous

contractors who hire undocumented workers, loss of tax revenue, and the misplaced efforts of employer audits.

A recent proposal put forth by the business coalition stresses the impossibility of deporting the more than eleven million undocumented workers in the country and proposes instead that Texas take the lead in giving undocumented workers conditional driver's licenses and permission to work. Texans for Sensible Immigration Reform (TX-SIP 2011) articulates this proposal in bold terms through a plea to the GOP, while rejecting both amnesty and mass deportation (with the exception of violent offenders). Key recommendations include instituting a modern ID card with full biometric identification for noncitizens, the availability of a ten-year visa that would allow recipients to work and travel and then apply for permanent residency on the condition of English proficiency, payment of back taxes and a fine, and no provisions for either Social Security or Medicare. This conservative justification for immigration reform tied the need for labor supply to low birth rates and abortion in the United States and articulated the GOP's reliance on the Hispanic vote (TX-SIP 2011). Though a far departure from the core rationales offered by left-of-center immigrant advocates, in a conservative state such as Texas, the business rationales for reform have carried significant weight (Gleeson 2013).

Regardless of the specific policy proposal, at all levels of policy reform social media continue to be crucial, with organizations such as *Cuéntame* and *Presente .org* facilitating an ongoing stream of online petitions, video announcements, and news alerts. The recent Immigrant Bill of Rights outlines a set of demands for the administration: 1) ensure immigrant access to legal representation, 2) protect immigrant LGBT rights, 3) reward education of immigrant youths, 4) protect immigrants from discrimination, 5) stop exploitation of immigrant work, 6) stop arbitrary detention and deportation, 7) protect immigrant freedom of expression, 8) address root causes of migration, 9) ensure human rights at the border, and 10) stop separation of immigrant families.[35]

NOTES

1. The Department of Homeland Security defines an "alien" as "any person not a citizen or national of the United States (U.S. Department of Homeland Security 2013).

2. The role of faith leaders in fighting xenophobia has deep roots in the civil rights movement. While Christian and Jewish clergy have come together to fight for the rights of Latino immigrants, Muslim clerics too have played an important role in the post 9/11 era when the civil liberties of Muslim and Arab Americans have come under attack (Hondagneu-Sotelo 2008).

3. http://www.hispanicnashville.com/2011/05/cca.html.

4. http://nationinside.org/campaign/divestment/press/national-private-prison-divestment-campaign-groups-to-hold-national-day-of-/.

5. http://www.change.org/petitions/president-obama-s-comm-end-it-don-t-mend-it.

6. In FY2012, ICE removed 409,849 individuals through the Secure Communities program (U.S. Immigration Customs and Enforcement 2013).

7. http://www.preciousknowledgefilm.com/.

8. http://www.cbsnews.com/8301-201_162-57343614/feds-ariz-sheriff-arpaio-violated-civil-rights/.

9. http://www.aclu.org/immigrants-rights/state-anti-immigrant-laws.

10. http://www.welcomingalabama.com/tuscaloosa.html.

11. http://thinkprogress.org/tag/hb-56/?mobile=nc.

12. http://www.sc-coalition.org/updates.

13. Undocumented immigrants have long been ineligible for in-state tuition in Georgia, and in October 2010 the state board of regents voted 14–2 to ban undocumented immigrants from attending the top five state schools with a competitive application process. https://girrc.wordpress.com/2012/03/06/362012-cl-atlanta-anti-immigrant-student-bill-passes-senate/; http://www.salon.com/2012/02/24/georgias_immigration_law_targets_universities/.

14. http://culturestrike.net/an-undocubus-sketchbook.

15. http://culturalorganizing.org/?p=993.

16. http://www.ybca.org/undocunation#overview.

17. http://culturestrike.net/undocunation-art-and-activism-across-borders.

18. http://juliosalgado83.tumblr.com/post/15803758188/i-am-undocuqueer-is-an-art-project-in.

19. http://dreamersadrift.com/.

20. http://www.youtube.com/watch?v=FVZKfoXsMxk.

21. https://www.facebook.com/events/269099203218291/.

22. http://www.defineamerican.com/page/about/about-defineamerican.

23. http://www.youtube.com/watch?feature=player_embedded&v=7wJXXCsj8s8#!.

24. http://www.freedomuniversitygeorgia.com/mission--misioacuten.html.

25. http://www.vdlf.org/articles/index.php?article_id=13.

26. Critics of the union's boycott strategies, however, argue that the union has launched its actions without the grassroots support of its workers (http://lavozlit.com/?p=3605).

27. http://www.californiareport.org/slideshows/farmworkerdeath/.

28. http://cleancarwashla.org/index.cfm/#&panel1-1.

29. http://huffingtonpost.com/mobileweb/2012/11/30/achieve-act-john-kyl_n_2218182.html.

30. http://www.chirla.org/.

31. http://www.americanprogress.org/.

32. www.nelp.org; www.nilc.org.

33. The California AB889 was vetoed by Governor Jerry Brown in October 2012, and advocates have reintroduced a new version of the bill (AB241), which allows

exceptions for low-income, ill, elderly, or disabled individuals who need around-the-clock care (a provision pushed by Brown and other business groups). See http://www.huffingtonpost.com/2013/03/07/domestic-workers-california-bill_n_2822520.html.

34. These included Sheila Jackson Lee, Al Green, and Gene Green (http://www.govtrack.us/congress/vote.xpd?vote=h2005-661).

35. http://immigrantbillofrights.org/.

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9

Nongovernmental Organizations, Civil Society, and Undocumented Migrants

Lane Van Ham

Undocumented people pose a conundrum to the civil society of the United States that is succinctly expressed in Mae Ngai's description of them as "a social reality and a legal impossibility" (2004, 4). Insofar as civil society has been conceptualized as the range of nongovernmental actors who counterbalance state powers and act as guarantors of democracy, its parameters have been understood as coextensive with the jurisdictions of sovereign nations. Conventionally, citizens of those sovereign nations are assumed to be the agents and beneficiaries of checks on state power (Keane 1998, 80–89). As "legal impossibilities" for the nation-state, the undocumented then stand outside the purview of nongovernmental organizations (NGOs) and other actors in civil society. Yet even as undocumented people are prohibited by law from being so much as present within a country's geographical bounds and are excluded from various protections and rights that are extended to sanctioned residents, they are nonetheless imbricated with the workings of society and the gamut of its institutions, major and minor. As ipso facto negations of national community as defined by juridical *ideal,* undocumented people present a need to reflect on the socially *real,* as well as the deepest values that are supposed to undergird both.

The need is not purely theoretical. In the United States the need has been addressed on the ground for decades by NGOs, social movements, and other sectors of civil society that engage in what may be called undocumented advocacy.[1] Undocumented advocacy assumes many forms and ideological frameworks and assists both those who are stereotypically "without papers"—i.e., lacking material proof that their presence within the territory is legally permissible—and those in any condition under which state authorities may rule them unlawfully present, including violation of terms of entry or residence. On the surface, many advocates for the undocumented evince little to no self-reflexive critique of the national legal and political system to which the participants belong. Their actions, for instance, can be motivated by humanitarian concerns that are detached from any analysis of undocumented migration as a social phenomenon. Some undocumented advocates have positioned their work in terms of a strict legalism based on fidelity to the Constitution or other laws that have no bearing outside of the United States. Among other things, legalistic approaches may involve litigating to show that an allegedly deportable person is legally entitled to remain in the country or objecting to measures imposed against undocumented people on the grounds that they will in time be used to erode the liberties of citizens.

In contrast, some forms of advocacy on behalf of the undocumented imply or espouse some moral standard higher than state sovereignty, asserting that questions of justice and fairness toward undocumented people cannot be answered solely by reference to a lawful/unlawful binary. They have, for example, opposed deportations on the grounds that they disrupt families and social stability, as well as endanger people who face violence and persecution in their home countries. They have also advanced more general objections to immigration law by arguing that undocumented people have earned membership in the nation by dint of long-term residence and economic productivity, and that people are driven to migrate extralegally by exigencies of greater import than border enforcement and federal law.

Other advocacy projects have ventured more explicitly into the philosophical and deconstructive, interrogating the abstract concept of "undocumented" and inquiring into its social consequences. Central to these projects has been a sense that people who are undocumented or whose status within a nation-state is not yet determined are at risk of being excluded not just from protections and privileges under the law, but from humanity itself. The most famous expression of this concern is Hannah Arendt's *The Origins of Totalitarianism,* in which she reviews the situation of masses of Europeans who were rendered stateless by World War I and treated by their nations of exile as "the scum of the earth" (1966, 147). Their plight, Arendt argues, refuted the promise of the "Rights of Man" by demonstrating how

noncitizens could be exempted from what are supposedly universal and inalienable rights and thereby be rendered nonpeople. Probing and denaturalizing the constituent features of geopolitical border regulation, as Arendt and others have done, amounts to a form of critical anthropology, in the sense that it attempts to define what a human being is in an age of passports, resident aliens, guest workers, and so forth. It also tends toward a counterhegemonic project of "rehumanizing" those who are denigrated because of their position in the limbo of noncitizenship.

Grappling with the legally impossible but socially real, NGOs and other undocumented advocates at once confirm, confound, and contest the dimensions of civil society. This is most obviously true of the approaches that argue for relativizing the law vis-à-vis extenuating circumstances or pan-human moral principles, because they suggest that the moral authority of civil society must stem from a source that transcends national confines. But undocumented advocacy that is apparently comfortable within a nationally circumscribed civil society ends up in the same position. Because undocumented people are both within and without their host country, they are particularly vulnerable to the application of state powers that would not be used on citizens and other sanctioned residents. For citizens who fear the eventual use of these expanded state powers against the rest of the population, alienated and undocumented people become proverbial canaries in the coal mine for the preservation of freedoms integral to a functioning civil society. Paradoxically, then, the well-being of citizens, and indeed of civil society itself, becomes linked to defending the foreign born, with or without papers. The end result, in either case, is to insist on the state having limited power even against people who are not legitimized as de jure members of the national community. At a minimum, actions in defense of undocumented people imply a civil society whose sphere of interest is supranational, and for undocumented people to participate in these actions on their own behalf hints at a civil society that is supranational as well.

EARLY CONTESTS OVER EXCLUSION AND DETENTION: 1882–1910s

The origins of undocumented advocacy are fuzzy, owing to a number of difficulties in defining "documentation." Certainly, twentieth- and twenty-first-century disputes over residence, documentation, and national membership have been prefigured by controversies over inclusion in the colonies and the early republic, and the first glimmers of advocacy for the undocumented appear among those who argued for the humanity and natural rights of religious minorities, Africans, and Indians.

But undocumented advocacy proper began to take shape in the final decades of the nineteenth century, in tandem with the consolidation of immigration lawmaking at the federal level and the development of policies for the detention and deportation of people deemed ineligible for admission or continued residence. During this time, restrictions on entry and deportable postentry offenses proliferated, which meant more people were blocked on arrival or detained after admission and put at risk of deportation.

The most important early challenges to state powers of exclusion and deportation concerned Chinese immigrants, especially those detained upon arrival. Shortly after the Chinese began emigrating to California during the Gold Rush, they formed mutual aid associations known as *huiguan,* which were organized around members' home districts in China. After Congress passed the Chinese Restriction Act in 1882, the *huiguan* initiated a torrent of court cases over Chinese who were detained and prevented from entering. Over the next twenty plus years, the *huiguan* rallied support on both sides of the Pacific to liberalize the treatment of Chinese in admissions and the enforcement of postentry social control. Though focused on their compatriots, the rough contours of their agenda were those of broader undocumented advocacy to come: they protested denied entries; the mistreatment of detainees; the refusal to award detainees due process; and measures that ostensibly targeted unlawful entry and presence, but stood to snare legal residents as well (Lee 2003; Salyer 1995).

Immigrant advocates addressed similar strictures as European migration boomed in the Northeast. Ethnic-specific associations such as the St. Raphael's Italian Benevolent Society and the Hebrew Immigrant Aid Society aided their cohorts by maintaining a presence at ports of entry and intervening as needed so as to win the release of detainees (Brown 1996, 168; Wischnitzer 1956, 41; Zizzamia 1989, 36–36, 49–50). The era also saw the establishment of organizations that worked on behalf of immigrants in general, regardless of ethnicity. The most enduring and influential of these was the Immigrants' Protective League (IPL), a progeny of Chicago's Hull House social settlement (Lissak 1991). Part of the IPL's work concerned Chicagoans whose immigrant relatives or friends were being held in detention. IPL representatives would contact groups with offices at the landing sites, such as the YWCA, the Immigrants' Commission, and ethnic organizations, to discover the basis for the detention and prevent hasty, undue deportations (Abbott 1924).

FIGHTING DEPORTATIONS: 1920–1950s

In the 1920s the federal government elevated deportation from an occasional measure to a core component of immigration policy. As it did so,

groups in civil society pushed back, urging exceptions on the basis of family need and humanitarian concern, as well as contesting deportations intended to weaken a variety of social movements. Though modest in scale, these efforts constituted the earliest work by sectors of civil society to analyze and respond to the phenomenon of undocumented immigration on a systematic basis.

By the end of the 1920s legal scholars and immigrant advocacy groups were chipping away at deportation and naturalization policy in ways that had not been attempted since the heyday of the *huiguan.* Reformers asserted, first of all, that deportation policy operated outside of normative standards of judicial procedure and fairness. But the primary thrust of their rhetoric was to undermine the monolithic character of policy by arguing that it was applied in ways that harmed families and the social fabric in general (Ngai 2004, 77). Rather than make deportation rulings strictly by the book, proposed the reformers, some degree of "administrative discretion" (Van Vleck 1932, 14) should be exercised so that certain deserving people could remain in the country. Three major investigations and reports along these lines appeared in the early 1930s: "Deportation of Aliens from the US to Europe," by Barnard political science professor Jane Perry Clark; "Administrative Control of Aliens: A Study in Administrative Law and Procedures," by George Washington University Law School dean William Van Vleck; and a volume of the sprawling report issued by the National Commission on Law Observance and Enforcement (popularly known as the Wickersham Commission).[2] In effect, the proposals rehearsed what in later decades became hallmarks of immigration policy debate, disputing the wisdom of "enforcement only" practices and proposing some means by which the government could award "amnesty" to undocumented people under particular circumstances.

The objections raised by legal scholars were also reflected in NGO activity. The IPL responded to deportation raids in Chicago in 1926 and 1930 by compiling information from witnesses and countering media and government narratives that touted the roundups as effective crime-fighting measures ("Chicago's Deportation Drive" n.d.; Davis 1931). Two more organizations that contested deportation policy were the International Institutes and the Foreign Language Information Service (FLIS). Formed in 1910 under the auspices of the YWCA, the International Institutes operated in numerous industrial cities nationwide, providing immigrant communities with services such as English classes and naturalization assistance (Mohl 1981). The FLIS, in turn, began as a federal project to propagandize among immigrant populations during World War I, but became an independent body in 1921 and primarily focused on producing materials for publication in the many

foreign-language newspapers then operating in the United States ("Scope and Content Note" 1989, v). But the International Institutes and the FLIS also engaged in occasional advocacy work, with the latter coming out in 1928 in favor of naturalizing undocumented immigrants who were otherwise in good legal standing (Board of Trustees n.d.), and both rallying opposition to a range of congressional legislation from 1930 to 1931 that would have expanded deportation powers and required foreign-born residents to register with the government (Lewis 1930; Bremer 1931).

Immigrant advocates also challenged assumptions about exclusion and deportation by fighting the de-documentation of people who had been legally admitted to the country. A prominent augur in this regard was the case of John Turner, an anarchist labor organizer who visited the United States in 1903. Though cleared for entry on arrival, Turner was later arrested and sentenced to deportation because of a ban on anarchist admissions that Congress had passed previously that year. Turner's supporters rallied on his behalf and argued his case before the U.S. Supreme Court, to no avail (Kanstroom 2007; Sayler 1995). The use of immigration law as a means of narrowing the range of political expression assumed greater prominence with the 1917 Immigration Act, an omnibus of restriction precipitated by a perfect storm of boilerplate xenophobia and elite fears over leftist political movements. In the process, domestic dissent, labor organizing, and civil liberties alike were denounced as foreign, subversive influences, with communism replacing anarchism as the epithet at the end of the tarring brush. The campaign reached its pinnacle in 1919 and 1920 with the Palmer Raids, a roundup and deportation of noncitizen dissidents directed by Attorney General A. Mitchell Palmer (Kanstroom 2007; Walker 1990).

The government's sweeping new powers to stymie oppositional speech and to alienate, detain, and deport succeeded in weakening some forms of political dissent, but they also galvanized pushback among civil libertarians. Outraged by the Palmer Raids and wartime assaults on free expression, a number of legal scholars and otherwise concerned observers formed the American Civil Liberties Union (ACLU) in 1920 (Kanstroom 2007; Walker 1990). Sounding the alarm that these strategies could be deployed against citizens suggested a narrow, nation-based metrics for measuring the utility of government action, but it also had the effect of legitimizing the foreign born—even those alienated on the basis of their ideology—as actors within civil society. The Palmer Raids were denounced by the ad-hoc National Popular Government League (Walker) and the Federal Council of Churches (Panunzio 1921), but their post hoc criticism did not produce lasting immigrant advocacy organizations, and the rights of immigrants were only a subset of the ACLU's larger mission.[3]

Focused, sustained resistance to politically motivated deportations had to wait until the genesis of the American Committee to Protect the Foreign Born (ACPFB) in the early 1930s. Evidence persuasively suggests that the ACPFB was a front organization for the Communist Party USA (CPUSA) (Sherman 2001), which had been harried by authorities for over a decade and needed a way to defend its own ranks from deportation. But with the rise of fascist repression in Europe, the ACPFB's work often became not just a matter of the CPUSA's organizational survival, but of saving human lives. Throughout the 1930s the ACPFB focused on suspending deportations of Communists to fascist-controlled areas of Europe, including members of the Spanish Civil War's International Brigades who had escaped Franco and been detained upon arrival in the United States (Smith 1959; Sherman 2001). Their efforts coincided with the development of refugee discourse as a specific branch of immigration policy debate, the principal concern being whether the United States should bend or create policies that would admit a larger number of Jews fleeing Hitler's Germany. However, in the cases championed by the ACPFB, the refugees were already present, and sending them back, said the committee, was tantamount to a death sentence.

The ACPFB continued to block deportations throughout World War II and the Red Scare of the 1950s, most notoriously in the case of Harry Bridges (Larrowe 1977; Sherman 2001). The Australian Bridges came to the United States in 1920 (Sherman 2001) and worked as a longshoreman in San Francisco, where he led a general strike in 1934 that virtually shut down shipping along the West Coast and produced a favorable settlement for the workers (Kanstroom 2007; Sherman 2001). For the next two decades federal prosecutors attempted to have Bridges deported, but they were rebuffed by court decisions and eventually gave up after losing a case in civil court in 1955 (Larrowe 1977).

Despite the ACPFB's general subordination to the objectives of the Soviet Union, its work was path-breaking and prophetic. Never before had any organization advocating for the undocumented maintained such a nationwide base of grassroots support or carried out such a wide range of activities over such a long period of time. For two decades the committee opposed bills that expanded the government's deportation powers; published a variety of general-audience pamphlets on immigration history and current debates; offered naturalization assistance; fought in the courts; sponsored publicity stunts, petition drives, and rallies; and distributed information on legislation to the populations that stood to be affected by it (Sherman 2001; Smith 1959). This flurry of activity only slowed in the 1950s, when congressional hearings exposed the ACPFB's close ties to the CPUSA, and

its membership steadily eroded until it was little more than a letterhead (Sherman 2001).

CRITIQUING DEPORTATION IN THE BORDERLANDS: 1920–1980s

Ultimately, however, the politics of immigrant documentation became defined not by postentry offenses, but by undocumented entry, and the front-line of controversy was not the coast, but the nearly two-thousand-mile boundary dividing the United States and Mexico. Asians and Europeans had been entering the United States illegally through Canada and Mexico since the 1870s (Ettinger 2009), but in the 1920s Mexicans became established in popular consciousness as the archetypal undocumented immigrants. The reasons for this were manifold, but the primary one was that businesses in the Southwest that benefited from short-term, seasonal labor had promoted cycles of migration to and from Mexico for decades (Gutiérrez 1995). As a result, members of ethnic Mexican communities in border states and beyond routinely exhibited the full range of legal statuses, from native-born citizens to recent undocumented entrants (Ngai 2004).

Mexican Americans responded to these cross-border influxes ambivalently. They welcomed the new arrivals as links to their ancestral homeland, but worried that the primarily uneducated, unskilled laborers would depress wages and reinforce Anglo stereotypes of Mexican culture as fundamentally backward (Gutiérrez 1995). Concerns over wages, in particular, were exacerbated by the Great Depression, and in 1930 the premier Mexican American civil rights organization, the League of United Latin American Citizens (LULAC), began to call for curbs on immigration from Mexico (Gutiérrez 1995). When the government launched deportation and repatriation campaigns during the Depression, there was little protest, even though an estimated 60 percent of those removed in the early 1930s were U.S. citizens, and many removed from Texas in a 1939–1940 roundup were U.S. citizens as well (Ngai 2004).

Yet as historian David Gutiérrez points out, differences in nationality were less vexing for some Mexican Americans, particularly members of the working class who collaborated across the citizen/noncitizen divide in mutual aid societies and labor organizations (1995). Over time a greater number of Mexican Americans began to feel a basis for solidarity with the noncitizens in their midst on the grounds of what Gutiérrez has called the "equity" argument, predicated on the understanding that Mexican culture had thrived in the Southwest before the creation of the present-day U.S.-Mexican border, and that Mexican nationals who had labored for years in the United States—often

at the behest of U.S. recruiters—had earned membership in the national community through their toil and contributions to the economy (Gutiérrez 1995, 108, 113–116).

The focal point for these conflicting pulls at midcentury was the U.S.-Mexican Bracero Program. Launched in 1942, the Bracero Program was a bilateral accord that arranged for Mexican nationals to enter the United States on a temporary basis to relieve an ostensible wartime labor shortage in the Southwest (García 1980). The Bracero Program revived and exacerbated old fears among many Mexican Americans about immigration from Mexico. When the program was renewed after World War II, despite the end of the labor shortage rationale, Mexican American civil rights groups participated in an "antibraceroist" (García 1980, 29) coalition that also included the National Council of Churches, the National Catholic Welfare Conference, the National Consumers League, the NAACP, the American Friends Committee, and the AFL-CIO (García 1980).

Ironically, political turbulence about the Bracero Program also featured loud and sometimes vituperative attacks on undocumented migration. Despite the belief of both Mexico and the United States that a formal guest worker program would reduce undocumented entries to the United States, for a miscellany of reasons the opposite occurred (García 1980). According to some critics, in fact, illegal immigration had become more worrisome than the formal Bracero accord, and they called for government action to stop it (García 1980). Defamation of "illegals" escalated accordingly, and the general result of anti-Braceroist lobbying and coverage of undocumented immigration in popular media was to construct undocumented immigrants as malevolent, enemy forces. One immigration official, in language that would eventually become commonplace, described undocumented migration as "the greatest peacetime invasion ever" (García 1980, 126).

Hence, when the Immigration and Naturalization Service (INS) launched a large-scale, high-profile campaign to detain and deport undocumented laborers in 1954, opposition from immigrant advocates was scant. Rather tactlessly called "Operation Wetback," the dragnet targeted California and Texas in particular and sought to remove as many undocumented people from the United States as possible as well as to bolster the image of the INS. Mexican American civil rights groups publicly endorsed the roundups, but ethnic Mexican communities were harmed by the operation in various ways, including the breakup of families and the deportation of legal residents (García 1980). Organized advocacy for the deportees was limited to California, chiefly Los Angeles, where the Los Angeles chapter of the American Committee for the Protection of the Foreign Born (LACPFB) blasted the raids in flyers and street protests. Pointing out that deportation efforts tended

to be used to squash workers' organization (García 1980), the LACPFB decried Operation Wetback as a violation of Mexican ethnics' civil rights and organized protest delegations to the INS district headquarters (Morgan 1954). In a foreshadowing of the kind of alliance building that would not become standard in undocumented advocacy for another generation, the LACPFB delegations included Jewish survivors of the Holocaust and Japanese Americans who had been interned by the U.S. government during World War II (García 1980; Morgan 1954).

But the paucity of protest over Operation Wetback belied subtle shifts in opinion among Mexican Americans, who, while maintaining opposition to undocumented migration in general, were starting to equivocate on punitive measures against undocumented people already present in the country. Many U.S. citizens of Mexican ancestry found their families sundered when the government began stepping up deportations, first through the expanded deportation powers of the McCarran-Walter Immigration Act of 1952, and then through Operation Wetback. As a result, more Mexican Americans began to articulate some version of the equity argument to assert that qualified undocumented Mexicans should be exempt from deportation (Gutiérrez 1995). LULAC's national convention in 1954, for example, denounced undocumented immigration, but likewise denounced McCarren-Walter as harmful to families (Gutiérrez 1995). The Community Service Organization, which formed in 1947 to mobilize Mexican Americans as a force in Los Angeles politics, manifested the shift in attitude by welcoming undocumented people as members and even backing legislation that provided pensions to aliens who had worked in the state for twenty-five years, regardless of legal status (Gutiérrez 1995).

In the late 1960s a more forthright defense of undocumented people took form in the *Centros de Acción Social Autónomo* (Autonomous Social Action Centers, more popularly known by the Spanish acronym CASA). CASA was the brainchild of Bert Corona and Chole Alatorre, longtime Mexican American labor activists who argued that undocumented people had to be empowered and welcomed into working-class organizing efforts. Corona and Alatorre launched CASA in 1968, opening an office in Los Angeles and providing the community with information about immigration law, from naturalization procedures to the rights of detainees (García 1994). They sponsored educational and social gatherings and aided immigrants with fighting eviction, finding employment, and meeting basic needs.[4] Importantly, CASA also involved undocumented people in its decision making and political mobilizations (García 1994). The organization grew, and within a few years CASA had expanded to multiple offices in Los Angeles and several major cities in other parts of the country (García 1994).

CASA's formation and growth came just before a revival of undocumented immigrant scapegoating at the start of the 1970s. But as sensational media reports and punitive legislation emerged, so too did forms of opposition that would have been unthinkable only a decade before. These years were a watershed in advocacy for undocumented people and immigrants in general. First, although earlier immigrant advocates had occasionally adopted social movement strategies such as mass meetings and street protests, they had not done so in an ongoing, sustained manner. From the mid-1970s on, pro-immigrant sentiment would include social movement activity on a regular basis. Second, in this period some erstwhile anti-Braceroists who had called for crackdowns on illegal entry reversed their positions and formed new alliances that would persist into the twenty-first century.

In the most important transformation, Mexican Americans who had long promoted immigration controls began moderating their perspectives. If Mexican American NGOs had once feared that Mexican immigrants would diminish their chances for prosperity, a generation of immigration enforcement had convinced them that crackdowns on undocumented migration invariably resulted in discrimination and civil rights violations against ethnically Mexican citizens and other legal residents. Some Mexican American organizations also lined up to promote some form of amnesty that would establish a path for undocumented people already in the United States to regularize their status and become citizens (Gutiérrez 1995). Though the softened attitude largely derived from the venerable "what is done to immigrants will be done to us" argument, moves to defend a community of mixed legal statuses subtly challenged the assumption that being undocumented and even having entered without documentation were offenses that ought to result in alarm and punishment.

Religious anti-Braceroists also reversed their prior antipathy to the presence of undocumented people in the country and backed some means of making them eligible for citizenship. In 1976 the National Conference of Catholic Bishops declared that "people uprooted and on the move for survival and human dignity are a theological sign to the Christian community" and that "the People of God [are] required by the Gospel and by its long tradition to promote and defend the human rights and dignity" of immigrants (Nolan 1984, 168–169). The declaration further recommended that "in light of humanitarian concerns and the preservation of family unity, a generous amnesty procedure be enacted for the undocumented aliens presently residing in the US" (169). The National Council of Churches followed suit in 1981, issuing a policy statement that looked askance at the practicality and wisdom of mass arrests and deportations and expressed its own support for a conditional amnesty program (Nolan 1984).

By the early 1980s a confluence of organizations including the ACLU, the American Immigrant Lawyers Association, the U.S. Catholic Conference, the National Council of Churches, the National Conference of Catholic Bishops, LULAC, and the National Council of La Raza had become formidable enough to help defeat objectionable legislation in Congress (García 1994). Never before had grassroots, popular organizations formed specifically around the cause of undocumented people, nor had that cause been endorsed at a national level, by such high-profile institutions. The trend continued in the ensuing years, as more organizations began to contest congressional proposals to crack down on undocumented entry and residence.

Critiquing Refugee Policy: 1960–1980s

In the 1970s and 1980s refugee policy became another flashpoint for questioning the merits of a simple "enforcement only" approach to undocumented entry. Refugee policy in the United States had evolved haphazardly since World War II, primarily guided by the belief that refugees could and should serve as propaganda value for a worldview that assumed polarized, irreconcilable antagonism between the United States and communism.

The process of approving or denying refugee status thereby institutionalized a double standard that became grounds for a new level of debate over the fairness of the legal/illegal distinction. Starting with Hungarians who fled their country after the Soviet invasion in 1956, U.S. presidents began to exercise the executive privilege of overriding numerical limits on immigrant admissions for people who needed to leave their home countries under emergency conditions. Dwight Eisenhower and John Kennedy extended the practice to Cubans after the 1959 revolution in that country, permitting Cubans to overstay their visas and in some cases enter without papers (Loescher and Scanlon 1986). At least some of this policy stemmed from statements of the migrants that they were merely awaiting favorable conditions to return home, but even after the Castro regime solidified, the U.S. Department of State continued to admit Cuban migrants outside of the official system until the 1970s (Loescher and Scanlon 1986). In contrast, Haitians who arrived without documentation in the same period were often allowed to stay, but no special accommodations were made for them to normalize their status, because the United States was anxious to downplay the human rights violations of Haitian ruler Jean-Claude Duvalier. Individuals and agencies working with Haitians were outraged by the double standard, and congressional hearings in 1975 and 1976 revealed that whereas Cuban claims of political persecution were verily rubberstamped, Haitian claims were either never heard or rejected outright by the Department of State (Loescher and Scanlon 1984, 1986).

The most famous challenge to the inequity of U.S. refugee admissions, though, came in the 1980s, when religious and secular groups adopted a variety of strategies to aid Central Americans fleeing state repression and civil war in their homelands. Salvadorans and Guatemalans, in particular, were hit by brutal politically motivated violence and sought asylum in the United States. But because the United States championed the Salvadoran and Guatemalan governments as bulwarks against communism, aspirant refugees came up against the same double standard as Haitians and were unable to obtain exit visas. Instead, they traveled through Mexico and crossed illegally into the United States, where those who were apprehended were deported. Initially, sympathetic individuals and organizations offered Salvadorans and Guatemalans informal, improvised help, both in escaping detection and in pursing asylum through the courts. By 1982 these efforts were systematized by legal aid groups and a "sanctuary" network that ran from Mexico to the United States and Canada, helping fleeing migrants cross borders and find safe haven. Tucson, Arizona, became a critical hub of such work, where sanctuary activists went public with their activities and insisted that the movement was in fact upholding the law, whereas the U.S. government was breaking it by refusing asylum to endangered people. Authorities eventually prosecuted several sanctuary participants, most famously after INS infiltration of sanctuary activity in Tucson and Nogales, Arizona.[5] Though most of the Tucson defendants were found guilty, the convictions actually widened the movement instead of intimidating it (Cunningham 1995; MacEóin 1985), and it endured for the remainder of the decade, when its precipitating conditions were ameliorated through a combination of peace settlements in Central America and reforms in U.S. refugee policy (Otter and Pine 2004; Cunningham 1995).

UNDOCUMENTED ADVOCACY SINCE 1986

Since the late 1980s advocates for the undocumented have labored in a climate intensified by greater hostility toward illegal entrants, a dramatic surge in Border Patrol funding, and an upswing in state and local measures that have attempted to expel undocumented residents through attrition. In most respects, NGO activity in this era has exhibited continuity with that of preceding decades. Organizations continue to litigate on behalf of detainees, protest poor conditions in holding facilities, lobby for policy reform, and so forth. Notably, though, the movement has been swelled by undocumented people themselves, who in greater numbers have become active in civil society, locally and on the national stage.

The opening salvo in the new era came in 1986, after a decade and a half of legislative debate and maneuvering in Congress produced the Immigration

Reform and Control Act (IRCA). In a landmark move, IRCA provided terms for a limited amnesty, which at least partially fulfilled the aspirations of the many individuals and organizations that had fought hard to win it. But IRCA also increased funding for border enforcement, which immigrant advocates and civil libertarians felt would encourage a more hardline attitude among federal and local officials that could lead to abuses of power. After IRCA's passage, the American Friends Service Committee (AFSC) began the Immigration Law Enforcement Project (ILEMP), which worked in Florida and along the U.S.-Mexico border in an effort "to reduce the violation of human rights in immigration law enforcement" (American Friends Service Committee 1992, 1). ILEMP created a network of groups in these areas who could document abuses by the Border Patrol, U.S. Customs, and local law enforcement (American Friends Service Committee 1992; Dunn 2009), which sometimes resulted in organizations that carried out related projects in their respective regions.[6]

While human rights NGOs directed themselves to the border, new advocates for the undocumented emerged within the nation's interior, including some of the major players in organized labor. Though the stereotype of labor as anti-immigration has often been true, many prominent unions shifted at the turn of the twenty-first century toward thinking of undocumented immigrants as potential allies instead of threats (Burgoon et al. 2010; Jacobson 2011; Milkman 2007). The most important herald of change came in 2000, when the AFL-CIO Executive Council approved a resolution encouraging Congress to pass a new amnesty and end government sanctions on employers who hire undocumented workers (Milkman 2007). Another index of support among organized labor was the 2003 Undocumented Workers Freedom Ride, which originated with the Los Angeles hotel workers' union (Milkman 2007) and promoted immigration reform by sending both documented and undocumented workers across the country in a fleet of buses (Teicher 2003).

The number and variety of religious communities advocating for undocumented people grew in the new century as well. In 2005 a large, ecumenical consortium released the "Interfaith Statement in Support of Comprehensive Immigration Reform," invoking scriptures from the Old Testament, New Testament, and the Qur'an in support of policies that promote "legal status and family unity in the interest of serving the God-given dignity and rights of every individual" (2005). Another major development has been the emergence of voices for reform among conservative evangelical Christians (Banerjee 2007; Berkowitz 2007; Gilgoff 2010). Evangelicals had traditionally been indifferent to immigration issues, but that began to change in the final years of the Bush administration because of the burgeoning number of Latinos among them. Latinos' clamor for reform eventually pushed their peers toward

seeing immigration as a moral issue (Banerjee 2007; Gonzalez 2007), and in 2012 a spectrum of evangelical leaders agreed on the brief, six-point "Evangelical Statement of Principles for Immigration Reform" (Evangelical Immigration Table 2012) that included preservation of families and a path to citizenship.

Some of the religious energy around the welfare of undocumented people has combined with secularist ideals in humanitarian and rehumanization projects in the borderlands. One outcome of urban border fortification in the mid-1990s was squeezing undocumented traffic into the California and Arizona deserts, where hundreds of migrants began to die every year (Esbach, Hagan, and Rodriguez 2003; Rubio-Goldsmith et al. 2006). As fatalities mounted, regional organizations new and old began to publicize the deaths as testimony to the dire need for immigration policy reform. One response was to mount relief projects, whether by placing lifesaving materials in the most heavily traveled desert corridors or by setting out on foot to provide such materials and medical aid in face-to-face interactions (Ferguson, Price, and Parks 2010; Fox 2000; Rose 2012; Van Ham 2011). Another was to sponsor marches and ceremonies in which the participants invoke the dignity of migrants and symbolically negate the border. The most common feature of these events, which tend to combine religious and secular elements, has been memorializing the dead in an effort to salvage them from the realm of faceless abstraction and stimulate greater sympathy among the general public for their well-being (Hondagneu-Sotelo 2008; Van Ham 2011).

But arguably the most portentous change in undocumented advocacy since the turn of the century has been the increase of participation in civil society by undocumented people themselves. The most prominent example may be the young adults who have organized in support of a congressional proposal known the DREAM Act and sought to impact debate on immigration reform by "coming out" as illegal. Every year an estimated sixty-five thousand undocumented youths graduate from high school (Perez 2009), unable to continue their education because their legal status makes them ineligible for financial aid or for in-state tuition. Even if they are able to pursue their academic goals, undocumented students are still unemployable after graduating. In 2001 congressional representatives introduced legislation popularly known as the Development, Relief and Education for Alien Minors (DREAM) Act, which would provide qualifying high school graduates with a path to citizenship (Perez 2009). As the bill went through various changes in subsequent years, potentially eligible students—often referred to as "DREAMers"—worked with supporters to achieve its passage, sometimes to the point of individual participants revealing their undocumented status and exposing themselves to deportation. The most well publicized of these

incidents occurred in 2010 and involved a group of students (some of them undocumented) who sat in at the Tucson office of Senator John McCain until they were arrested and removed (Gonzalez 2012). Using slogans such as "undocumented and unafraid" and "no papers, no fear," a cascade of similar actions followed, including the Undocubus tour, which sent a group of undocumented riders on a cross-country bus trip that incorporated meetings with DREAM Act supporters into its itinerary (Gonzalez 2012).

Another case of undocumented people entering civil society has been through worker centers, defined as "community-based mediating institutions that provide support to low-wage workers." Worker centers were first formed by African Americans in the South and by immigrant communities in some larger cities in the late 1970s and early 1980s. But as Latino immigration grew in the late 1980s and early 1990s, the centers were ineluctably compelled to address immigration issues, because immigrants were a large percentage of the workers needing service, advocacy, and organizing. Hence, many have advocated for the undocumented, in recognition of the vulnerability of undocumented workers and the difficulty undocumented workers have in seeking redress for workplace grievances on their own. Furthermore, by incorporating members into their programs, worker centers have become sites where undocumented people can learn strategies for organizing and leading collective action (Fine 2006).

Undocumented people have also become active in civil society by joining hometown associations (HTAs), which like the *huiguan* of a century before organize groups of immigrants from the same city or town in their homelands. One goal of HTAs is to contribute to development projects back home, such as building roads and schools (Ramakrishnan and Viramontes 2010; Sommerville, Durana, and Terrazas 2008). But they also offer members a measure of "identity safety" (Ramakrishnan and Viramontes 2010, 156), providing a space where the culture of the sending community can be openly expressed. Thus, HTAs enable immigrants to retain affective and social-structural bonds to their homelands, but also "act as organized points of contact and coordination between immigrants, the host government, and other institutions" (Sommerville, Durana, and Terrazas 2008, 2) and thereby provide venues for developing civic skills. The bulk of HTA members are documented residents, and the associations are almost always led by naturalized (and for that matter male) citizens. But because they sometimes include undocumented members, some have taken to assisting those members by providing leads on jobs and housing and pointing the way to available services (Ramakrishnan and Viramontes 2010; Sommerville, Durana, and Terrazas 2008). HTAs are not typically politically engaged, but anti-immigrant measures have catalyzed collaboration between HTAs and established

Mexican American civil rights organizations, and some political activity has also been carried out by a larger association of HTAs, the Confederation of Mexican Federations in the Midwest. Still, lack of legal status surely limits the form and degree of undocumented members' involvement.

The most sensational manifestation of the many contemporary currents of advocacy occurred in the spring of 2006, when they unified in opposition to H.R. 4437, federal legislation known as the Sensenbrenner bill after its primary sponsor, Representative F. James Sensenbrenner of Wisconsin. The Sensenbrenner bill amplified trends toward punitive restrictionism in immigration law, including language that appeared to criminalize any form of assistance to undocumented people (Bloemraad, Voss, and Lee 2011). Approval of the bill by the House of Representatives, however, activated networks formed by years of organizing among undocumented workers (Milkman 2007; Voss and Bloemraad 2011) and galvanized a cascade of mass opposition, coast to coast. The largest march, in Los Angeles, included groups devoted to human rights, immigrant rights, and labor rights, as well as an untold number of unaffiliated individuals who participated out of secular principles, religious beliefs, or a simple desire to defend themselves and their loved ones. Other marches and demonstrations around the country evinced similar alliances (Voss and Bloemraad 2011), and their efforts were gratified when the bill died because the Senate declined to introduce it for debate.

CONCLUSION

Undocumented advocacy since the marches of 2006 has been less dramatic, but certainly unflagging.[7] Though being "without papers" in the United States means, in many ways, being as vulnerable as always, it is not as dismal as the conditions Juan Ramon García describes as prevailing in the 1950s, when "undocumented persons were generally dehumanized and depersonalized by both those who opposed their entry and those who encouraged it. 'Illegal aliens' had no true champions to take up their cause, to meet their needs, or to turn to for help" (García 1980, xvi). Since that time, many forces in civil society have explicitly assumed undocumented advocacy as a major focus of their work and endeavored to transform policy and public opinion accordingly.

The practical and conceptual challenges before them are great. For one thing, social equality is an a priori impossibility for the undocumented, since if one could be undocumented and stand equal among citizens and legal residents, the term "undocumented" would no longer have meaning. Even as undocumented advocates rhetorically invest undocumented people with dignity and rights that transcend any nation-state, there is no such thing as

global citizenship or passports, nor any other mechanism for giving that ideal legal weight. As Arendt argued in her analysis of people denationalized during the Great War in Europe, the only means to even approximate a rights of man is, paradoxically, for everyone to have nation-specific civil rights and citizenship. In the end, the one way of stabilizing the precarious condition of undocumented people is through documentation: making them eligible for naturalization or state-sanctioned residence and bringing them under the cope.

Paths to citizenship, though, do not address migration's underlying causes in the global economic inequality that pushes people from poor countries and pulls them toward more prosperous ones. The phenomenon is so unavoidably international, in fact, that it should be risibly shortsighted to speak of enacting "comprehensive immigration reform" within any one nation. But as hard as it may be to achieve selective deportation stays and amnesties, they are still easier to legislate than paradigmatic shifts in the world order of haves and have-nots. The prospects for working within a national polity toward facilitating some system of cross-border human movement and evening out the economic disparities that instigate involuntary migration are, to be charitable, dim. For undocumented advocacy, the horizon appears to portend nothing more than sporadic, piecemeal policy improvisations and adjustments.

At the same time, by igniting and intervening in debates about border enforcement, naturalization, and related issues, undocumented advocates spur lawmakers and the general public to reexamine their assumptions about the basis of collective political identity. The welter of ballot initiatives, protests, congressional votes, executive orders, op-eds, talking heads, and so forth may stimulate a host of consequential innovations, from laws and multilateral accords to transnational constituencies and moral communities, that would not have otherwise developed. The trend toward increasing undocumented participation in civil society may even be an incipient version of this. As David Fitzgerald has observed of HTAs, "the point of theoretical significance is that international migrants' place in two different political systems provides them a space to act as intermediaries" (2008, 164–165) between nation-states and enacts a limited transnational civil society by influencing government policy on both sides of the border.

Undocumented advocates have included civil libertarians, religious bodies, lobbying groups, and social movement organizations, just to name a few, and they have carried out their work by such means as lobbying, sponsoring marches and informational events, filing court cases, and providing material aid and legal assistance. Across organizations and activities, though, their work with people who are socially real but legally impossible has consistently

involved critiquing and transforming prevailing concepts of law, national community, national boundaries, and modern personhood. If, at a minimum, NGOs and other undocumented advocates have fought against despotic power grabs to preserve civil society, they have also, at their most visionary, hinted at reimagining and practicing civil society in ways that dilate the compartmentalized nation-state.[8]

NOTES

1. The term "undocumented advocacy" is problematic in that it convicts the subjects of its foci by definition, but it directly references the sphere of engagement for many of the advocates' work, which often involves wrangling over *whether* someone is undocumented and for that matter, wrangling over the very notion and metrics of documentation as a basis for exclusions.

2. Though the Wickersham Commission was assembled by government order, its members were recruited from NGOs.

3. The ACLU has continued to defend the constitutional rights of immigrants, undocumented or otherwise, in numerous court cases since its founding, and in 1987 established the Immigrants' Rights Project as an ongoing part of its work.

4. Conflicting accounts make CASA's early history somewhat snarled. Corona says that 1968 was the year an organization was formed that later created CASA; CASA member Arnoldo García's account is different from Corona's in that he says 1968 marks the founding of CASA itself (2002, 69, 72). Articles of incorporation available in the CASA archives at the University of Stanford appear to corroborate García's account.

5. Literature on the sanctuary movement in Tucson is copious. Crittenden, *Sanctuary* (1988) is an overview aimed at a general readership that runs through the 1986 trial and its immediate aftermath; Otter and Pine, *Sanctuary Experience* (2004) is a more comprehensive oral history that covers the movement from start to finish. Overviews of sanctuary as a nationwide phenomenon and the litigation-based strategies that existed alongside it have yet to be written.

6. Members of ILEMP and a handful of other NGOS working on or near the border have articulated a nation-critical standpoint that theorizes immigration and immigrant advocacy in a global context. In a 1998 interview conducted by the University of Texas at Arlington Center for Mexican American Studies, ILEMP director Maria Jimenez described immigration policy as "the regulation of the movement of people across borders which is increasingly part of our global system" and as "a method, I think, of insuring inequalities at an international level" (1998, 37–38). Likewise, she argued that the justice and wisdom of immigration policy should be evaluated in terms of international human rights, not civil rights (Jimenez 1998, 39). Similar perspectives on immigration within the global economy (Hondagneu-Sotelo 2008, 158; Van Ham 2011, 60, 85, 93) and the need for viewing border policy through a human rights lens (Van Ham 2011, 58, 85, 148) have been expressed by activists in Arizona and California.

7. Activity in civil society on behalf of undocumented people is much wider than discussed in this chapter. Moviemakers, graphic artists, journalists, theologians, and others have made crucial contributions of their own.

8. My thanks to Graham, Colin, Robert, and Bruce for assisting me in the writing of this chapter through their depictions of urgent, dangerous, bewildered travel and communication.

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10

Immigrant Sanctuary: Historical and Contemporary Movements

Stephen Nathan Haymes
María Vidal de Haymes

INTRODUCTION

Sanctuary is an ancient tradition that has its historical roots in the early Hebrew cities of refuge, to which people under the threat of law could retreat. This tradition has continued through the common era and was recognized by English common law (Altemus 1987–1988). Michele Altemus and Lane Van Ham note that this practice has existed in the United States from its founding to contemporary times. During the colonial period, settlers came to the colonies fleeing European persecution. In the antebellum era, sanctuary took the form of an underground railroad that moved fugitive slaves to northern free states and Canada (Altemus 1987–1988). Following World War II, church-based immigrant advocates argued for the admission of thousands of displaced persons from Europe and through voluntary associations helped to resettle people leaving countries with communist governments during the Cold War era (Van Ham 2009). During the Vietnam War era, sanctuary was offered to war resisters in American churches. In the 1980s sanctuary was extended to Central Americans fleeing violence and civil wars (Altemus 1987–1988), and more recently has been extended to irregular migrants facing deportation (Terry 2007).

While sanctuary is a long-standing practice that has been offered to people under the threat of law for various reasons, the focus here is on contemporary expressions of sanctuary offered to immigrants and refugees in the United States. What does sanctuary mean in this context? Although the concept of sanctuary has varied somewhat over the last three decades, it has generally referred to places of safety for irregular immigrants provided by private groups, typically churches, and municipal governments (Villazor 2008). Rose Cuison Villazor makes the distinction between public and private sanctuary as various forms of refuge emerged in the 1980s (7). In this context, *private sanctuary* refers to the assistance, such as food, shelter, and other forms of support, extended to asylum seekers by churches, private actors, and organizations. *Public sanctuary* refers to the state and municipal laws, resolutions, and policies that establish "safe havens" for this same population.

This chapter addresses contemporary private and public manifestations of sanctuary in the United States that have focused on refugees and immigrants. Recent forms of popular private sanctuary in the United States, beginning with the Sanctuary Movement of the 1980s and its resurgence and reformulation in the contemporary New Sanctuary Movement, as well as current forms of public sanctuary, are discussed. Challenges to both private and public sanctuary are also addressed.

THE SANCTUARY MOVEMENT OF THE 1980S: PRIVATE CHALLENGES TO FEDERAL POLICY

Church-based immigrant advocacy has a long history that has often relied on sacred text for direction and reason. Common examples include the biblical references of Matthew 25:35–40 in Christian scripture and Leviticus 19:33–34 in Hebrew scripture, which present a call to welcome the stranger, provide hospitality to foreigners in need, and love the alien. Though often inspired by sacred texts and private belief, church-based immigrant advocacy requires that individuals act in the public arena to question, make claims, and contest the state and global spheres of modern civil societies (Van Ham 2009, 623).

This entry of religious institutions into the public sphere characterized the Sanctuary Movement in the United States in the 1980s and early 1990s when violent civil wars raged in El Salvador and Guatemala. Through the base of religious congregations, the Sanctuary Movement offered refuge to Central Americans who were fleeing political violence in those countries. Westerman estimates that as many as 750,000 individuals fled death squads and war in El Salvador, while more than 75,000 died, and another 70,000 to 100,000 people were "disappeared." Up to 200,000 people were killed during the long

Guatemalan civil war, and another 40,000–50,000 individuals disappeared (1994, 168). Between 1981 and 1983 another estimated 200,000 Guatemalans sought refuge in Mexico (Alba and Castillo 2012, 5).

Although many of these people were facing possible forced disappearance, death, or torture in their countries of origin, the United States did not officially recognize them as refugees, denying most political asylum. Asylum was routinely denied because the U.S. government supported the governments of these Central American countries, irrespective of their human rights records. Meyer and Seelke point out that during the Cold War, the United States "viewed links between the Soviet Union and political movements in Central America as a potential threat to US strategic interests" (2012, 19). The United States sought to prevent leftist movements in the region by heavily supporting right-wing forces, including the Salvadoran government in its battle against the Farabundo Marti Liberation Front (FMLN), which sought to eradicate the class system and inequality that maintained the Salvadorian oligarchic state, as well as the Nicaraguan Contra forces seeking to overthrow the leftist Sandinista government in Nicaragua. During this period U.S. economic and military assistance to these Central American nations averaged over $1.2 billion annually (19). Renny Golden, a Sanctuary Movement participant from the Chicago Religious Task Force on Central America, summarized the incongruity that granting asylum to Central Americans would create for the U.S. government in this way: "What a great contradiction it would be to grant these people political asylum when we are arming their killers" (Beck and Greenberg 1984, 36).

In contrast to individuals fleeing communist nations, the asylum applications of individuals from El Salvador and Guatemala were routinely denied, reflecting a pattern of U.S. political interests rather than the human rights records of the countries of origin or the 1980 U.S. Refugee Act standard of "well founded fear of persecution" (Altemus 1987–1988, 700–702). For example, during the Cold War and the height of the Central American civil wars, the United States granted asylum to less than 3 percent of Salvadorian and less than 1 percent of Guatemalan applicants, while granting asylum to more than half of all applicants from the Soviet Union (699). The U.S. government maintained that most of the irregular immigrants from Central America were migrating to the United States to improve their financial circumstances, not to escape persecution (700). In juxtaposition, sanctuary activists claimed that the government of the United States was morally obliged to provide admission to and care for Central American refugees, because U.S. policies had contributed to the conflict in the region that had impelled their migration (701–702). This claim, and complementary actions from congregations, arose out of the growing realization of gross human rights violations

in Central America, the U.S. government support of some of the offending actors, and the U.S. refusal to provide refuge for those fleeing the violence.

The Sanctuary Movement of the 1980s emerged in response to the dramatic increase in the number of Central American refugees to the United States, coupled with the aforementioned growing awareness of U.S. support of repressive and violent Central American governments and indifference to the humanitarian need of asylum seekers. The Sanctuary Movement of this era positioned the church as a platform for humanitarian aid as well as political action, both viewed as moral activities based in a tradition of empowerment, rather than limited to protest or charity (Pirie 1990). The overarching goals of the Sanctuary Movement of the 1980s were twofold: to secure, in the short term, "extended voluntary departure" for Salvadorians and Guatemalans, and in the long term to bring peace and economic justice to the region (Chinchilla, Hamilton, and Loucky 2009; Wild 2010). These goals were pursued through efforts to raise public awareness of the situation in El Salvador and Guatemala and the plight of the people there, as well as about U.S. involvement in the region. Notable strategies included public testimony by refugees and a dissemination of their message, civil disobedience, strategic use of media, and continued public proclamation of the religious motivation to provide charity and sanctuary, while summoning others to consider offering similar assistance individually or through their congregations (Pirie 1990, 382). The compelling testimonies of the Guatemalan and Salvadorian refugees extended far beyond the congregations through extensive media coverage, generating sympathy and interest across broad sectors of the U.S. population (Chinchilla, Hamilton, and Loucky 2009).

Other aims of the movement varied across congregations and participants, as did methods and strategies. The methods ranged from providing basic humanitarian aid to active sanctuary activities such as smuggling (Wheaton and Palacios 2008). The most common activities involved humanitarian aid. In solidarity with Salvadorian and Guatemalan immigrants and in protest of U.S. policy, many congregations offered food, shelter, medical assistance, and humanitarian support. Some provided "safe houses" in church basements or in communities, secured community-based or pro bono legal services to assist with asylum cases, and provided funds to bail refugees out of Immigration and Naturalization Services (INS)[1] detention centers while they were awaiting decisions on asylum claims (Pirie 1990, 382). Others participated in bold active forms of sanctuary, such as smuggling refugees across the border and participating in "evasion services" that consisted of Sanctuary Movement participants transporting refugees to other locations to evade local authorities (Loken and Bambino 1993–1994). Evasion services were much more common than smuggling, which was limited to fewer than 120 refugees per year.

The smuggling activities, while a very small part of the movement, attracted considerable publicity for the Sanctuary Movement, as well as later legal actions against some of the participants (Wild 2010, 987).

As participants varied in their preferred methods, they also differed in how they viewed the legality of their actions. Some believed that their actions were legal and adhered to international law and the 1980 Refugee Act.[2] Others thought that the provision of sanctuary was not in compliance with federal laws, such as the Immigration and Nationality Act's prohibition against harboring irregular migrants, but believed that open defiance of the law was a way of generating attention and support for their cause (Wild 2010). The initial position of the federal government toward the Sanctuary Movement was to ignore it and avoid tracking undocumented refugees harbored by churches. But as the movement grew, so did the attention of the federal government, which launched an investigation of movement activists (Wild 2010, 989–990). The INS authorized undercover agents to enter churches and meetings to secretly tape private conversations, wiretap phones, photocopy documents, collect personal information, and report findings on a regular basis to the U.S. government. This covert investigation led to the indictment of sixteen Sanctuary Movement participants and the arrest of more than sixty people charged with smuggling, transporting, and concealing undocumented immigrants between 1984 and 1985 (Altemus 1987–1988, 710–711). After a six-month trial, six individuals were convicted of conspiring to smuggle Salvadorians and Guatemalans into the United States, and two were convicted of harboring, concealing, or transporting an undocumented alien (Wild 2010, 990). They were sentenced to varying terms of probation, and none received jail terms.

Those who thought that the very public trial of the Sanctuary participants would be the "death knell" of the movement were proven wrong (Wild 2010, 990). Pirie and others claim that the trials of Sanctuary Movement activists were political trials motivated by the "threat to status quo policies and practices concerning refugees, information evaluation, and democratic participation, particularly in foreign policymaking" that the movement represented (1990, 381) However, the trials did not succeed in silencing or stopping the movement. The arrests, indictments, and trials received wide media coverage that garnered more visibility and sympathy for the movement and the causes it addressed. As the trials proceeded, religious leadership groups, such as the National Council of Churches, groups of the Roman Catholic Bishops and religious orders, and the Central Conference of American Rabbis, affirmed sanctuary as moral and endorsed the movement and civil disobedience. Rather than the Movement being stifled, it gained participants. By mid-1985, 250 congregations had declared themselves sanctuaries, and support continued to

grow and spread beyond faith-based institutions (Chinchilla, Hamilton, and Loucky 2009, 107). While congregations and faith-based organizations were at the forefront of the Sanctuary Movement, other nonreligious institutions joined in the effort. By the mid-1980s a number of universities and colleges began declaring their campuses as safe havens for Central American refugees. California was a center for campus organizing. Students in ten California institutions of higher education had declared their support for the Sanctuary Movement by 1985. These declarations were the result of campuswide student votes or decisions made by student organization representatives. Most campus-based sanctuary efforts consisted of fund-raising, providing food, and supporting local Sanctuary churches. However, students from nine California colleges and universities formed an Inter-Campus Sanctuary Network, which provided shelter for undocumented Central Americans by opening a safe house (Chinchilla, Hamilton, and Loucky 2009).

The Sanctuary Movement suffered legal and legislative setbacks, such as the decision in the case *United States v. Aguilar* (871 F.2d 1436, 9th Cir. 1989), which resulted in the aforementioned convictions,[3] and the lowering of the felony means threshold for harboring undocumented aliens in the 1986 Immigration Reform and Control Act. Yet the movement continued to grow and have an impact. By 1987 the movement had expanded to include more than 450 Sanctuary groups, including 25 ecumenical religious groups, 305 churches, 41 synagogues, 13 secular groups, 15 universities, and 24 cities (Smith 1996). The most notable victories of the movement include the estimated six hundred to three thousand refugees directly protected through sanctuary (Ryan 1987); the national attention and education of the public concerning the humanitarian crisis in Central America, as well as U.S. policy and involvement in the region; and the amendments to the Immigration and Nationality Act in the early 1990s that gave asylum seekers from Guatemala and El Salvador special refugee status (Wild 2010, 990–1001).

FROM PUBLIC SANCTUARY IN THE 1980s TO THE PRESENT: MUNICIPAL CHALLENGES TO FEDERAL POLICY

The Sanctuary Movement gained momentum throughout the 1980s and by mid-decade could count on the backing of hundreds of congregations. It began to cross over to the public sector with the enactment of public sanctuary resolutions or laws in two states and numerous cities in the latter half of the decade (Davidson 1988). The Sanctuary Movement, which began in churches, ushered in government efforts, at state and local levels, to reassure immigrants of safety within their borders (Villazor 2008, 5). These efforts took the form of laws declaring public spaces as sanctuaries, similar to the position of

churches, thus contesting federal government immigration policies, with some cities criticizing the federal rejection of Central Americans' political asylum claims (5). Cities such as Berkeley, California; Madison, Wisconsin; and Cambridge, Massachusetts enacted local resolutions declaring sanctuary for Central American refugees (Bilke 2009). These sanctuary ordinances or laws broadened the scope of protections offered to Central Americans, but also sought to extend these supports to all immigrant residents, providing universal safeguards such as prohibiting the denial of government services based on immigration status and refusing to inquire about or report immigration status (Villazor 2008, 5). Some cities adopting such policies declared themselves to be sanctuary cities.

Sanctuary cities are municipalities that have policies or practices in place that in general ask city employees to refrain from actions that can contribute to the deportation of undocumented immigrants in their community (Kittrie 2006). Cities with formal sanctuary policies generally instruct city employees and agencies to neither make inquiries about the immigration status of individuals seeking services, nor report on the immigration status of an individual to the Department of Homeland Security's (DHS) Immigration and Customs Enforcement (ICE), nor use city resources to enforce federal immigration legislation. These policies have been adopted at local or state levels and take the form of statutes, ordinances, resolutions, or executive orders, but all differentiate between the local and federal roles in the execution of immigration policy and restrain the functions of local authorities in immigration enforcement (Sullivan 2009, 568–569). Kittrie asserts that contemporary sanctuary policies come in three forms: "don't ask," don't inform," and "don't tell." More specifically, Kittrie states that sanctuary policies generally specify that local law enforcement officers do one or more of the following: "(1) limit inquiries about a person's immigration status unless investigating illegal activity other than mere status as an unauthorized alien ('don't ask'); (2) limit arrests or detentions for violation of immigration laws ('don't enforce'); and (3) limit provision to federal authorities of immigration status information ('don't tell')" (2006, 1455).

The first local sanctuary policy was established in 1979 in Los Angeles. This policy was a result of the confluence of a number of factors, including the growing complexity of federal immigration policy, rising numbers of undocumented immigrants, and an increasing sensitivity toward minority communities resulting from the civil rights movement (Sullivan 2009). The Los Angeles Police Department (LAPD) policy known as Special Order 40 had the goal of improving community relations and cooperation between the LAPD and minority communities and stated that "undocumented alien status itself is not a matter for police action" and that officers should not

"initiate police action with the objective of discovering the alien status of a person" nor "arrest nor book persons for the violation of Title 8, Section 1325 of the United States Immigration Code (Illegal Entry)" (Gates1979).

After the Central American civil wars ended in the 1990s, the private church-based Sanctuary Movement was largely inactive until the early 2000s, when it experienced a resurgence in response to the expanded authority offered to local law enforcement following the terrorist attacks of September 11, 2001 (Sullivan 2009). Following the 9/11 attacks, the Department of Justice issued a policy memorandum in 2002 announcing that local officials had the authority to arrest and detain undocumented immigrants for criminal as well as civil immigration violations, rescinding a 1996 memorandum that indicated that their authority was limited to enforcing only criminal violations. Legal scholars and policy makers questioned the constitutionality of local enforcement of civil immigration law, a concern reflected in the adoption of sanctuary policies by more than twenty municipalities within two years after the memorandum was issued (Pham 2006, 137).

The majority of the nation's largest cities now have some form of sanctuary policy, a trend that has accelerated rapidly in the last decade (Kittrie 2006). Presently the Immigration Policy Center of the American Immigration Policy Council indicates that more than seventy cities and states have adopted policies that prevent police agencies from asking community residents who have not been arrested to prove their immigration status (Tramonte 2011). However, the viability of local sanctuary policies is threatened by contemporary federal immigration initiatives. The most prominent threat to state and municipal sanctuary policies is the DHS Secure Communities initiative, launched in 2008 in select jurisdictions.

Secure Communities is the ICE strategy to increase information sharing between federal agencies and improve the system capacity to identify and remove criminal aliens from the United States. According to the DHS Web site, the program prioritizes the removal of criminal aliens whose presence poses a threat to public safety, as well as those who have repeated immigration violations. The DHS states that this goal is achieved through the cross-agency sharing of already existing databases. Under the Secure Communities program, ICE and the Federal Bureau of Investigation (FBI) form an information-sharing partnership (U.S. DHS/ICE 2009).

The ICE Web site highlights the federal data sharing and states that the program does not impose new or additional requirements on state and local law enforcement, since they routinely share the fingerprints of individuals who are arrested or taken into custody with the FBI to execute criminal background checks. Under Secure Communities, the FBI automatically sends fingerprints to ICE to check against its immigration databases to

identify those who are unlawfully present in the United States or are removable due to a criminal offense (U.S. DHS/ICE 2009). The immigration databases utilized by ICE in this program are the US Visitor and Immigrant Status Indicator Technology Program (US-VISIT) and the Automated Biometric Identification System (IDENT). US-VISIT was implemented in 2003 and is one of the most visible post-9/11 travel control initiatives of the federal government to address security concerns (Mittelstadt et al. 2011). Under US-VISIT, the federal government collects biometric information on all noncitizens entering the country by air or seaports, as well as on certain land-border travelers, to deter the entry of those deemed ineligible or a security threat. Under this initiative, ten-fingerprint scans and photographs are taken and stored in IDENT, a database that contains more than 108 million individual records and is interoperable with the FBI's Integrated Automated Fingerprint Identification System, IAFIS (Mittelstadt et al. 2011). IAFIS is the world's largest biometric database, containing the fingerprints and criminal histories of more than seventy million individuals in the criminal master file and more than thirty-one million civil prints (U.S. FBI n.d.).

When the data sharing yields a match, ICE may choose to place a detainer on the individual, a request for the jail to hold that person for up to forty-eight hours beyond the scheduled release date, so that ICE can take custody and initiate deportation proceedings. Immigrants can be subject to a detainer regardless of whether they are in jail for a serious violent crime, a misdemeanor, or a traffic violation or are even victims of or witnesses to crimes, in situations in which it is unclear who the perpetrator is, so the police arrest both (Immigration Policy Center 2010).

As of January 22, 2013, the Secure Communities program had been activated in 3,181 jurisdictions in fifty states, four territories, and Washington, D.C. (U.S. DHS/ICE 2013). Since the inception of the program, ICE has provided vague, misleading, and even contradictory statements regarding the autonomy of states, cities, and local law enforcement agencies in making decisions regarding participation in the Secure Communities program (U.S. DHS/OIG 2012). Initially, ICE indicated that localities could opt out or decline participation in the program, thereby respecting sanctuary policies of local communities and states. In its initial implementation, ICE entered into memoranda of agreement (MOAs) with state identification bureaus, the agencies responsible for data sharing between the state and the federal government. It was understood that states had the option to decline an MOA, or to terminate the MOA if they no longer wanted to participate in the program. However, ICE has subsequently announced that it has withdrawn all existing MOAs with states, that MOAs are not necessary, and that ICE will

unilaterally proceed with the program's expansion to full participation (Immigration Policy Center 2011; U.S. DHS/OIG 2012, 8).

While some localities have voluntarily participated in the Secure Communities program, others have resisted participation. The implementation of Secure Communities presents significant concrete and ethical concerns, as well as legal issues. In particular, cities with sanctuary policies and strong community policing have challenged implementation in their jurisdictions. The legal concern is fundamentally a federalist issue regarding the boundaries between national and local powers and the extent to which Congress can require compliance with its mandates (Huston 2008).

In addition to state and local law enforcement agencies, civil liberties groups and immigration advocates have raised a number of practical and ethical concerns about the program. These include 1) the encouragement of racial profiling and pretextual arrests that target immigrants; 2) the burdening of local police and jails due to detainers; 3) the undermining of community trust essential for community policing, as victims may be afraid to report crimes and help with prosecution; 4) the lack of congruence with the stated goal of targeting individuals charged or convicted of serious criminal offenses; 5) the lack of oversight and transparency; and 6) the lack of a clear complaint mechanism or redress procedure for individuals erroneously identified by DHS databases or subject to a detainer issued in error (Waslin 2009).

THE NEW SANCTUARY MOVEMENT: A RENEWAL OF PRIVATE SANCTUARY

In January 2007 faith leaders from fourteen states and various religious traditions gathered in Washington, D.C., with representatives from nine regional and national denominational offices and two national interfaith coalitions to develop the guiding principles and goals for the New Sanctuary Movement. In May of that year congregations in Los Angeles, San Diego, Seattle, and New York publicly declared themselves sanctuaries. Since then the New Sanctuary Movement has grown to include interfaith coalitions in thirty-five cities in every region of the nation, as well as interfaith leaders who have pledged their support for and participation in public and private sanctuary and advocacy efforts (Freeland 2010, 490).

The renewal of the Sanctuary Movement in 2007 was inspired by the congressional consideration in 2005 of H.R. 4437, which mandated immigration status checks before aid could be given to individuals by various organizations; the growing number of raids, detentions, and deportations in the United States; and the emblematic case of Elvira Arellano (discussed below). Although H.R. 4437 never became law, ICE markedly increased the

pace of worksite raids and deportations in the years leading up to the call for renewal of the Sanctuary Movement. In the early to mid-2000s ICE significantly intensified immigration enforcement activities through door-to-door operations to arrest immigrants with deportation orders and the execution of large-scale raids on worksites with suspected undocumented workers. Between 2002 and 2006 the number of undocumented immigrants arrested at workplaces increased more than sevenfold, from five hundred to thirty-six hundred (Capps et al. 2007).

Equally aggressive has been ICE's strategy of detention and deportation (see volume 2, chapter 2 in this publication). The fastest growing incarceration system in the United States is the immigration detention system, with three million immigrants held in detention facilities during the past decade (Gavett 2012). Deportations have also increased dramatically since the mid-1990s. In the early 1990s the number of individuals deported remained lower than 50,000, but between 1996 and 2005 the rate rose to a yearly removal average of around 180,000. This rate has continued to accelerate, reaching 408,849 in 2012. While security reasons are often evoked, the most recent removals from the United States are noncriminal immigrants from Mexico and Central America (92%), and of all individuals deported, only 33 percent were removed for criminal violations (Hagan, Rodriguez, and Castro 2001, 1376–1377).

The increase in detention and deportation has led to lengthy or permanent separations for families and often causes extreme emotional and financial hardship. Among the most affected are the five million U.S. children with at least one undocumented parent (Migration Policy Institute 2013). The recent intensification of immigration enforcement activities by the federal government has increasingly put these children at risk of family separation, psychological trauma, and increased economic vulnerability. For example, during the first six months of 2012, the federal government deported more than 46,000 parents of children who are citizens of the United States, representing 22 percent of the 211,167 people ICE deported during that time period. The majority of U.S. citizen children whose parents are deported remain in the United States in the care of other relatives, leave the country with their parents, or are placed in foster care (Gonzalez 2012). One such case that drew national attention was that of Saul Arellano and his mother, Elvira.

Elvira Arellano, an undocumented Mexican immigrant who publicly defied a deportation order by taking refuge in Adalberto United Methodist Church in Chicago, became an inspiration and symbol for the New Sanctuary Movement. Arellano, a single mother working in housekeeping at O'Hare International Airport, was arrested in 2002 in a post-9/11 airport raid under Operation Tarmac, a national DHS program targeting undocumented

airport workers, a group presumed to pose a security risk. Arellano was later convicted of having crossed the border illegally in 1997 and of using a false Social Security number to work; she was sentenced to three years of probation. She subsequently received an order to appear before immigration authorities in August 2006. Facing the likelihood of deportation and separation from her seven-year-old U.S. citizen son, Saul, she took refuge in the Chicago church. She remained housed there until she was deported in August 2007 from Los Angeles, where she had gone to lecture at the church Our Lady Queen of Angels (Sustar 2007; Darder 2007). Arellano's widely publicized case became a symbol of U.S. immigration policies that were separating thousands of families through detention and deportation. The case gained international recognition and sympathy and contributed to the formation of the New Sanctuary Movement.

The New Sanctuary Movement seeks to reenergize, reestablish, and build on the knowledge and network of churches and individuals that had formed the Sanctuary Movement of the 1980s, to once again provide safe spaces for the undocumented and their families. Similar to the movement of the 1980s, the New Sanctuary Movement calls for hospitality and justice, invoking moral and ethical obligations to welcome and care for the vulnerable "stranger" in our midst, while also denouncing unjust policies and laws (Villazor 2008, 7; Caminero-Santangelo 2009). While the New Sanctuary Movement shares a number of similarities with the 1980s movement, as well as having some of the same participants, it does exhibit several points of departure. Both movements involve churches and faith-based groups and actors that offer sanctuary to undocumented immigrants. Both require participant congregations to make a public statement. Both also select immigrants for sanctuary with stories that fit the movement mission.

Nevertheless, there are a number of differences. First, the movement of the 1980s sought to assist refugees (although not formally recognized by the United States as such) fleeing violence related to civil wars in their countries of origin. In contrast, the New Sanctuary Movement seeks to help "economic" immigrants who have left their country of origin primarily for financial reasons and are not necessarily endangered. While the Central American Sanctuary Movement had considerable support and sympathy for those it sought to protect, the New Sanctuary Movement enjoys less backing, as the public is much more ambivalent about current undocumented immigrants due to perceptions about their increasing numbers, social cost, and security (Wild 2010, 997).

The New Sanctuary Movement has three principles, three goals, and multiple methods. The first principle is that everyone has a right to a livelihood, family unity, and physical and emotional safety. The second is that these

rights are violated under current immigration policies, which contribute to the exploitation of immigrant workers and threaten family integrity through separation, particularly of children and their parents, due to immigration raids, detention, and unjust deportations. The final principle is that one cannot in good conscience ignore such suffering and injustice. The three goals of the movement are to take a public, moral stand for immigrants' rights; reveal, through education and advocacy, the actual suffering of immigrant workers and families under current and proposed legislation; and protect immigrants against hate, workplace discrimination, and unjust deportation (New Sanctuary Movement 2007). Among the methods employed by the New Sanctuary Movement are forums for dialogue to build relationships and share concerns; community raid preparedness and raid response; "know your rights" training; legal and financial assistance; spiritual support to individuals and communities impacted by detention, deportation, or raids; and providing shelter to undocumented immigrants who are under an order of deportation (Caminero-Santangelo 2009, 122; Villazor 2008, 5–6) .

CONCLUSION: IMMIGRANT SANCTUARY THEN AND NOW

In historical and contemporary times, immigrant sanctuary has arisen in instances in which a stranger was met with indifference or unjust treatment (Wheaton and Palacios 2008). Contemporary private and public sanctuary, as well as federal and local immigration policies and initiatives such as the Secure Communities program, are of tremendous consequence to undocumented immigrants in the United States. Together they represent the tension between local and federal governments regarding the enforcement of federal immigration policies and local efforts to integrate immigrants and increase safety. They also represent the tension between the immigrant-welcoming stances of some congregations, states, and cities and the increasingly punitive federal immigration policies associated with the realignment of the U.S. immigration system after September 11, 2001, to focus on national security and enforcement through intelligence gathering, data sharing, and detention and removal.

While it is difficult to determine the actual impact of the Sanctuary Movement of the 1980s and to predict the future of public sanctuary and the New Sanctuary Movement, it is clear that the practice of immigrant sanctuary has made an impact on many planes. At the humanitarian level, private sanctuary has provided relief to hundreds of immigrants at risk of detention, deportation, and family separation. At the level of public awareness, it has been an effective vehicle to educate faith-based communities, as well as the general public, about the plight of asylum seekers and irregular immigrants, the human consequences of U.S. policies and interventions in other countries and

regions, and the precarious situation of undocumented and mixed-status families in the United States (Chinchilla, Hamilton, and Loucky 2009, 122). Public sanctuary has fostered immigrant integration and community safety, while avoiding the detention and deportation of immigrants based solely on their irregular status. And perhaps the most significant promise of immigrant sanctuary is its function as a counterweight to the flood of anti-immigrant legislation and initiatives at all levels of government, offering alternative terms for the debate about immigration.

NOTES

1. The Homeland Security Act was passed by Congress in November 2002, just a little over one year after the September 11, 2001, terrorist attacks. This act created the U.S. Department of Homeland Security (DHS), which dismantled the former Immigration and Naturalization Services (INS) and separated the former INS agency functions into three components: Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS).

2. Altemus (1987–1988). Some Sanctuary Movement members believed that they were not breaking the law by giving refuge to Salvadorians and Guatemalans, based on their reading of the Refugee Act of 1980 and Article 33 of the United Nations Convention and Protocol Relating to the Status of Refugees (principle of non-refoulement) . They believed that Salvadorians and Guatemalans met the legal standard for refugee status as defined in the Refugee Act and thus qualified for protection under it. The act defines a refugee as a person outside of his or her country of nationality who is unable or unwilling to return because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Furthermore, the United States, as a party to the 1967 UN Protocol Relating to the Status of Refugees, may not forcibly expel or return (refouler) a refugee to where his or her life or freedom may be threatened because of race, religion, nationality, membership in a particular social group, or political opinion.

3. Wild (2010, 989). Altemus (1987–1988, 710–711). *U.S. v. Aguilar* was the 1988–1989 court case that was brought against Maria del Socorro Pardo Aguilar and fifteen other members of the Sanctuary Movement following the INS-authorized undercover investigation. The appellants argued that the aliens that they smuggled, transported, and harbored were political refugees entitled to asylum under the Refugee Act of 1980 and that their conduct was protected by a humanitarian exception of the Immigration and Nationality Act.

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11

The Rise of Nativism

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The United States has a complex and some might say schizophrenic relationship with immigration. It is central to our national identity as we proclaim our history of immigration and our continued reception of new immigrants and value our position as a desired destination for many around the world. Paradoxically, at the same time the United States maintains cycles of restricting foreigners' access to not only the country but also American citizenship. During various periods, while celebrating our immigrant past we have fought against the most recent immigrants arriving on our shores. There are moments when we try to close the doors of opportunity to immigrants, both those already here and those who want to come; in those moments of restrictive activity we are creating new boundaries around who counts as an American.

Nativism is a contested term used to describe a range of anti-immigrant attitudes, behaviors, and policies. Someone who is nativist is opposed to "foreign" influences and believes immigration fundamentally threatens the nation and/or national identity. Nativism then is not just xenophobia or an anti-immigrant attitude but is centered on nationalism. Nativist sentiment claims to want to protect the nation and works to preserve its rightful identity. Therefore, nativism both as a movement and as a public attitude is about defining the United States as much as it is about defending it. It is not about

the defense of those born on U.S. soil, but rather substantially about who is a "real American." Nativism is a key to understanding the ever-evolving definition of "American" and who counts as a threatening "Other." *Native* is never defined easily, but is understood in connection with changing conceptions of American citizenship, which is more than a formal designation by the government, having to do with who belongs and who is a real member of the community. For example, when first arriving en masse at the turn of the last century, Italians were believed to be undesirable and unable to assimilate into American culture. A century later, Italian Americans are celebrated as an essential ethnic component of our national identity, while Mexicans are now often viewed as detrimental to "our" way of life. Although the country has expanded notions of belonging at certain times, full membership still remains out of reach for some ethnic minorities. Nativism is about a sorting of who belongs, while simultaneously rewriting the definition of national membership. Under the guise of defending an uncontested definition of *American,* nativist forces author a new national identity, and in doing so they draw new lines between those who belong and those who don't. While a constant theme in American history, there have been times when nativism has risen to the fore more powerfully. These cycles of nativism repeatedly seen in the United States are characterized by active and powerful nativist organizations, nativist public sentiment, and the implementation of nativist policies. To understand the rise of nativism is to understand how organizations, policies, and publics work together at various moments.

We look to historical and contemporary examples to see how these moments of nativism[1] arise and how they work to define and redefine U.S. citizenship. In *Strangers in the Land,* the classic text on nativism, John Hingham states: "Nativism . . . should be defined as intense opposition to an internal minority on the ground of its foreign (i.e. 'un-American') connections. Specific nativistic antagonisms may, and do, vary widely in response to the changing character of minority irritants and the shifting conditions of the day; but through each separate hostility runs the connecting, energizing force of modern nationalism" (2002, 4). In the various eras of nativism, we see that the definitions of *American* have changed. However, what we see across these moments is that nativism takes hold when a shift in immigration trends happens at the same time that large society-wide anxiety—spurred by economic, social, and political change—increases. Those anxieties are brought on by different changes, which in part help define the specific contours of the nativist sentiments. However, policy success depends on the partisan environment.

Despite the specific forms of the causal anxieties and the nativist responses, we see some similar concerns that undergird the discussion and support for

anti-immigrant politics: concerns about culture or assimilation, economics, and the rule of law. While the specific groups targeted and the way they are targeted within each era may change, the central themes justifying the restriction remain constant. Nativist organizations, political figures, or the public more broadly narrate a tale of foreigners undermining the economic security of Americans, assaulting the Anglo-Saxon core of the United States, as well as jeopardizing the safety of not only individuals but the entire nation. Race, ethnicity, religion, and country of origin are central to these tales that distinguish "Americans" from "others."

THE FIRST NATIVISTS: 1820s–1920s

A drive to define "America" in opposition to other "foreign" elements, or a fear of that foreigner, has existed from the beginning of the nation. Benjamin Franklin, concerned about the increasing numbers of Germans entering the United States, infamously declared, "Why should Pennsylvania, founded by the *English,* become a Colony of Aliens, who will shortly be so numerous as to Germanize us instead of our Anglifying them, and will never adopt our language or Customs, any more than they can acquire our Complexion?" (*Papers of Benjamin Franklin* 1959, 234). This is only the most popular evidence of what was a much more widespread concern about defining who counted as "American" in the wake of the revolution. Concerns about religion, nation of origin, and language undergirded some of the fretting about immigrants, foreigners, and what was considered appropriate American "stock." However, it was not until the early nineteenth century that nativism became central to the national conversation, as undesirable foreigners were perceived as a fundamental threat to the nation. This was the beginning of what has been cited as a "100-year period of nativism," a time stretching from the 1820s to the 1920s.

This first wave of nativism presented crests and peaks. Nativist organizations emerged from 1820 through the 1860s; although they were strong in the decades leading up to the Civil War, they gained little policy traction for their efforts. After the Civil War (1865), nativist attention turned from European immigrants to focus on newly arriving Asian immigrants. After the 1882 Chinese Exclusion Act was firmly accepted as policy, and in the wake of a renewed flow of European immigration, organizational and popular angst again returned to European immigration. Looking at the peaks and valleys in this one-hundred-year period of nativist sentiment, we see the societal anxieties that form the backdrop against which people read the shifts in immigration patterns and allowed nativism to flourish. Through this history we see the themes of economics, culture, and the rule of law and how the oppositional

definition of *American* is continually re-created, as well as the key roles race and religion play in defining who belongs.

Immigration began to accelerate during the 1820s and continued to increase until a peak in the early 1850s.[2] Measured in almost any way, from absolute numbers to proportion of the population to a percent of total population growth, immigration increased dramatically. Between 1820 and 1830 about 150,000 immigrants arrived in the United States. Between 1851 and 1860 more than two and half million immigrants arrived. The countries from which immigrants were coming did not change drastically over this period, with around 90 percent of the immigrants coming from northern and western Europe, although of note is the drastically increasing immigration from Ireland.

These rapid population changes served as a catalyst for developing nativist sentiment that frequently was tied to anti-Catholicism. The American republic was understood to be in danger from the growth of a large non-Protestant population who would not or could not be good citizens of the republic. Fealty to the pope was one perceived challenge that new immigrants brought with them that could not be overcome. In addition, the potential radicalism of immigrants was a central concern. Beginning with the incoming French nationals in the wake of the French Revolution at the end of the eighteenth century, the antiradical component of nativist thought carried over to German natives as well. German immigrants who fled after the 1848 failed revolution were suspect and fueled the antiradical component of nativist thought. Higham states the concern was that "perhaps people bred under oppression lacked self-reliance and self-restraint; in America they may confuse equal rights with 'voluptuous license.' Perhaps, a man discontented in his own country will have no settled principles or loyalty at all" (2002, 8). Antiradicalism and religious bigotry combined with Anglo Saxon superiority to form the basis of nativist sentiment in this era.

Irish and German immigrants represented a fundamental threat to American identity. The ideal American citizen was loyal, not revolutionary, with a strong independence both spiritually and economically. While Germans were tainted with the stain of revolution, Irish immigrants were perceived as lacking the independence necessary to be a successful citizen. They were economically and spiritually dependent and were understood as lacking the mental capabilities to transcend that dependence (Knobel 1996). Such immigrants were easy prey for manipulation by political parties and as such would not be good Americans. Here we see the key roles of religion and nation of origin in defining who counts as "American."

Nativist organizations were essential for the construction and dissemination of these ideas. Nativist political and social groups flourished in the decades before the Civil War. Knobel explores nativist organizations and

traces their roots to local, fraternal organizations of the 1830s that displayed nativist impulses and involved themselves in community politics. In the early 1840s masonic organizations with strong nativist streaks were revived (Knobel 1996). These new secret fraternal organizations, stressing brotherhood, nationality, and independence, drew clear boundaries around "American" and "foreigner."

In the mid-1850s this nativist movement, which had been a force mostly at the local level in New York and Philadelphia, became a national political movement. Nativist lodges opened in Ohio, Iowa, Maryland, throughout the Deep South, and elsewhere (Knobel 1996). The American Party or the Know Nothings, two names for the national linkages between these fraternal organizations, fielded anti-immigrant candidates or ran fusion campaigns (two parties listed the same candidate) with other parties, with great success. In 1855 the party's platform called for more restrictive naturalization laws and the disenfranchisement of immigrants, as well as calling on Congress to no longer extend land grants to unnaturalized foreigners (King 2000). In 1854 and 1855 the party had electoral successes in Connecticut, Delaware, Kentucky, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, and Texas. There were forty-eight congressional representatives from the American Party in 1855 and seven Know Nothing governors (Tichenor 2002). In addition, the Know Nothings nominated former president Millard Fillmore as their official candidate for the 1856 presidential election; he won nearly 900,000 votes, or almost 22 percent of the total electorate, running largely on the anti-immigrant platform (Hing 2004).

Despite its electoral advances, due to party politics more broadly the nativist movement did not see major policy changes toward European immigration during this early period. Electoral imperatives of the period, which included relatively easy access to citizenship, universal white male suffrage, and competitive parties, meant that politicians and others had an incentive to organize, not alienate, immigrant voters (Tichenor 2002). This drove nativist organizations to their third party plan. Even with representation in Congress, however, the nativists were still unable to get their agenda passed. Democrats and some Republicans considered immigrants an important component of their electoral coalition, and therefore a majority defeated anti-immigrant proposals. In addition, the central issue of the day was slavery, putting immigration on the back burner.

The Civil War would put an end (for the time being) to the meteoric rise of nativist politics. What had attempted to unify "Americans" against a foreign other could no longer hide the central internal division within the union. The nativist party, to some extent, split along the lines of slavery, with the antislavery side joining with immigrants who rallied to the Union cause.

The country and the Republican Party focused on national economic growth, and immigrants were still understood as a contributing element. Although the xenophobia certainly did not vanish, the Civil War marked the end of the Know Nothings.

While the antebellum nativism that had begun on the East Coast died down during the Civil War, West Coast anxieties about the Chinese, evident before the Civil War, continued afterward virulently and violently. Between 1850 and 1882 just over 100,000 Chinese entered the United States, overwhelmingly settling in California, drawn by the economic opportunities of the local gold rush (Hing 2004) and proving to be central in the completion of the Central Pacific Railroad (Calavita 2000). Though they were initially welcomed as a source of necessary cheap labor, the completion of the railroad and "periodic recessions ravaging the country" (Calavita 2000) altered the attitude toward the Chinese. Labor and anti-Chinese clubs were the central organizing arms of the anti-Chinese movement, and these organizations helped foment a popular nativist sentiment cultivated by economic and cultural concerns. Labor unions challenged the presence of Chinese workers, and anti-immigrant groups claimed the Chinese were so different as to be unassimilable. The Chinese were depicted as immoral, criminal, and a fundamental threat to the American nation. Prostitution, drug use, and crime more broadly were understood as being endemic to the Chinese character. Even for the noncriminal, the cultural gap was seen as too great for them to be incorporated into an American identity. This difference was crafted at the intersection of religion, race, and nationality. One congressman from California referred to the Chinese as "nothing but a Pagan race." A senator from Oregon similarly argued that "[t]he Chinese[,] . . . a pagan nation[,]" if allowed to vote would establish "pagan institutions in our midst which would eventually supersede . . . Christian influences" (Torok 1996, 83). The Chinese threat was narrated as a direct assault against the core American identity, an identity founded on a specific race and religion. Culturally, the Chinese were believed to be not only far too different to be part of what was considered American but even a danger that threatened U.S. civilization.

Such nativist sentiments led to violent local responses and political organizing as anti-Chinese mobs injured or murdered hundreds of Chinese in cities along the West Coast in the 1870s and 1880s. While some of these incidents were spontaneous acts by gangs, at other times these brutal attacks were undertaken with clear premeditation and an incredible degree of organization. In 1885 in Tacoma, Washington, a well-organized group, including the mayor, the sheriff, and other city officials as well as union members, planned and carried out the mass expulsion of Chinese from the city; more than six hundred Chinese were rounded up and put on trains leaving town.

Known as the "Tacoma Method," this mass removal by elected officials served as inspiration for other cities including Seattle over the next few years.

From the beginning California politicians supported the anti-Chinese movements. However, since the federal court struck down many of the state and local measures, the anti-Chinese nativism required an organized, national response. Reacting to anti-Chinese sentiment, Congress did pass a series of laws over two decades that subordinated and excluded the Chinese. In 1875 the Page Law effectively barred Chinese women from entering the United States in response to claims that they were being imported as prostitutes (Hing 2004). In 1882 Congress passed the Chinese Exclusion Act, which barred the entry of all Chinese laborers for the next decade. For those classes of Chinese who were exempt from the law (i.e., merchants, teachers, and government officials), certificates confirming financial status and occupation were issued by the Chinese government (Calavita 2000). Of note is that the act of 1882 was not only one of the earliest federal immigration laws passed in the United States (Calavita 2000); it was the first to restrict an entire group of immigrants based on their race and class (Lee 2002).

Yet the Chinese were not the only Asian group to receive the crippling attention of U.S. federal immigration laws. The Japanese immigrant community, after maintaining a much more harmonious relationship with the United States due to pressure from the Japanese government, began to receive the unfavorable attention of the public by the turn of the century (Hing 2004). Out of concern that too many jobs were being taken from white Americans, Japanese laborers were eventually restricted, but rather than through legislation, U.S. government officials negotiated with their Japanese counterparts and arrived at what became known as the "Gentlemen's Agreement." In 1907 and 1908 the Japanese government refrained from issuing travel documents to U.S.-bound laborers. In exchange, Japanese families could be reunited, and women and children were thus allowed to enter the United States. While Congress never enacted a blatant law of exclusion as it had done against the Chinese, local laws as well as other national acts continued to marginalize the Japanese (Hing 2004). The case against the Japanese was grounded in the same arguments made against the Chinese: that their non-Christian and nonwhite characteristics would infest the nation and dilute the strong Anglo Saxon foundation upon which it was founded. Finally, the 1917 Immigration Act fashioned an Asian "Barred-Zone," building on previous restrictions and practices to exclude Chinese and Japanese immigrants, and was intended to completely exclude all Asian immigration to the United States (King 2000). In the case of Asian exclusion we see nativist policies, organizations, and popular sentiment arising at the same moment.

At the turn of the twentieth century the nation was undergoing massive economic, social, and cultural transformations. The great wave of immigration from 1880 to 1914 brought record numbers of foreigners from nontraditional sending areas. No longer dominated by those from northern and western Europe, more than twenty million immigrants from southern and eastern Europe arrived. This massive change in national origins is illustrated by the comparison of two peak immigration years (Martin and Midgley 2006). In 1882, 87 percent of all European immigrants came from the traditional regions of northern and western Europe and 13 percent from southern and eastern Europe. By 1907 just 19 percent of all immigrants originated from northern and western Europe, while 81 percent came from southern and eastern Europe. As part of the era of industrialization, most of the arriving immigrants settled in the urban centers of the East and Midwest. Congress, responding to nativist pressures to address the consequences of these new immigrant groups, commissioned a study chaired by Senator William P. Dillingham. The so-called Dillingham Commission ended its research in 1911 and concluded that immigration from southern and eastern Europe posed a serious threat to the society and culture of the United States. Immigrants from these nations were declared to have more "inborn socially inadequate qualities than northwestern Europeans" (U.S. Senate 1991).

Responding to the changing demographic profile of the nation and international events, nativist fear of immigrants broadened and became entwined with panic over socialism and syndicalism. Known as the "Red Scare," this nativist movement was facilitated not only by the continued growth of immigration, industrial unrest, and perceived revolutionary notions of those in labor unions (Renshaw 1968), but also by the real desire to protect a central American identity (Cohen 1964). The rising numbers of total immigrants, but also their origins from southern and eastern Europe, were seen as diluting the national "stock" of America. The Russian Revolution in 1917 and other worker unrest around the world led U.S. citizens and government alike to view anyone perceived as aligned with communism, as well as communist sympathizers and members of the International Workers of the World (a global union founded by socialists, anarchists, and radical trade unionists), as threats to national security. This fear of the possibility of an internal enemy supplemented other fears about immigrants. Nativist forces allied with broader fears of radicalism and the subversive Left; immigrants thought to be aligned with communist groups were targeted for persecution and deportation. The increased hysteria aimed at socialists, anarchists, and communists became embedded with the hostility not only toward the countries of eastern and southern Europe, where these movements were believed to be developing (Hing 2004), but also toward the immigrants themselves. As nativism and

antiradicalism thrived, the federal government turned to anti-alien measures to squash the Left (Schrecker 1997). After being rounded up and detained, some 850 noncitizens—labeled communists, radicals, and leftists—were shipped back to eastern Europe in 1920 (Schrecker 1997).

As illustrated previously, groups pushing for immigration restriction found more success after the turn of the century as Progressive Era reforms limited the power of political parties that had previously thwarted their agenda. In addition, restrictionist organizations formed broader alliances (Tichenor 2002), exemplified by the Immigration Restriction League, a central group working to limit immigration, developing ties with labor as well as with Asian exclusionist groups. The focus on eugenics, race, and scientific governance during the Progressive Era also helped shape nativist sentiment and policy. Irish and Jewish immigrants were now depicted as not just religiously different, but racially as well. Here religion and race became intertwined through science. The new respectability of nativism allowed a restrictionist agenda to progress in the federal government (Reimers 1999).

In response to the reorganization of nativist groups and a rise in the public's concern, the policy recommendations of the Dillingham Commission became the first comprehensive national immigration framework, the 1924 national origin quotas. The Quota Law of 1921, a temporary measure, introduced numerical restrictions on immigration for the first time and was a "direct assault" (Hing 2004) on southern and eastern Europeans. The law apportioned quotas of immigration slots to each nationality. Each country could send no more than 3 percent of the total for that nationality *already residing* in the United States. As the United States was primarily made up of those who traced their roots to northern or western Europe, the quota for southern and eastern Europeans was considerably smaller. Of note is the fact that while the quotas allotted for southern and eastern Europeans were easily filled, those for the northern and western European countries were not (Hing 2004). A mere three years later, the quota system became permanent with the Immigration Act of 1924—albeit with numerical tweaking that further suppressed the allotted number of immigration spots to be allocated to southern and eastern European countries. The legislation based the quota system on a national origins procedure whereby the allotted slots for each nationality would be based on the total number of persons of that national origin in the United States in 1890—prior to the major waves of immigration from southern and eastern Europe. This formula impacted Jews, Italians, Slavs, and Greeks (Hing 2004) most deeply and was purposeful in doing so because of the cultural differences these groups brought to the nation. There was a desire to protect the Protestant Anglo Saxon stock and core of the United States in the wake of the colossal change in the national origins of the immigrants now coming into the country.

One of the central aims of the Immigration Act of 1924 was to bring to a standstill the changing composition of the American populace. A prelude to the 1924 act was a speech heavy in restrictionist language given by President Calvin Coolidge to Congress, which caused Representative John Cable to congratulate Coolidge for his efforts to "stop the seepage of aliens" into the United States. Representative Albert Johnson, cosponsor of the act, asserted after it was passed: "The United States is our land. The day of unalloyed welcome to all peoples, the day of indiscriminate acceptance of all races, has definitely ended" (quoted in Tichenor 2002, 146**).** The quota laws of this time originated in the continuing certainty of racial/ethnic superiority of the original settlers of the United States, as well as the belief that a true American was white and of western European origin (Hing 2004). In addition, however, certain sectors wanted the immigration restrictions to open up economic opportunities for native-born Americans. For example, the U.S. Department of Labor decried the "millions of unnaturalized immigrants, of the unnaturalized races" who were living in the shadows—and by extension, stealing the jobs of more deserving American citizens (King 2000, 199). Again, economic and cultural anxieties were at the core during this period of restrictionism.

While the quotas favored some Europeans over others, more than drawing a line through Europe, Mae Ngai tells us it drew a line around Europe, excluding others from access to the United States more completely (2004). The law also excluded immigrants who were ineligible for citizenship. Due to the 1790 Naturalization Act, which allowed for only *white* immigrants to be naturalized, this meant nonwhites were denied immigration visas. The Immigration Act of 1924 therefore was also responsible for stopping large-scale immigration from the Asian nations (Boyd 1971). Ngai has forcefully argued that the Immigration Act of 1924 "contributed to the racialization of immigrant groups around notions of whiteness, permanent foreigners, and illegality" (1999, 70). In adopting a quota system that relied on population estimates from 1890—prior to the large waves of immigrants from southern and eastern Europe—as well as limiting those noncitizens who could never naturalize due to their race, the immigration policies of this era established legal structures that reinforced the identity of *American* as white and those nonwhites as essentially un-American. The 1924 act created what Ngai refers to as the regime of "quotas and papers" and in doing so developed the category of illegal immigrant (Ngai 1999). The undocumented or the illegal alien would become the center of large-scale nativist responses.

A LULL IN NATIVIST ORGANIZING

The story of nativism is a window into the shared idea of what constitutes an ideal American. Central to that story is the desired ethnic makeup of the

United States and who is deemed a worthy citizen. Since the rise of eugenics and the introduction of the idea of race, race has been central. While the period between the nativism of the 1920s and the forthcoming nativist revival of the 1990s saw a lull in explicit nativist organizations, we still see the evolving drive to define American citizenship in opposition to threatening others. Even when nativist organizations were not powerful, as illustrated in the previous era, strong nativist sentiments were still found among the general public, politicians, and government policies. These moments of nativist policy occur at times of great societal stress, such as the Great Depression and World War II. The forced removal of ethnic minorities, many of them American citizens, through repatriation or internment illustrates the continued role of culture and race, the rule of law, and economics in nativist campaigns. We see how economic recession increases the potency of nativist activism, as the once-desired workers are expelled, and how the fear of the foreigner and the desire to protect national security can reignite nativist sentiments.

Mexican Repatriation of the 1930s

The international border between Mexico and the United States has a long and complicated history, one founded in invasion, occupation, and surprising lack of regulation (De Genova 2004). The initial migration from Mexico[3] to the United States occurred in the 1880s, as railroads, mining, and agriculture in the growing U.S. Southwest depended significantly on Mexican labor (De Genova 2004). Yet the history of Mexican migration has to be seen in a larger context as a response to the repeated restrictions against Asians. Mexican migrant labor became central to the economic growth of the U.S. Southwest (De Genova 2004). Up to this time, migration from Mexico was largely unregulated, as it was essentially coordinated by industries and agricultural interests in the United States as well as remaining outside the quota limitations put in place by the Immigration Act of 1924 (De Genova 2004). Of note is the active role of not only U.S. industries but also individual states in the cultivation of Mexican migration (Hing 2004). Migrant labor was desired in this new Southwest region of the United States as a regional political economy was being developed. The Mexican immigrant population in the United States in 1900 was estimated to be around 100,000 (Hing 2004), and this number continued to grow. Always labeled as "temporary," Mexican migrant labor was continually exempt from the national immigration policies that restricted other foreign nationals. Industrial and agricultural employers were able to successfully argue that Mexican labor was not only vital but irreplaceable. Mexicans as immigrant laborers were welcomed into the country, though considered undesirable as American citizens, as reported by the Dillingham Commission (Hing 2004).

However, while Mexican migration had been exempt from oversight and exclusion far longer than that of any other group, the market crash in October 1929 abruptly altered their situation. The federal government turned to deportation in response to the economic and political crisis of the Great Depression, forcibly deporting en masse Mexican migrants and their U.S.-born children, who were citizens of the United States (De Genova 2004). In the 1930s federal, state, and local governments acted collectively to remove persons of Mexican origin, regardless of citizenship status, against their will (Johnson 2005). National and local groups worked simultaneously to rid the nation of workers who were "no longer needed" (Hing 2004). President Hoover's secretary of labor, William Doak, believed the way to solve the national unemployment problem was to oust aliens, who were argued to be holding the rightful jobs of "real" Americans (Hoffman 1973). In Los Angeles local citizens' committees, made up of the mayor, county supervisor, publisher of the *Los Angeles Times,* and other city officials and business leaders, were formed to address the unemployment issues (Hoffman 1973). C. P. Visel of the Los Angeles Citizens Committee sent a telegram to the U.S. Government Coordinator of Unemployment Relief, alerting him to "deportable aliens" in LA County and stating: "[L]ocal U.S. Department of Immigration personnel not sufficient to handle. You advise please as to method of getting rid. We need their jobs for needy citizens" (quoted in Balderrama and Rodriguez 2006, 99). Many white U.S. citizens, reeling from the economic stresses of the Great Depression, blamed immigrants for their wretchedness. H. M. Blaine purportedly pronounced that the majority of the Mexicans in the Los Angeles Colonia were either "on relief or were public charges," even though sources at the time documented that less than 10 percent of people on welfare across the country were Mexican or of Mexican descent (Balderrama and Rodriguez 2006). It was believed that removing Mexicans would open up jobs for, and increase the welfare relief available to, deserving white Americans. Independent groups such as the American Federation of Labor (AFL) and the National Club of America for Americans thought that deporting Mexicans would free up jobs for citizens, and the latter group urged Americans to pressure the government into deporting Mexicans (Balderrama and Rodriguez 2006). As a result, federal agents were sent to the region, conducting a deportation campaign that primarily targeted those of Mexican ancestry. The police raided public places and rounded up individuals for deportation (Johnson 2005). Balderrama and Rodriguez (2006) have reported that more than one million persons were repatriated to Mexico, though other estimates put the number closer to 500,000 (Massey, Durand, and Malone 2002; De Genova 2004). Of importance is that not only foreign-born Mexicans were repatriated to Mexico, but also American citizens of Mexican descent.

While the repatriation of Mexicans and Mexican Americans is largely understood as motivated by economic conditions and an attempt to open up employment opportunities for white Americans, the role of race was clearly part of the process. Ethnic hostility long marked the attitude of white Americans toward those of Mexican origin, and while seen as useful as laborers, Mexicans were considered animalistic (Melville 1983), lacking the mental acuity of white Americans (Hing 2004) and not "the kind of people one would want as permanent members of the community" (Hing 2004, 125). Not only were undocumented Mexicans deported, but exclusionists pushed for state and local agencies to push documented immigrants and U.S. citizens of Mexican origin to Mexico (Hing 2004). Yet as the economic conditions improved and cheap labor was needed, the federal government again turned to Mexico. The Bracero Program (1942 to 1965) was a guest worker program negotiated between the United States and Mexico allowing Mexicans to be temporary agricultural workers. Over the course of the program, almost five million Mexicans entered the United States as Braceros, or farmhands (Massey, Durand, and Malone 2002).

Japanese Internment 1942–1946

While previous immigration policies had limited the number of Japanese living within the United States, Japanese communities still existed in the western United States and Hawaii. Under the shadows cast by World War II, immigration policy continued to take a restrictive and reactive stance as it responded to nativist demands of citizens and organizations to secure national borders and reinforce the whiteness of America. Following the attack on Pearl Harbor and the consequent fear of Japan, President Franklin Roosevelt signed an executive order in 1942 creating zones or internment camps to protect against espionage and sabotage. Those of Japanese origin were deemed security risks, and the status of American citizenship did not protect individuals from suspicion. Lieutenant General John DeWitt testified to Congress: "I don't want any of them [persons of Japanese ancestry] here. They are a dangerous element. There is no way to determine their loyalty. . . . It makes no difference whether he is an American citizen, he is still a Japanese. American citizenship does not necessarily determine loyalty. . . . But we must worry about the Japanese all the time until he is wiped off the map" (quoted in Perea 1994, 586). The questionable loyalty of the Japanese was rooted in racial prejudice. The Japanese, according to DeWitt, would never be able to be real Americans, even if formally citizens. They were forever connected by blood to Japan, and that connection determined their character and their loyalty. While the law of the land was birthright citizenship, it was clear that in a time of crisis, not all citizens were equal. A *Los Angeles Times* editorial stated:

A viper is nonetheless a viper wherever the egg is hatched. . . . So, a Japanese American born of Japanese parents, nurtured upon Japanese traditions, living in a transplanted Japanese atmosphere . . . notwithstanding his nominal brand of accidental citizenship almost inevitably and with the rarest exceptions grows up to be a Japanese, and not an American. . . . Thus, while it might cause injustice to a few to treat them all as potential enemies, I cannot escape the conclusion . . . that such treatment . . . should be accorded to each and all of them while we are at war with their race. (Niiya 1993)

Over the span of the implementation of the executive order issued by President Roosevelt, the United States incarcerated more than 110,000 persons, both citizens and immigrants (Daniels 2006). Although it was officially framed as an "evacuation," Japanese Americans were forced to live in desolate camps. While perhaps tangential to immigration policy, the incarceration of those persons of Japanese origin is crucial to the continued theme of the apparent "Otherness" of Asians more broadly, a repeated pattern of denying Asians access to U.S. citizenship and labeling them as unable to assimilate. Concerns about national security and protection were fused with cultural fear to justify the Japanese internment.

NATIVISM REAWAKENED

The 1820s to the 1920s were known as the first real period of nativism. In the 1990s scholars began writing about the "New Nativism" or "Nativism Reborn." This era brought a renewed focus in public opinion and policy on the threat immigrants were posing to the American nation. Nativist organizations that had been actively working for the three to four decades prior to this acknowledged revival were central to this "new" nativism.

The immigration shifts that nativism was responding to occurred in the wake of the 1965 immigration reform legislation. The Immigration and Nationality Act of 1965 abandoned the national origin quota system for an overall limit on immigration and a per country cap on immigrants that was equally distributed. Within those limits preference categories were used to admit immigrants with jobs or skills and for family reunification. This radical overhaul of the immigration system led to a large increase in immigration as well as a shift in its sources. The foreign-born population in 1960 was around 9.7 million; by 1990 that number was 19.7 million. This was an increase from 5.4 percent of the population to almost 10 percent (Gibson and Lennon 1999). The region from which immigrants were arriving changed drastically as well. Immigrants from Latin America made up 9.4 percent of the immigrant population in 1960, while in 1990 that number was 44.5 percent. Asian immigration increased from 5 percent to over 26 percent in that same period (Gibson and Lennon 1999). The focus in the debate on

immigration changed as well once the national origin quotas had been eliminated, turning from whom to legally admit to how to handle illegal immigration. The 1965 law changed the entire landscape of immigration, from how many immigrants and from where and why, as well as how political actors talked about immigration.

At the same time, the movements of the 1960s and 1970s developed a range of new interest groups to lobby in different directions on the issue of immigration. Unions worked toward stronger enforcement of immigration regulation, especially of laws governing documentation and employment, while business groups resisted such efforts. The National Council of La Raza and other ethnic-based organizations that emerged or flourished in the 1960s took on immigration and became strong advocates for immigrants' rights. The Christian Right, which began a rise to prominence and power in the late 1970s, would develop key leaders who had strong nativist sentiments, such as Phyllis Schlafly and Pat Buchanan.[4] Some environmental groups or activists developed an interest in immigration, as they identified a growing population as detrimental to the preservation of natural resources in the country. Founded in 1968, Zero Population Growth (currently Population Connection) educated the public about the dangers of overpopulation but also took on immigration as one of its core issues. Moreover, the Federation for American Immigration Reform (FAIR), founded in 1979, was the brainchild of activists in various environmental and population organizations. Its founder, John Tanton, had been active in Zero Population Growth, Sierra Club, and Planned Parenthood; Tony Smith, who helped found FAIR, had previously been active in the National Parks Conservation Association. Smith had met Tanton through their work with Planned Parenthood, Earth Day Rallies, and the Environmental Fund. Other activists concerned with population issues would later form anti-immigrant groups, such as Roy Beck, who founded Numbers USA, which favors reductions in immigration numbers.[5]

Yet even with a conservative turn in American politics in the 1980s, the conversation on immigration was interestingly moderate. The 1986 Immigration Reform and Control Act (IRCA) was a compromise bill that included enhanced enforcement as well as the first-ever sanctions against employers who knowingly hired undocumented immigrants. In addition, the law provided a pathway to citizenship for those undocumented who could prove they had resided in the United States since 1982. The program served to regularize the status of about three million immigrants.

This set the stage for a nativist turn in the 1990s, when other societal anxieties became grafted onto the brewing nativism. Anti-immigration organizations and leaders in the 1960s and 1970s had been actively developing narratives about the fundamental threat new immigrants posed to American society and

citizenship. Yet this narrative found a more fertile ground in the 1990s due to larger economic, cultural, and demographic changes. With rising insecurity about America's place in a new global economy, coupled with a changing economic structure from a manufacturing to a service and technology-based economy; shifts from the New Deal era social contract to a neoliberal understanding of limited government; and anxieties about white America's place in the post–civil rights era and continuing racial tension in "multicultural" America, the organizational narratives about immigrants' threat to the American nation and U.S. citizens found fertile soil.

These narratives put forth a problem immigrant, who is understood as an undocumented immigrant from Latin America or Mexico with a propensity for crime, indolence, and reproduction. This problem immigrant is a threat to the nation physically, economically, culturally, and politically. These narratives were tied into hierarchal conceptions about race and culture. The criminal tendencies of current immigrants, according to nativist groups, threatened the breakdown of the rule of law in American society, as well as increasing individual citizens' risk of becoming victims of the violent acts of such immigrants. While undocumented migrants, it was claimed, proved their criminal tendencies by virtue of residing here without documents, there was also a connection to a long history of racialized characterizations. Those from south of the border were understood to be more prone to criminal activity and connected to drugs and shady underhanded ways of dealing than U.S. citizens.

In these revised nativist narratives, immigrants also posed a threat to citizens' economic well-being. These new immigrants from the South would attempt to utilize as many social services as possible, without paying taxes to support the maintenance of these programs and institutions. They failed to achieve economic independence, a critical component of American identity. At the same time, the narrative posited, immigrants who did work would take jobs from deserving citizens.

Undocumented immigrants were coming to take advantage of the system, not become part of the United States, and therefore would not assimilate, according to nativist tropes of the 1980s and 1990s. Immigrants would fail to learn English, adopt American ways, and be loyal to the nation. As such, immigrants were a threat to the U.S. cultural and political system. Immigrants who would retain their culture from Latin America and Asia were seen as a direct threat to the Anglo Saxon core that is believed to be the foundation of U.S. success. Peter Brimelow's *Alien Nation* (1995) is an ideal example of this argument, as he claims that the American core is white, and the ethnic minorities that currently migrate into our country threaten the culture, political system, and core foundation of the nation. Bilingualism, affirmative action, and maintenance of distinct, un-American values undermine the homogeneity of

the political society and cripple its ability to function. For Brimelow, traditional white American homogeneity is essential for the success that America has experienced.

These tropes about immigrants spread beyond the nativist organizations into public sentiment as individuals grappled with complex changes in U.S. society. Debates over multiculturalism, affirmative action, economic transformations, and demographic changes got grafted onto the immigration debate. During the early 1990s Californians began to hear about the impending time when whites would no longer be a majority in their state. Economic debates such as those over free trade in the early 1990s easily connected questions about not just products but also people passing across borders. A recession hit the country briefly in the early 1990s, and California felt the economic decline more acutely as the recession was coupled with the decline in military spending at the end of the Cold War. National partisan activities also opened up room for anti-immigration organizations to grow and nativist tropes to spread. Of note is Pat Buchanan's presidential platform in his 1992 run for the Republican nomination. His campaign focused on social conservatism and connected this to a strong anti-immigrant platform. Buchanan eventually threw his support behind the incumbent, George H. W. Bush, but the Republican Party continued to struggle with divisions among what had been its core. That year, Ross Perot's third-party run for the presidency garnered almost 19 percent of the popular vote, pulling many votes from what would otherwise have been Republican voters, and Bill Clinton won the White House. Following defeat, a turn against a Hispanic other and a Democratic Party of "minorities" was viewed as one way to regain some electoral power and shore up the right-wing base. These demographic, economic, and partisan trends made fertile soil for the race-based fear of immigrants.

The organizations and the growth of nativist sentiments, combined with economic and demographic changes, led to nativist policy victories in the 1990s. Proposition 187, the California voter initiative designed to deny social services to undocumented immigrants, was passed with an almost two-thirds margin. The tropes of the nativism of this period are revealed in the campaign over Proposition 187. The proposition targeted services because this was a mechanism to rid the country of the foreign others who were damaging the nation. In the California voter's pamphlet explaining the measure, these services were "magnets that draw these ILLEGAL ALIENS across our borders" (Attorney General 1994). By cutting off the magnet that was drawing immigrants, the proposition also dealt with the noneconomic dangers nativists perceived were brought by the undocumented, such as violence and a general assault on the safety of American citizens. A letter to the editor of the *Los Angeles Times* (1994) in support of the measure stated: "The real issue here

is do we or do we not live according to law? . . . Has your car been stolen? Yourself robbed? Raped? Too bad. If we don't enforce the laws then might makes right. Illegal immigrants . . . should all be deported." Four years later, with many of the same proponents, Proposition 227, designed to end bilingual education in California, was passed by approximately the same margin as Proposition 187. Although Prop 187 was a California campaign, the conversation around the measure spread across the country. National politicians for many years afterward were asked about their opinions of Proposition 187 as a bellwether of where they stood on this incredibly salient issue. Part of the 1996 welfare reform act signed by President Bill Clinton, demonstrating the appeal of the nativist message, stripped social services from not just undocumented but also legal immigrants. In 1996 the federal Illegal Immigration Reform and Responsibility Act (IIRRA) targeted undocumented immigrants and put into place stricter enforcement controls. While Proposition 187 became mired in the courts and ultimately was never implemented, and most states began to slowly return access to services to immigrants, the political discussion had lasting impacts, and the damage of defining current immigrants as foreign and a threat was done.

In part as a result of their own success, nativist organizations and their influence declined toward the end of the decade. American citizenship had successfully been redefined, and nativist sentiments had spread into the populace. The government was responding, as evident in the legislation and executive actions on immigration enforcement, making nativist organizations designed to highlight and educate about the threat of immigration less relevant. In addition, the conversation about global economic change that had helped propel the nativist agenda to the national forefront began to recede. The North American Free Trade Agreement (NAFTA) and free trade more broadly were not seriously debated. We would have free trade; the questions were just on the margins. Similarly, we would have immigration and immigrant labor, with questions on incorporation still present. This led to a decline in the organizational power of nativist groups. While the organizations declined in importance and relevance, the fear of immigrants as a fundamental threat to national sovereignty lay only slightly under the surface, ready to be reignited by the events of 2001.

NATIVISM NOW

Continued immigration throughout the 1990s and 2000s altered the population of the United States. Between 1990 and 2000 the number of foreign born within the United States doubled, from twenty million to almost forty million; currently 13 percent of the total U.S. population is foreign born.

Of the population who are foreign born, eleven million, or almost 30 percent, are undocumented immigrants (Martin and Midgley 2010). Since 1965 immigration from Latin America and Asia has continued to alter the racial/ethnic composition of the country. In 1970 only 6 percent of the total population was either Hispanic or Asian, yet in 2010 over 20 percent of the United States was classified as one of these two ethnicities. The growth of Hispanics is particularly of note, as from 1980 to 2009 the Latino population more than tripled, increasing from 14.6 million to nearly 48.4 million (Saenz 2010). Hispanics are currently the country's largest minority group, at 16 percent of the total population. If current trends continue, by 2050 non-Hispanic whites will make up just 50 percent of the total population, down from 83 percent in 1970. The rapidly changing racial composition of the United States over the last decade, combined with the events of 9/11 and the current economic conditions (Saenz 2010), has provided the backdrop for the reappearance of nativist activity after a small lull at the turn of the century. The terrorist attacks in September 2001 heightened the salience of the debate about national security, defending the border, and immigration. The increased immigration of the current era has coalesced with the war on terror. As a result, there has been an increased focus on enforcement and border control. In addition, the Great Recession that began in 2007, the worst economic situation since the Great Depression, resulted in a decline of income levels, an unemployment rate reaching 10 percent, and a well-documented housing and mortgage crisis. During this time citizen interest groups organized around economic, security, and safety problems wrought by undocumented immigrants, and many federal and state legislators pushed for stronger immigration controls. According to the Center for New Community, state and local anti-immigrant groups increased by 600 percent from 2005 to 2007.

The events of September 11, 2001, severely heightened the focus on illegal immigration, as the American public grew more wary of illegal immigration, and U.S. legislatures rushed to enhance national security through a hyper-focus on undocumented immigrants (Meissner, Kerwin, and Bergeron 2013; Stewart 2012; Coleman 2007). Illegal immigrants from Mexico were merged with plane-crashing terrorists, as national security was evoked to call for increased border security and apprehension of illegal aliens. While increased border enforcement began in the 1990s, this trend increased dramatically after the events of 9/11. In 2001 there were 180,000 deportations; in 2008 the United States deported 359,000 undocumented immigrants (Coleman 2009). In addition, 1.4 million undocumented immigrants were deported during President Barack Obama's first term in office, whereas President George W. Bush deported a total of 1.57 million undocumented immigrants over the course of both of his terms.

The policy choices pursued today are still largely influenced by the events of 9/11. Immigrants and terrorists are intertwined, and the policies enacted reflect this conflation (Kanstroom 2004; Tumlin 2004; Koulish 2010). Immigration is now under the purview of the Department of Homeland Security, which has classified illegal immigration as a central national security issue (Coleman 2009). Immigration has also become a state issue, not falling under just the federal purview, as state and local police have been used in the enforcement of federal immigration laws. There has been an expansion of what Coleman terms "interior enforcement and detention"—and therefore an expansion of what is considered the border and border control—since 9/11 (Winders 2007).

An extension of this national security focus occurred with the signing of the Secure Fence Act of 2006 by President George W. Bush. The goal of the legislation was to build a double-layered steel fence along 700 miles of the U.S.-Mexico border. In 2011, 649 miles of both pedestrian and vehicle fencing had been completed (Meissner, Kerwin, and Bergeron 2013). In addition, unmanned drones and ground sensors have been used to patrol the border region between Mexico and the United States (Meissner, Kerwin, and Bergeron 2013). Yet the actions on the Mexican border are not only the work of national officials, as citizen groups have pushed to increase security and rid the nation of illegal immigration. The Minutemen Project, founded by James Gilchrist in 2005, is an activist organization that uses private citizens to monitor the flow of illegal immigrants across the border and to attract national attention to the issue of illegal immigration. Gilchrist claims that the "illegal alien invasion" is the source of a variety of social ills, including crime, unemployment, and pollution (Lyall 2009). Ranch Rescue and Barnett Boys are two other vigilante groups seen on the border (Walker 2007). While leaders of the Ranch Rescue dehumanized the Mexicans that they were hunting (Moller 2007), referring to them as "worthless little dogs" (Walker 2007), the Minutemen Project has consciously dissociated itself from such racist motivations. However, its efforts appealed to both the Aryan Nation and National Alliance, which advertised its 2005 rally on their Web sites (Moller 2007). Although the Minutemen organizers have added several statements claiming that they are not motivated by racism and that racism is not welcomed by their organization, their Web site states that their opposition to illegal immigration is not only due to alarm over the breaking of the rule of law but also a true concern about the rising multicultural nature of American society (Moller 2007). The site claims that due to the "tens of millions of invading illegal aliens," there will be a "tangle of rancorous, unassimilated, squabbling cultures with no common bond to hold them together, and a certain guarantee of the death of this nation. . . . America let its unique and coveted form of government and society sink

[and] . . . self-destruct" (Moller 2007). Moller astutely notes that painting current immigrants as unsuitable for American political democracy is a continuation of the nativist thought found in U.S. history.

State-led anti-immigration laws are the most recent examples of nativism. Modeling legislation after Arizona's infamous SB1070, which was signed into law in April 2010, five additional states—Alabama, Georgia, South Carolina, Utah, and Indiana—passed omnibus immigration laws that highlighted criminality. All of these state immigration laws included increased police powers to ascertain the immigration status of any individual, the ability to detain and incarcerate undocumented persons, as well as the creation of new criminal penalties for any *citizen* who engaged with an illegal alien, such as by hiring or renting a house to or even providing a ride to an undocumented immigrant. The present concerns about immigrants are similar to earlier eras, as the restrictionist movement of today centers on the supposed economic toll of undocumented immigrants, as well as concerns about culture and the rule of law. However, all this is framed in a broader discussion about the dangers to national security and the nation-state.

This latest round of anti-immigrant state activity placed concerns about the economic impact of immigrants center stage. Legislative sponsors of the bills as well as concerned citizens' groups and respondents repeatedly intoned economic concerns—both the rightful jobs of state citizens being taken away by undocumented immigrants and the burden undocumented immigrants place on state services at the taxpayer's expense—as justification for more stringent immigration laws. In an *Atlanta Journal-Constitution* editorial, Matt Ramsey, the lead architect of HB87, Georgia's anti-immigrant legislation, issued a statement that "millions of Georgia citizens working and raising their families no longer are willing to accept the loss of job opportunities to nearly 500,000 illegal aliens in our state or to subsidize their presence with their hard earned tax dollars" (quoted in Redmon 2011b). Citizen groups agreed. "Illegal immigrants are using all of these services and not giving back into the system. It's ethically wrong, and it's morally wrong. This will stop unscrupulous behavior," said Catherin Davis, legislative director of the Network of Politically Active Christians (quoted in Redmon 2011a). State Representative Micky Hammon also clearly linked the restrictionist immigration law to economic opportunities for Alabamians, stating that if the law forces undocumented immigrants to leave, it's doing what he intended: "This will create jobs for unemployed Alabama citizens" (White 2011). Economics was a prominent theme in the rhetoric surrounding the recent measures, as it was in previous eras.

Examining the organizations central to the passage of these measures, as well as online comments, demonstrates that cultural issues foment support for the anti-immigrant measures in the South, a new immigrant receiving area.

In Alabama, Tea Party organizations provided venues for supporters of HB56, and the affiliate group, the Rainy Day Patriots, organized a rally in support of the anti-immigration measure. Cultural arguments are heard among some in explaining their support for restrictive immigration measures, as illustrated by Marcelo Munoz (2010), a participant in the rally and a blogger for the Rainy Day Patriots:

> Citizenship involves more than the mere location of one's birth. True citizenship requires cultural connections and an allegiance to the United States. Americans are happy to welcome those who wish to come here and build a better life for themselves, but we rightfully expect immigrants to show loyalty and attempt to assimilate themselves culturally. Birthright citizenship sometimes confers the benefits of being American on people who do not truly embrace America.

Munoz goes on to say that immigration must be controlled to "preserve our national identity." Assimilation is a key concern that is linked with questions of loyalty and security.

In supporting the anti-immigration measure SB20, *The Post and Courier* of South Carolina decried the heavy cost of illegal immigration to the state, as low-income people, "many of whom don't speak English," strain social services. A survey of articles and associated online commentary about immigration in the two largest newspapers in South Carolina between September 2010 and March 2011 found repeated claims about the need for all immigrants to learn English as well as derogatory references to racial identity or culture of immigrants (Gehrman 2011). Some commentators suggested that illegal immigrants "won't assimilate" and "have zero respect for our laws and culture" (Gehrman 2011).[6]

In addition, the rhetoric of "anchor babies" has continued in the nativist narrative. Some state legislatures as well as members of Congress have called for the overturning of the Fourteenth Amendment, which guarantees American citizenship for all those born on American soil, including those born to illegal aliens. Representative Steve King introduced the Birthright Citizenship Act on January 3, 2013, claiming that "the current practice of extending U.S. citizenship to hundreds of thousands of 'anchor babies' must end because it creates a magnet for illegal immigration into our country. Now is the time to ensure that the laws in this country do not encourage law breaking" (2013). While the narrative presented clearly ties immigration to the rule of law, King's proposed act, with thirteen cosponsors, would alter the definition of who gets to be a U.S. citizen. The nativist organization FAIR also supports the overturning of the Fourteenth Amendment, claiming that a "misapplication" of this amendment encourages immigration and decreases the percentage of whites in the United States.

CONCLUSION

The United States is a nation of immigrants, yet maintains a rather chaotic relationship with immigration. While one of our strongest national characteristics is seen as welcoming those from foreign lands to become part of our nation, conversely, throughout its history the United States has consciously worked to limit the entry of immigrants to the country and to American citizenship. The barring of specific immigrant groups has allowed us to exclude those who do not fit an ever-changing, idealized image of who we are as U.S. citizens (Hing 2004). This focus on protecting and preserving the nation is central to the ideas of nativism. While nativism includes an array of anti-immigrant stances, positions, and policies, at its core it is about American identity. Not only does nativism act to defend the nation from forces that mitigate the essential character of the United States; it also actively works to define what is and who is a "real American."

Though it is a recurring theme in American history, there are periods when nativism is demonstrated more vigorously and persuasively. These times of nativism are typified by powerful anti-immigrant organizations, nativist public sentiment, and the enactment of nativist legislation. The "100-year period of nativism," stretching from the 1820s until the 1920s, presented a century of anti-immigrant sentiment and policies, including the Know Nothing Party, the creation of an Asian "barred zone," and an immigration policy based on quotas to limit those immigrants not from western and northern Europe. The 1930s through the 1970s saw a lull in nativist organizing, yet we see the forced removal of ethnic minorities as nativism found expression through government officials and actions. The 1990s, known as an era of "New Nativism," brought a renewed focus in public opinion, nativist organization, and public policy on the threat of immigrants to the nation's well-being and our economic way of life. Nativism in the present moment continues the narrative about the threat of immigration, illustrated by the state-led immigration control acts. Similar themes are evident in the narrative and backing of anti-immigrant politics of all eras as concerns about culture, economics, and the rule of law are repeatedly evoked and used to justify the prescribed actions of the day. Nativist organizations, political notables, and the populace more generally all broadly report beliefs that foreigners subvert the economic stability of Americans, attack the cultural stock and core of the nation, and not only endanger individuals but imperil the nation's security. The contours and recombination of these tropes, determined in part by the larger anxieties society is facing at any moment, lead to very different conceptions of citizenship and policy outcomes for those deemed on the outside. Nativism illuminates another way that immigrants are central to the construction of our nation, a much different way than normally intended

when one states, "America is a nation of immigrants." Throughout its history, U.S. citizenship has been defined and redefined, not affirmatively, but in opposition to a "foreign" racialized, religious, or political other.

NOTES

1. By looking at nativist moments we look at restrictive or anti-immigrant politics more broadly. Lurking underneath the desire to define nativism clearly and separate it out from anti-immigrant politics is the assumption that nativism is an illegitimate position. We want to know if anti-immigrant politics are driven by nativism or some other set of more legitimate concerns that we might give more political space or credence to, such as economic or environmental concerns. We want to know if it is racism or xenophobia, or if it is a legitimate political position. This endeavor, though is an intellectual one that denies the ways in which politics really gets played out. Anti-immigrant politics in practice has a nativist element, a racist side, and pieces of the movement or arguments that don't rely on xenophobia or fear of the other. One cannot carve out nativism so neatly from the other elements of restrictive movements, opinions, and politics, and the attempt to do so denies the interconnection between these ideas. One of the big lessons of looking at nativism throughout history is the ways in which it and other anti-immigrant arguments about economics or the environment are always used in unison. Such arguments, even if not about culture or the demise of the nation-state, complement and are complemented by explicitly nativist sentiments. Arguments about the impact of immigrants on culture, economics, and the environment are frequently used by the same set of actors and toward the same ends. To understand nativism is, then, not to carve out space for legitimate anti-immigrant politics, but to highlight the ways that defense of a conception of "American" has been at the base of politics that has promoted immigration restriction in U.S. history.

2. Statistical data on this time period can be found in the Dillingham Commission Report (U.S. Senate 1991).

3. However, it must be noted that after the end of the Mexican-American War, when over half of Mexico's territory became part of the United States, Mexicans in this territory instantly became American. The newly created border was seen as artificial, as the residents continued to cross back and forth when necessary, as no physical boundary was established.

4. Although leaders from the Christian Right emerged as nativist activists, Christian Right organizations did not necessarily adopt a nativist platform. See Jacobson (2012) for more information on the Christian Right and immigration politics.

5. For more on the environmental movement and immigration restriction, see Jacobson (2011, 2008, ch. 6).

6. Although there are great limitations to drawing any conclusions from the anonymous online commentary, these are actually important complementary sources when attempting to uncover the role race or culture plays in current debates.

During a time when explicit racial references or racial biases are socially undesirable, fewer people would make public claims about culture and race informing their positions. This anonymous format allows such comments to enter into the public debate in the post–civil rights movement era.

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"To Persevere in Our Struggles": Religion among Unauthorized Latino/a Immigrants in the United States

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INTRODUCTION

In *Between Heaven and Earth,* Robert Orsi writes that religion "cannot be understood apart from its place in the everyday lives, preoccupations, and common sense orientations of men and women" (2004, 169). In Orsi's view, religions "provide men and women with existential vocabularies with which they may construe fundamental matters, such as the meaning and the boundaries of self . . . the sources of joy, the borders of acceptable reality, the nature of human destiny, and the meaning of the various stages of their lives. It is through religious idioms that the necessary material realities of existence—pain, death, hunger, sexuality—are experienced, transformed, and endured for better or for worse" (169). One of the fundamental material realities of existence is one's emplacement in the world. Thus, lived religion must address the challenges of "orientation—orientation in the ultimate sense, that is, how one comes to terms with the ultimate significance of one's place in the world" (Long 1999, 7). In other words, religions "appeal to contested historical traditions of storytelling, object making and ritual performance in order to make homes (dwelling) and cross-boundaries (crossing). Religions . . . involve finding one's place and moving through space" (Tweed 2006, 74). This is particularly true for migrants who seek to negotiate the

dramatic disruptions of both time and space that often accompany the process of migration.

Religion, however, is not just about emplotting journeys in religious narratives of redemption, spiritual transformation, or mission, or just about imagining mythical and utopian communities in diaspora. Religion also offers material resources and networks that allow immigrants to build "transnational social fields" (Levitt and Glick Schiller 2004) through and across which remittances, information, religious artifacts, devotions, and people circulate, linking societies of origin and settlement. These networks give crucial support during the migration and settlement processes, offering immigrants among other things safe organizational spaces such as congregations, where those who face increasingly hostile climates can find ethnic/national solidarity, belonging, and catharsis, as well as employment opportunities, housing referrals, language training, and the opportunity to develop a voice and civic skills that may eventually lead to political participation and collective mobilization.

In this chapter we explore the everyday religious experiences of Latino and Latina unauthorized immigrants, particularly in new immigrant destinations, as a means to clarify the significance of religion. We have chosen this focus because 76 percent of unauthorized immigrants in the United States are "Hispanics" (Passel and Cohn 2009). Moreover, our extensive fieldwork among Latino/a immigrants allows us to bring to life their everyday religious practices and beliefs. We expect, however, that this chapter will draw attention to some of the ways in which religion often intersects with the experience of living unauthorized in the United States for immigrants from other regions of the globe, living in a range of U.S. locations and participating in a broad array of religious traditions (see Hondagneu-Sotelo 2008; Guest 2003).

CROSSING OVER: LIVED RELIGION IN A MILITARIZED BORDER ZONE

Arguably, no experience is more disorienting and traumatic for unauthorized immigrants than the journey into the United States. The process of migration starts with the fateful decision to leave their communities behind, often fleeing from political repression or civil war, as happened for many Guatemalans, Salvadorans, and Nicaraguans during the 1980s, or seeking the means to support their families in the face of economic processes that have transformed agriculture, dislocating small farmers, as in the case of Mexican migration after NAFTA.

For approximately half of unauthorized immigrants currently in the United States, the journey as a migrant, and the new identity forged by this

journey, began at a border that they did not have permission to cross. Immigrants who do not enter the United States at an authorized checkpoint encounter at the border between the United States and Mexico (and for many, at the border between Mexico and Guatemala before that) a violent, militarized zone. Since 1980 the border between the United States and Mexico has seen a dramatic increase in enforcement. Between 1980 and 2009 the Border Patrol budget increased ninety-five times and the quantity of border surveillance eleven times (Massey 2009). This border militarization has resulted in more deaths during crossing and an elevation in the cost—both financial and emotional—of crossing. As they cross through this zone, unauthorized immigrants experience suffering and, in some cases, face their own mortality.

It should come as no surprise that much of the religious cosmology developed by unauthorized immigrants resignifies the border and makes sense of their often traumatic experiences there. In our own research among unauthorized immigrants in Georgia, we heard countless stories of the dangers of crossing, stories that often were made sense of through religious resources: references to the protection of God or of the Virgin Mary; descriptions of miraculous occurrences; and engagement with religious practices that have a long history, but that unauthorized immigrants reconfigure as a means to reorient themselves to the reality of a dangerous border.

The *promesa* (vow) made by Oscar and Esperanza, two unauthorized immigrants who came to Atlanta from a small village in the state of Mexico in 1998, offers a clear example of this process. For Catholics in their region of Mexico, the offering of a promesa is a widespread practice: the faithful make a vow to a particular manifestation of the Virgin Mary that, if she prays on their behalf for a particular outcome and the outcome is achieved, they will make a specific offering in thanksgiving. In April 1998 Oscar and Esperanza set off with Esperanza's sister-in-law, Norma, and their small children on a dangerous journey to the United States, where they would reunite with Esperanza's and Norma's husbands (who had been living in Atlanta for several years). Before leaving they offered a promise to the Virgin of Guadalupe: if they arrived safely in Atlanta, they would send the first dollars they earned back to their parents in Mexico, which their father would use to build a small chapel honoring the Virgin of Guadalupe on their family's property.

Their journey was arduous. After paying a *coyote* $1,500, they attempted three times to swim across the Rio Grande near Matamoros. They were apprehended by Border Patrol and returned to Matamoros, where their *coyote* abandoned them. Esperanza and Norma's small children, who had crossed through a checkpoint with a relative using false birth certificates, awaited their mothers in a hotel in Brownsville. The three adults had no choice but to climb onto the back of a truck and travel hundreds of miles away from their

children, to Aguasprietas. Sonora, where another *coyote* would charge them the same amount to cross into Douglas, Arizona. Years later, at the kitchen table in her Atlanta apartment, Norma described the journey with words that made clear the profound disorientation of crossing:

> We ran for no more than a half-hour, and then we walked for about an hour, until we got to a ranch with horses. We went into a small room and, there, we waited, standing up. We couldn't even move because there were so many people, because many coyotes had gathered their people together in this one place. I think that a lot of coyotes paid the house, because it was just a tiny room and we were all standing pushed against each other, waiting until they opened a door to the house. . . . I think we were in the basement, I don't know what it was. And the next day, someone would show up and say, "Who is with Juan Jiminez? And the people who came with Juan Jiminez [a *coyote*], they left. Then the people with Rodrigo Martinez, and so on. And we got really confused. We didn't even know who we had been running around with and we got into this truck—a gringo showed up driving this truck full of undocumented people. And he said, "You all didn't come across with us. What are you doing here?" They had made a mistake. So they got in touch with the other guy and told him to come and get us. . . . They wouldn't let us leave [the little room] until the [*coyote*] gave them the money, some of the money that we had given to [the *coyote*]. Finally, we went in a truck from Douglas to Phoenix and then in an airplane from Phoenix to Atlanta.[1]

All told, the trip lasted almost a month, and Norma, Esperanza, and Oscar finally arrived in Atlanta in mid-May 1998.

Four and a half years later, in December 2002, Oscar returned to San Juan with Norma's husband, Berto. Upon their arrival, they saw—for the first time—the material reminder of their promesa fulfilled. A *capillita* (little chapel) with a three-foot-high statue of the Virgin of Guadalupe inside stood next to the steep gravel driveway that ran past Esperanza's unfinished home. Her presence in the brick, glass, and wrought-iron structure served as a constant reminder of the arduous journey that the group had begun more than four years earlier, and of the protection offered by the *Virgen.*

Using hundreds of dollars that they had saved over the years working in Atlanta, Berto and Oscar threw an enormous party in honor of the Virgin of Guadalupe. The festivities began with an outdoor mass to bless the capillita, and they continued late into the evening. Concerned primarily with their children's well-being, Esperanza and Norma had been unwilling to risk crossing the border again to attend the party. During the course of the night, though, both called on the telephone. They were passed around from person to person throughout the evening, celebrating across the phone lines. Berto also recorded the entire event on a videotape, which he took back to his

sisters. Weeks later they gathered in their Atlanta apartment to experience the event on video.

Many of those who come into the United States at the southern border engage in religious practices to make sense of their journey and also to seek protection along the way. Reporting on their humanitarian work as doctors along the Arizona border, Kathryn Ferguson and colleagues document dozens of cases in which migrants experiencing crises report miraculous apparitions (Ferguson, Price, and Parks 2010). For instance, a woman abandoned in the desert by *coyotes,* surviving on the fruits of prickly pear cactus, described finding a prayer card bearing the image of the Virgin of Guadalupe wedged into the branches of a mesquite tree. She "knew when she saw this that they would be rescued. She said that she had felt the protective hand of the Virgin all along her journey" (18). Another woman reported that when the car transporting her family out of the border area plunged into a ravine, "there was an aura of white light surrounding them, and the Virgin was there, saying everything would be all right" (20). As he was being discharged from the hospital, one of the men in the family took an amulet bearing an image of the Virgin from around his neck, gave it to the nurse who had treated them, and asked for her prayers.

Among the most intriguing material artifacts of theologizing as a way to reorient to experiences on the border are *retablos*—votive paintings that "tell the story of a dangerous or threatening event from which the subject has been miraculously delivered through the intervention of a holy image of Christ, the Virgin, or the saints, to whom thanks are reverently offered" (Durand and Massey 1995, 2). In their 1995 study of the retablos made by Mexican migrants, Durand and Massey found that approximately one-third of the retablos they examined depicted themes of coming into the United States or facing legal barriers to integration into U.S. life (71).

Retablos serve as a visual manifestation of personal testimony, expressions of gratitude or remorse that would be difficult to articulate. As Durand and Massey explain:

> Migrants, moreover, experience a set of special problems unique to their status as foreigners who are frequently undocumented. As surreptitious migrants, they undertake risky and dangerous border crossings; they regularly expose themselves to exploitation on the job and in daily life; they navigate a strange economy and an alien society; they have unpleasant encounters with powerful and arbitrary bureaucracies; they live clandestinely outside of the protection of legal authority. It is not surprising, therefore, that holy images occupy a special place in the hearts of Mexican migrants to the United States. Through faith and devotion to familiar icons, people are able to make sense of the alienating and disjointed experiences of life in a foreign society. Holy images provide a cultural anchor for people adrift in a sea of strange experiences, exotic tongues,

and odd customs. Icons such as the Virgin of San Juan provide a reassuring source of solace that enables migrants to construct an inner Mexico within the alien material culture of the United States. Thus, when migrants experience moments of duress and anxiety in the course of their wanderings, they typically turn to a sacred image to assuage their apprehensions and calm their fears. (1995, 63)

For Esperanza, Oscar, and other unauthorized immigrants, making and fulfilling a promesa, offering prayers, sharing prayer cards and miraculous medals, and making retablos are among a wide range of resignified religious practices that have helped them to endure, and to make meaningful, the arduous process of migrating without authorization. Such practices signify the most fundamental work of religion: to provide orientation. They also attest to the malleability of lived religion—the ways in which traditional religious practices and material artifacts can be reimagined and redeployed as a means to make sense of entirely new sources of disorientation.

For unauthorized immigrants, the religious work of orientation does not end with successful crossing, nor does it always entail the resignification of traditional practices. Nestor, an unauthorized immigrant from El Salvador who arrived in suburban Atlanta in the mid-1990s, was not particularly religious for the first several years that he lived in the United States. He explained in a 2011 interview with us that for years he had no interest in attending church; he only went occasionally at the urging of his wife. By the time of our interview, Nestor was deeply involved in a new program at his parish called SINE (*Sistema Integral de la Nueva Evangelización*—Integrated System of New Evangelization), which entails intensive retreat experience, followed by integration into the life of the parish through participation in small Christian communities of eight to twelve people (Marquardt et al. 2011, 186). Nestor could be found at the church several days a week, participating in committees, training catechists, and attending mass and prayer groups.

Nestor explained that this program had the capacity to create a "life-changing" experience for any person, but that the hunger for this encounter, and for involvement in the church, was increased for unauthorized immigrants in his community as a result of their unique and uniquely troubling experiences. He explained that for the non-Latino U.S. citizens in his parish, the rigor and spiritual intensity of SINE were not particularly appealing, because they might say to themselves: "Why do I need to be in the church? I have my money, I have my house. I can get into any country without restrictions. Why do I need God?" Nestor continued, "And my situation, it's different." He explained: "I need to be in church. I need to pray every day because I don't have documents and . . . I don't have a driver's license, and I need to pray because, you know, maybe the police are going to arrest me. I have to

pray to get a job because I have to send money to my mom and my brother and my sisters and to all of my relatives because they're poor" (Marquardt et al. 2011, 189). Even though Nestor owned his home, drove a late-model truck, and had a successful business as a painter, he knew that his situation was tenuous—that at any moment he could lose his business or be detained by the police, that he could lose his capacity to support extended family, and that his own sense of place in the world would be disrupted once again. Nestor described his increasing depth of spirituality as an "encounter with Jesus" that "really changed my life." It "really opened my eyes," he explained, allowing him not only to see his own church in a new light, but also to better understand and live with the increasingly tenuous life in the Atlanta suburbs.

Nestor lived in Cobb County, Georgia, an area of the United States that emerged in 2008 at the forefront of a new immigration enforcement regime. As the first county in Georgia to participate in the 287(g) program[2] and as the home of two of the nation's most vocal anti-immigration organizations,[3] Nestor's local community found itself, by the beginning of the second decade of the twenty-first century, at the epicenter of the local enforcement experiment. As we will see below, this experiment not only resulted in increased disorientation for unauthorized immigrants, which led many to turn to a deeper spirituality, but it also created the need for religious organizations to assume new responsibilities.

Sanctuary: Religious Organizations in a Climate of Enforcement and Hostility

A good deal of research has been undertaken on the ways in which religious organizations facilitate integration of immigrants into their new areas of settlement, creating "alternative places of belonging" (Williams, Steigenga, and Vásquez 2009). Congregations may serve for new immigrants as surrogate families and also as alternative public spaces, particularly in unwelcoming environments and in new destinations, where a range of organizations and institutions that might help to integrate new immigrants into local life does not exist.

Until the 2012 presidential election, which changed the tone of the public conversation on immigration, the Barack Obama administration had been doubling down on enforcement as a way to prove its get-tough credentials. As of July 2012, it had deported 1.4 million unauthorized immigrants, largely through the 287(g) and Secure Communities enforcement programs. This has translated into an average of approximately 400,000 ICE removals annually during the Obama administration (compared to approximately 250,000

per year under the George W. Bush administration) (Khimm 2012; U.S. DHS/ICE n.d.; U.S. DHS 2011).

This emphasis on enforcement has generated enormous anxiety and uncertainty among immigrant communities, who fear that a trip to the grocery store, or to pick up the kids from school, or to attend church may result in being detained for a minor traffic violation and lead eventually to deportation. But the duress has not only come from the federal level. States and localities have been taking matters into their own hands, formulating and passing a myriad of laws aimed at disciplining and punishing unauthorized immigrants. In 2009 alone, for example, 1,500 immigration-related laws and resolutions were considered in all fifty state legislatures, with 353 ultimately enacted. According to Monica Varsanyi, these laws include those that "penalize employers who knowingly employ illegal immigrants, laws preventing undocumented residents from receiving driver's and businesses licenses, and laws excluding undocumented students from in-state tuition benefits at public colleges" (2010, 3). Other local ordinances prohibit landlords from renting to unauthorized immigrants or limit the number of renters per housing unit.

While the most notorious of these laws is, of course, SB1070 in Arizona, other laws were crafted to mirror or build upon it in Alabama (HB56), Georgia (HB87), Indiana (SB590), Utah (HB497 and SB288), and South Carolina (S20). Arguably the most draconian of these laws was Alabama's HB56, which was signed into law in June 2011. Like SB1070, HB56 required employers to use E-Verify to check employees' immigration status and deputized the police to check the status of anyone they stopped if they suspected the person to be in the country without proper authorization. However, the Alabama law went beyond SB1070, ordering public elementary, middle, and high schools to ascertain the immigration status of students upon enrollment and report the number of unauthorized immigrants to state education officials. Furthermore, it criminalized the act of harboring, transporting, or assisting undocumented immigrants.

HB56 has had a dramatic effect on Alabama's unauthorized immigrant community. In a panic, many parents took their children, many of them U.S. citizens, out of school and fled to other states such as Texas, Tennessee, and Florida. Shortly after passage of the law, Rev. Paul Zoghby, pastor at St. Margaret of Scotland Church, a church with a large Latino congregation, explained, "This is the saddest thing I have experienced in my 18 years as a priest. . . . We've already lost 20 percent of the congregation in the past few weeks, and many more will be gone by next week. It is a human tragedy" (*Washington Post* 2011). In August 2012 a federal appeals court struck down most provisions of the law, and in April 2013 the U.S. Supreme court declined to consider the case. Nevertheless, a climate of fear and hostility continues to pervade many Alabama

communities, and the state has seen both a decline in immigrant population and an associated economic decline (Addy n.d.; Liptak 2013).

In challenging contexts such as Alabama, religious organizations become more than "spaces of sociability" (Ammerman 1997). They offer alternative forms of visibility and voice, of "presencing" that transgress the panoptical logic of the state. Congregations allow immigrants to be visible as full persons to each other and to citizens who worship with them, while being "invisible" to the disciplinary actions of the state. When Cobb County became the first county in Georgia to implement the 287(g) program, the immigrant community entered into a state of crisis and profound disorientation. Radio stations were reporting roadblocks as local Spanish-language news outlets described the Cobb County Jail filled with immigrants, detained on simple misdemeanors but denied the opportunity to be released after posting bail. Among those detained were several lay leaders in Nestor's parish; men and women who had been living in the United States for more than a decade, with no criminal record, were being picked up in sweeps of apartment complexes, imprisoned for driving without a license or with a broken tail light. The parish immediately moved into action, with citizen lay leaders reaching out to local attorneys and learning how to post bond and find information from Immigration and Customs Enforcement (ICE).

When local advocacy organizations called for the Cobb Sheriff's Department to explain to the community what was happening, they turned to Nestor's Parish, St. Thomas the Apostle, and asked the parish to host the event. Hundreds of immigrants packed into the parish hall to hear from local law enforcement officials—the very same people who had been staying home from work, keeping their children out of school, and staying off of roads and out of stores because of their fear of being detained. The church was chosen because it was a sanctuary—a place that unauthorized immigrants in Cobb County perceived to be safe.

At the Misión Católica de Nuestra Señora de las Américas, a Catholic mission exclusively for Latino immigrants in suburban Atlanta, the church has understood itself as the *Plaza del Pueblo* since its founding in 1990—a town square that serves as an alternative to the public spaces in the local town from which the members of this church were subtly and often very openly excluded (Vásquez and Marquardt 2003). Francisco, a Mexican man from Durango, explained the important role of *la misión* and the pastor during periods of heightened fear and insecurity for unauthorized immigrants:

> In those days [during a period of immigration raids on workplaces] Immigration was going around and detaining people . . . gathering people up. And those were, I think, those were the most terrible times, not just for me but for the community in general, because we don't have documents. . . . These were really hard times because we were

just waiting, wondering when someone was going to show up and take us away. . . . There wasn't confidence among the people until a leader came. Someone came to guide us and to give us confidence to gather together here. And he told us that nothing was going to happen to us if we came together because God loves us. Right? God wanted us to gather together. So then the people began to lose their fear. . . . Now it's very different—everything is very different because the community feels trust . . . there's so much confidence.[4]

Beyond offering a safe space to gather, the Misión Católica offered alternative discourses of identity to the unauthorized immigrants in the congregation, assuring them that they were beloved by God and willed by God to gather together, even in the most inhospitable times and places. Building upon a firm sense of collective identity and a collective mission to "defend the dignity" of their immigrant members (as articulated in their mission statement), members of the mission actively engaged in concrete practices that affirmed their value in the eyes of God: while most worked in jobs that rendered them almost invisible to the public eye (as dishwashers, nannies, landscapers, and night janitors), the members of this congregation assumed a wide range of visible leadership positions in their church, leading prayer groups, offering public testimony, organizing fund-raisers and parties, and planning marches and protests (Marquardt 2005).

Other religious organizations throughout the United States have offered more radical forms of hospitality, such as the New Sanctuary Movement. The original Sanctuary Movement drew its inspiration from liberation theology, forming an interfaith network that during the 1980s offered safe haven to immigrants from Central America fleeing political violence perpetrated primarily by authoritarian military regimes supported by the Reagan administration. Drawing inspiration from the original movement, the New Sanctuary Movement emerged out of a meeting on January 29, 2007, in Washington, D.C., which brought together representatives from eighteen cities, twelve religious traditions, and seven denominational and interdenominational organizations.[5] In addition to offering shelter to immigrant families in danger of being torn asunder by deportations, the "New Sanctuary requests contributing congregations to sign a promise to 'Take a public, moral stand for immigrants' privileges,'" and also to protect them from hate, workplace discrimination, and illegal deportation. Participating churches also are asked to witness to "how immigrants suffer in the existing system."[6]

Another radical experiment in hospitality, which we have followed more closely, is Alterna, an intentional Christian community in LaGrange, Georgia. With the guiding motto "love crosses borders," Alterna (2013) describes itself as a "Christian missional community comprised of U.S. citizens and Latin American immigrants committed to faithful acts of accompaniment,

advocacy, and hospitality."[7] The members of Alterna live in intentional community, sharing housing, food, and resources. They also work to assist unauthorized immigrants in LaGrange and throughout Georgia as they confront the daily challenges of living, buying, working, seeking medical care, and navigating legal systems. They engage in court monitoring and offer educational workshops, and they also promote local food consumption by maintaining a community garden as a food source and raising farm animals as part of a Heifer International project.

They do all of this guided by a deeply religious set of principles that create sanctuary in the midst of profound fear. As Anton Flores, a cofounder of Alterna, explains:

> The immigrant knows fear. She knows fear the moment she turns her back to her home and takes her first legally unauthorized step to "El Norte." He knows fear the very moment he steps into the Arizona desert braving the brutal elements and trusting the potentially unscrupulous coyote. They all know fear every time they drive (unable to obtain a license) down a Cobb or Gwinnett County road on their way to work, or worship, or Wal-Mart. (Marquardt et al. 2011, 225)

While fully acknowledging the realities in which these fears are based, he and the other members of Alterna preach "good news": "Real power can only be found in selfless love, and the good news is that everyone can be powerful because everyone can love" (225).

Alterna's work is influenced heavily by the thought of Dr. Gilbert Bilezikian, an influential American Baptist pastor who spent his childhood as an Armenian refugee in Paris. He founded Willow Creek Community Church, one of the most influential megachurches in the United States. On a visit to Alterna, Bilezikian spoke of his own childhood as a member of a refugee family seeking sanctuary, and he called upon Alterna to demonstrate to the world a deep sense of community that challenges the fragmented and fearful society surrounding it. Building on Dr. Bilezikian's work (1997), Alterna explains its primary mission: "Reclaimed by Christ, we seek to love one another, serve one another, know one another, and celebrate one another in such a way that we demonstrate a radical alternative to the kingdom of this world."[8] As a space set apart, the Alterna community becomes not only sanctuary, but also a demonstration plot for the "values of God's Reign," where unauthorized immigrants and citizens live, work, and worship in solidarity.[9]

The grassroots work of religious organizations like the New Sanctuary Movement and Alterna, which have opened themselves to the risks, surprises, and promises of welcoming migrants regardless of their status, dovetails and is cross-fertilizing with theological and politico-philosophical reflections about recognition and hospitality in the post-9/11 world, including Jacques

Derrida's work on unconditional hospitality and Emmanuel Levinas's on the irreducibility of enfleshed alterity that we encounter face to face (Levinas 1969; Volf 1996; Derrida 2000). However precariously, experiments such as the New Sanctuary Movement and Alterna may serve as incubators of a new ethics, not simply of cosmopolitanism but of singularity—that is, of the full recognition of the "Other," not as a faceless threat to be kept at bay, controlled, and punished, not the Other whose subjecthood is exhausted by contingent logic of the neoliberal nation-state, but as a complex Self whose existence is inextricably bound with that of citizens. (On churches and hospitality see Pohl 1999 and Brinton 2012).

Accompaniment and Advocacy: Addressing Detention and Deportation

The focus on enforcement has gone hand in hand with a strong emphasis on detention (see volume 2, chapter 2 of this work). According to Detention Watch Network, "in 2001, the U.S. detained approximately 95,000 individuals. By 2009, the number of individuals detained annually in the U.S. grew to approximately 380,000—this despite the fact that overall crime was down. The average daily population of detained immigrants has ballooned from approximately 5,000 in 1994, to 19,000 in 2001, and to over 30,000 by the end of 2009" (Detention Watch Network n.d.). Many of the 350 detention facilities in the United States are run by giant private corporations, such as Corrections Corporation of America (CCA), the Geo Group, and Management & Training Corporation (MTC). These facilities are operated at an annual cost to the taxpayer of more than $1.7 billion, with private corporations receiving from the Department of Homeland Security (DHS) an average of $122 per day for each immigrant they hold. Even with the drop in crime rates, the protracted economic crisis notwithstanding, for 2010 CCA and GEO reported annual profits of $1.69 billion and $1.17 billion, respectively. With so much money at play, private corporations running detention centers aggressively lobby sympathetic politicians at the local, state, and federal levels to pursue an enforcement solution to the dilemmas of unauthorized immigration. In fact, lobbyists for CCA played a major role in drafting SB1070 in Arizona. To characterize these transnational penal conglomerates, sociologist Tamara Nopper uses the term "prison industrial complex" (2008). This is a complex that developed and perfected penal practices and institutions disproportionately affecting African Americans during the war on drugs and now extends its reach to unauthorized immigrants, expanding and hardening what Michelle Alexander has called the "New Jim Crow."[10]

In the face of the growing penal apparatus deployed against immigrants, religious organizations have used their moral standing to bear witness and

denounce the deplorable conditions and frequent violations taking place at detention centers. Religious organizations have also sought to accompany detained immigrants and their families as they struggle with the deportation process.

The Alterna community has developed a particular concern with issues surrounding detention and deportation. Since 2007 Alterna has organized an annual vigil outside the gates of the Stewart Detention Center in Lumpkin, Georgia. The vigil occurs on the day before the Annual SOA Watch protest at the military base of Fort Benning, a short distance from Lumpkin. Protesters who have gathered from around the United States to draw attention to the injustices surrounding the School of the Americas have been exposed to the work of Alterna and to the justice issues surrounding private corporations (in this case, CCA) running for-profit detention centers. As Alterna has built networks with these protesters and the organizations with which they are affiliated, it also has become part of a nationwide movement focused on detention and deportation. Working with Detention Watch Network and the Georgia Detention Watch and with the Atlanta chapter of the ACLU, Alterna volunteers began conducting regular visitations with detained immigrants at the Stewart Detention Center in 2007.

In 2010 Alterna opened a hospitality house for the friends and family members of detained immigrants in Lumpkin, Georgia. The hospitality house offers free food and lodging to people traveling hundreds of miles to visit detained immigrants, and it also runs a visitation program that has brought hundreds of volunteers from religious, educational, and civic institutions to conduct humanitarian visitations with detained immigrants. The hospitality house, which recently developed into an independent organization, is deeply embedded in local, regional, and national networks—both religious and civic—that address immigration detention and deportation.

Other religious organizations, such as the Jesuit Social Research Institute at Loyola University–New Orleans and the Jesuit Province of New Orleans, have taken a different tack in addressing the perils of the prison industrial complex. They have engaged in responsible stockholder advocacy. As investors in the Corrections Corporation of America, they have been able to attend the annual meetings of the CCA in Nashville "to speak to the board, staff and shareholders of the need . . . to adopt a verifiable human rights policy and adopt stricter accountability and reporting measures."[11] The goal has been to introduce moral frameworks to issues surrounding detention, while appealing to the bottom line, the profitability of corporations, which can be affected by unfavorable publicity. Given that the detention system often operates in the shadows of civil society, efforts such as these complement the grassroots work of religious organizations like Alterna. As the activists are themselves

aware, responsible stockholder advocacy is fraught with danger. They must walk a fine line between influencing the system from within and legitimizing it through their investments.

PATHWAYS TO IMMIGRATION REFORM?

As unauthorized immigrants and those who work alongside them in religious organizations build networks of support that extend far beyond congregations, they also influence and change the denominations of which they are a part. Bishop Minerva Carcaño, the United Methodist bishop of Los Angeles, spoke at Agnes Scott College in Atlanta, Georgia, in February 2013. In her talk entitled "Immigration: Reforming the Heart of the Nation and the Church," she spoke of the many ways that unauthorized immigrants, through their religious practice, are reshaping the life of the Christian churches in the United States, creating vibrant new practices and revitalizing shrinking congregations. The Catholic archbishop of Los Angeles, José H. Gómez, has made similar claims:

> America is becoming a fundamentally different country. It is time for all of us to recognize this, no matter what our position is on the political issue of immigration. We need to recognize that immigration is part of a larger set of questions about our national identity and destiny. What is America? What does it mean to be an American? Who are we as a people—and where are we heading as a country? . . . immigration is not a problem for America. It's an opportunity. It is a key to our American renewal. . . . "America has become home to an amazing diversity of cultures, religions, and ways of life precisely because our nation's founders had a Christian vision of the human person, freedom, and truth." [As such, Americans must both] remember the missionary history of America [and] rededicate ourselves to the vision of America's founding creed. (Jones 2011)

Here Archbishop Gómez is inextricably linking immigration to the health of religious communities and the future of the United States as a democratic nation that values freedom of religion. He exhorts religious people to change their attitudes about immigration, including unauthorized immigration. The path to immigration reform through the "heart of churches" is concretely expressing itself in a significant shift in attitudes toward comprehensive immigration reform among Evangelicals, as shown by the formation of the Evangelical Immigration Table, a broad network of Christian leaders calling for a bipartisan solution on immigration that

- **respects** the God-given dignity of every person,
- **protects** the unity of the immediate family,

- **respects** the rule of law,
- **guarantees** secure national borders,
- **ensures** fairness to taxpayers, and
- **establishes** a path toward legal status and/or citizenship for those who qualify and who wish to become permanent residents. (Evangelical Immigration Table 2013)

The members of this network "urge our nation's leaders to work together with the American people to pass immigration reform that embodies these key principles and that will make our nation proud" (EIT Web site).

Evangelicals' evolving attitudes may have to do with the changing demographics to which Archbishop Gómez referred. A recent article in the *New York Times* cites the example of a Baptist pastor in Orlando, Florida, heading to Washington, D.C., to lobby in favor of immigration reform. He has discovered that in his traditionally Euro-American congregation there are now immigrants speaking thirty-two different languages. "The stories out there in the pews are stories of people from all over the world who have made friends and who have become close with people here," the pastor explains. "I think that's why there's movement in this church, there's momentum, there's an openness to try to do something to address their needs" (Preston 2013).

The path from religion to immigration reform can be more indirect but no less effective. A case in point is the DREAMers, unauthorized immigrants who came to the United States as children. Numbering approximately 1.4 million, they are known as DREAMers because they would benefit from passage of the Development Relief and Education of Alien Minors (DREAM) Act. In June 2012 the Obama administration offered many of these DREAMers a two-year renewable reprieve from deportation through the Deferred Action for Childhood Arrivals (DACA) initiative.[12] As Nicholls (2013) demonstrates, vigorous campaigning by these young immigrants supported by faith-based organizations and other coalitions around the country contributed to President Obama's announcement of DACA on June 15, 2012. According to Obama, this was "the right thing to do," as so-called DREAMers are "Americans in their hearts, in their minds, in every single way but one: on paper" (White House, Office of the Press Secretary 2012).

Although DACA can only be considered a partial and temporary success for the DREAMers, their ability to garner the attention of the Obama administration and attract the sympathy of many U.S. citizens can be attributed in large part to the strategic use of practices of peaceful civil disobedience, including marches and sit-ins, as well as the widespread use of compelling testimonials, which groups like United We Dream borrowed from the civil rights movement. In one case, United We Dream leaders even met with one of President Obama's senior advisors to press their case in a church in

Washington, D.C., since they could not come to the White House because of their irregular legal status. Like congregations such as La Misión Católica, the DREAMers have endeavored to create new forms of visibility and recognition in response to a panoptical state and the negative stereotypes about unauthorized immigrants that until recently framed public discourse.

Blanca, a DREAMer who came from Michoacan, Mexico, as a young child, told us that while she is not strongly religious in the sense of regularly attending mass, she appreciates what the Church is doing in supporting the DREAMers by giving them space to meet and logistical support. This is because the DREAMers in New York work very closely with the Asociación Tepeyac, a community organization that sponsors the *antorcha guadalupana,* a torch-bearing relay run from Mexico City to New York City. The event not only promotes devotion to the Virgin of Guadalupe, but also advances Asociación Tepeyac's aim "to inform, organize, and educate Mexican and Latino immigrants and their families about rights, resources, and to develop community leaders and organizations."[13] In Blanca's words, "What I appreciate the most is strength [*la fuerza*] that my religious upbringing has given me to persevere in our struggles, not to lose hope when things look difficult."

CONCLUSION

In her study of unauthorized immigration from Latin America, sociologist Jacqueline Hagan found that "religion permeates the entirety of the migration experience, from decision making and departure through the dangerous undocumented journey from their home communities north to the United States" (2008, 7). While religion plays diverse roles, depending among other things on the religious tradition of the immigrant, the existential challenges faced, and the profile of the immigrant—whether a single man who has crossed the border many times in search of seasonal work or a married woman who is crossing for the first time to join her family—Hagan identified five major ways in which religion interacts with the migration process. First, moving beyond the calculative, rational self that informs not only push-pull and even network models of immigration, she shows that religion serves as a moral guide and spiritual support. For example, throughout the deliberations to migrate,

> migrants regularly turn to God and to clergy for counsel and sustenance. For some, this will consist of saying simple prayers for safety and fortitude. For others . . . the religious interaction is much greater and more intense—even to the point of perceiving divine intervention via a "sign" or "message from God" indicating that migration plans may move forward. (158)

Second, religion acts as a mediator: faced with multiple threats of violent gangs who may kidnap them, corrupt officials, exploitative *coyotes,* a militarized border, wild animals, and a harsh, inhospitable terrain,

> [m]any migrants, lacking the resources or personal networks to assist them in their travels, now turn to churches, shelters, and religious workers to perform network functions. In recent years these organizations have become part of the social infrastructure that sustains transit migration in the region. (Hagan 2008, 162)

Third, Hagan found that religion also operates as a sanctuary and advocate for the rights of migrants. Religious networks, drawing from their transnational vision and resources, "challenge the rights of states to regulate and control immigration . . . monitoring the regulatory practice of state institutions and policies. They challenge the state by documenting human rights abuses and the crossing risks associated with current border enforcement policies" (2008, 164).

Fourth, religion is also a "companion" for migrants, mitigating the danger, uncertainties, anxieties, and loneliness that often mark the undocumented journey across the U.S.-Mexico border:

> While some [migrants] visit shrines and popular saints recognized specifically for protecting migrants, others spontaneously erect popular shrines to revered icons from their home communities to reproduce those cultural practices with which they are most familiar and comfortable. Many rely on their spiritual companions for protection, the images pasted on holy cards carried in their pockets or engraved on medallions worn around their necks. (Hagan 2008, 165)

Finally, Hagan found that religion is, as Thomas Tweed would put it, not only "translocative," linking spaces of livelihood, but also transtemporal, fusing tradition and memory with futurity and utopia (Tweed 1997). For example, as migrants vow to return home one day to give thanks to the Virgin Mary or a revered saint for a successful journey by sponsoring a special mass or festival or by paying a penance, promesas "reach across time and space, linking past with future and children with their parents" (Hagan 2008, 167).

Clearly Hagan's findings resonate with our own and serve as a helpful summary of the multifarious roles that religion plays for unauthorized immigrants. To Hagan's characterization, we would like to add the potential that religion has to inspire and provide the skills for transformative political action. As Kenneth Guest's work on religion in New York City's Chinatown shows, religion, while helping to build social capital, can also be a source of exploitation. It may, for example, reproduce and exacerbate social hierarchies based

on time of arrival, legal status, language, or regional identity, buttressing the power of ethnic elites to isolate unauthorized migrants and render them vulnerable to labor abuses (Guest 2003). Nevertheless, particularly for undocumented migrants who are economically marginalized and excluded from civic life, religion often affords differential degrees of agency in the face of state apparatuses increasingly invested in monitoring and controlling them through profiling, detention, and deportation. As the example of the DREAMers shows, religion not only can be a vital vehicle for survival and resistance in the face of these panoptical dynamics, but also can contribute to the transformation of public discourse and perhaps even laws.

NOTES

1. Interview with Marie T. Friedmann Marquardt, May 21, 2002.
2. The 287(g) program enables state, county, and local law enforcement agencies to enter into agreements with Immigration and Customs Enforcement (ICE) to perform functions such as "screening inmates at local jails and state prisons for immigration status, arresting and detaining individuals for immigration violations, investigating immigration cases, and working with ICE on task forces to address immigration-related crimes" (Rodriguez et al. 2010, 3)
3. Cobb County is the home of the Dustin Inman Society and also the first Georgia chapter of the Minutemen.
4. Interview with Marquardt.
5. For a more detailed analysis of sanctuary, see chapter 10 in this volume.
6. See http://www.newsanctuarymovement.org/hospitality.html (accessed June 18, 2013).
7. http://www.alternacommunity.com (accessed June 2, 2013).
8. http://www.alternacommunity.com (accessed June 2, 2013).
9. http://www.alternacommunity.com (accessed June 2, 2013).
10. According to Alexander (2010), "the United States now has the highest rate of incarceration in the world, dwarfing the rates of nearly every developed country, even surpassing those in highly repressive regimes like Russia, China, and Iran. In Germany, 93 people are in prison for every 100,000 adults and children. In the United States, the rate is roughly eight times that, or 750 per 100,000."
11. http://loyno.edu/jsri/national-advocacy (accessed June 19, 2013).
12. The DREAM Act was first introduced in 2001. More specifically, the DREAMers are designated as those unauthorized immigrants who "are under the age of 31; entered the United States before age 16; have lived continuously in the country for at least five years; have not been convicted of a felony, a 'significant' misdemeanor, or three other misdemeanors; and are currently in school, graduated from high school, earned a GED, or served in the military." http://www.immigrationpolicy.org/just-facts/who-and-where-dreamers-are (accessed June 20, 2013).
13. http://www.tepeyac.org/about (accessed June 21, 2013).

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Redressing the Shame of U.S. Immigration Laws and Enforcement Policies

Bill Ong Hing

INTRODUCTION

Several years ago an Immigration and Customs Enforcement (ICE) raid in Stillmore, Georgia, on the Friday before Labor Day weekend in 2006, evoked outcry from local residents, who labeled the action nothing short of "Gestapo tactics" (Bynum 2006). Descending shortly before midnight, ICE agents swarmed the area, eventually arresting and deporting 125 undocumented workers. Most of those rounded up were men, while their wives fled to the woods to hide, children in tow. In the weeks after the raid, at least 200 more immigrants left town. Many of the women purchased bus tickets to Mexico with their husbands' final paychecks. The impact underscored how vital undocumented immigrants were to the local economy. Trailer parks lie abandoned. The poultry plant scrambled to replace more than half its workforce. Business dried up at stores. The community of about a thousand people became little more than a ghost town. The operator of a trailer park that was raided, David Robinson, commented, "These people might not have American rights, but they've damn sure got human rights. There ain't no reason to treat them like animals" (Bynum 2006). Robinson took his U.S. flag and posted it out front, upside down, in protest.

Local residents witnessed the events, as ICE officials raided homes and trailer parks, forcing many members of the community out of Stillmore. Officials were seen stopping motorists and breaking into homes, and there were even reports of officials threatening people with tear gas. Witnesses reported seeing ICE officials shattering windows and entering homes through floorboards. Mayor Marilyn Slater commented, "This reminds me of what I read about Nazi Germany, the Gestapo coming in and yanking people up" (Bynum 2006; Jonsson 2006).

On a less-known September 11—in 1998—the body of a man was found floating in the All-American Canal in the Imperial Valley of Southern California. The next day, Saturday, September 12, another man, who had been in a coma since August, when he was found in the valley's desert with a core body temperature of 108 degrees, died. On Sunday the Border Patrol discovered the body of Asuncion Hernandez Uriel in the same desert. Some of her group stayed with her, but she died of heat stress. That same day, the decomposed body of Oscar Cardoso Varon was pulled out of the canal. In all, the bodies of four migrants attempting to cross to the United States from Mexico were found that weekend. That Monday, a headline in the *San Diego Union-Tribune* read, "Woman 113th border crosser to die."

Unlike the reaction of the American public to the horrors of September 11, 2001, no outrage or sympathy was expressed after the weekend border deaths beginning September 11, 1998. One might attribute that to a difference in scale—some three thousand deaths on September 11, 2001—but in fact more than fifty-five hundred have died in the border situation; fifty-five hundred avoidable deaths (and counting) since Operation Gatekeeper was begun by the U.S. Border Patrol in 1994 (Planas 2013).

This is just a glimpse of U.S. immigration laws and enforcement policies. In this chapter I provide a fuller picture of employer sanctions enforcement and Operation Gatekeeper, along with harsh deportation policies that are enforced in the name of protecting our borders and ourselves from a so-called invasion of immigrants. I explain how the lack of sufficient visas and U.S. trade policies have exacerbated the alleged "illegal immigration" problem. And I discuss how a system based on ethical values is needed to remedy the evils of current U.S. immigration policies.

OPERATION GATEKEEPER

Beginning in 1994, the Bill Clinton administration implemented Operation Gatekeeper, a strategy of "control through deterrence" that involved constructing fences and militarizing parts of the southern border that were most easily traversed. Instead of deterring migrants, their entry choices were shifted

to treacherous terrain: the desert and the mountains. The number of entries and apprehensions was not at all decreased, and the number of deaths because of dehydration and sunstroke in the summer or freezing in the winter dramatically surged. In 1994 fewer than 30 migrants died along the border; by 1998, the number was 147; and in 2007, 409 died (Hing 2004, 191). Even though the total number of undocumented crossings has declined dramatically, in 2012 the Border Patrol found 477 people dead (Planas 2013).

The San Diego sector of the Border Patrol covers the section of the U.S.-Mexico border that historically was the preferred site of entry for those entering the United States without inspection (De La Vina 1994, 1). This sector contains sixty-six miles of international border (De La Vina 1994, 3). Tijuana, Mexico's third largest city, lies directly south of San Diego, California, the sixth largest city in the United States (De La Vina 1994, 3). A smaller Mexican city, Tecate, is situated in the eastern end of the sector (De La Vina 1994, 3).

In 1994 more than 450,000 apprehensions of illicit border crossings were made in the San Diego sector. This number far surpassed apprehensions in the sectors with the next highest rates: Tucson (139,473) and McAllen, Texas (124,251). In the period prior to the end of 1994, undocumented border crossers in the San Diego sector commonly entered in the western part of the sector near the city of San Diego. Often, many of these individuals traveled through private property, and some were even seen darting across busy freeways near the international border inspection station. Clearly, most of the illicit crossers entered along the fourteen-mile area from Imperial Beach (at the Pacific Ocean) to the base of the Otay Mountains (U.S. Border Patrol 1997). Most of the stretch involves "easy terrain and gentle climbs," where the crossing lasts only ten or fifteen minutes to a pickup point (U.S. Border Patrol 1997). Even individuals who were apprehended and turned back across the border were just as likely to attempt reentry in the westernmost part of the sector at that time (U.S. INS 1997).

These highly visible border crossings resulted in tremendous public pressure on the Immigration and Naturalization Service (INS) to act. Residents of San Diego complained. Anti-immigrant groups demanded action. Politicians decried lack of border control. President Clinton came up with an answer and an approach to the question of "illegal immigration." In his State of the Union address on January 24, 1995, Clinton signaled a renewed get-tough policy against undocumented immigrants, including "mov[ing] aggressively to secure our borders by hiring a record number of border guards" and "cracking down on illegal hiring" (U.S. DOJ 1995). Knowing that Clinton faced reelection in 1996, administration officials hoped that renewed enforcement efforts against undocumented aliens would shore up the president's

support among voters in California, who overwhelmingly passed the anti-immigrant Proposition 187 in 1994 (*New York Times* 1995; Jardine 1998, 329–333).

Operation Gatekeeper was one of several operations that resulted from the Clinton administration's commitment to a new aggressive enforcement strategy for the Border Patrol. In August 1994 INS Commissioner Doris Meissner approved a new national strategy for the Border Patrol (U.S. Border Patrol 1994). The heart of the plan relied on a vision of "prevention through deterrence," in which a "decisive number of enforcement resources [would be brought] to bear in each major entry corridor" and the Border Patrol would "increase the number of agents on the line and make effective use of technology, raising the risk of apprehension high enough to be an effective deterrent" (6). The idea was to block traditional entry and smuggling routes with border enforcement personnel and physical barriers (6–9). By cutting off traditional crossing routes, the strategy sought to deter migrants or at least channel them into terrain less suited for crossing and more conducive to apprehensions. To carry out the strategy, the Border Patrol was to concentrate personnel and resources in areas of highest undocumented alien crossings, increase the time agents spent on border-control activities, increase use of physical barriers, and carefully consider the mix of technology and personnel needed to control the border (U.S. GAO 1999, 9).

In the San Diego sector, efforts would be concentrated on the popular fourteen-mile section of the border from the Pacific Ocean (Imperial Beach) stretching eastward (U.S. GAO 1999, 1, 4, 8, 9). That stretch had been the focus of some resources before Gatekeeper. Steel fencing and bright lighting were already in place in sections of this corridor, erected in part with the assistance of the U.S. military (1, 4, 8, 9). Yet because of the persistent traffic of undocumented entrants along this corridor, phase I of Gatekeeper continued to concentrate on increased staffing and resources along the fourteen-mile stretch (1, 4, 8, 9).

As the INS implemented its national border strategy, Congress supported these efforts; between 1993 and 1997 the INS budget for enforcement efforts along the southwest border doubled from $400 million to $800 million (U.S. INS 1998). The number of Border Patrol agents along the border increased from 3,389 in October 1993 to 7,357 by September 1998, an increase of 117 percent (U.S. GAO 1999, 7–9). State-of-the-art technology, including new surveillance systems using electronic sensors linked with low-light video cameras, infrared night-vision devices, and forward-looking infrared systems for Border Patrol aircraft, were installed (U.S. INS 1998).

Given these additional resources, Operation Gatekeeper buildup was impressive. Before Gatekeeper, the San Diego sector had nineteen miles of

fencing. By the end of 1999, fifty-two miles were fenced. Half of this fencing runs from the Pacific Ocean to the base of the Otay Mountains. Fourteen miles contain primary fencing (a ten-foot wall of corrugated steel landing mats left over from the Vietnam War.) Two backup fences, each 115 feet tall, have been constructed. The first backup fence is made of concrete pillars. The second backup fence is made of wire mesh, with support beams. Both are topped with wire. Almost twelve miles of this stretch are illuminated by stadium lights. Some fencing has been erected on sections of the Otay Mountains, as well as around various East San Diego communities along the border (Hing 1999). The Department of Defense's Center for Low Intensity Conflicts and the Army Corps of Engineers provided guidance to INS on the development of Gatekeeper features (U.S. GAO 1999, 12).

In implementing its national strategy beginning in 1994, the INS made a key assumption about its "prevention through deterrence" approach: "[A]lien apprehensions will decrease as [the] Border Patrol increases control of the border" (U.S. Border Patrol 1994, 4). In other words, the INS anticipated that as the show of force escalated by increasing agents, lighting, and fencing, people would be discouraged from entering without inspection, so that the number of apprehensions naturally would decline. In fact, the Border Patrol predicted that within five years a substantial drop in apprehension rates border-wide would result (Hing 2000). The deterrence would be so great that "many will consider it futile to continue to attempt illegal entry" (U.S. Border Patrol 1994, 23). These assumptions and predictions have not been borne out.

Apprehension levels did not decline. The enforcement strategies began with Operation Gatekeeper in San Diego and Operation Blockade in El Paso in 1994. True, apprehension levels for those two sectors were considerably lower in 1998 than in 1993 (i.e., 531,689 apprehended in San Diego in 1993 compared to 248,092 in 1998). However, the apprehension levels surged in El Centro, Yuma, and Tucson during the same period (i.e., from 92,639 to 387,406 in Tucson, from 30,508 to 226,695 in El Centro, and from 23,548 to 76,195 in Yuma) (U.S. Border Patrol 1997, 23). From 1994 to 1999, total apprehensions statistics along the southwest border actually increased by 57 percent! (CRLAF 1999). The increase continues. The number of apprehensions for all of fiscal year 2000 was 1.64 million, which was an all-time high (U.S. GAO 1999, 17–18, 20). In sum, after Gatekeeper sealed the westernmost section of the border, apprehensions in San Diego declined, but crossers moved east, and overall apprehensions actually increased substantially.

As Operation Gatekeeper closed the Imperial Beach corridor, the border-crossing traffic moved east. Frustrated crossers moved first to Brown Field and

Chula Vista and subsequently to the eastern sections of the San Diego sector (U.S. GAO 1999, 17–18, 20). Before Gatekeeper began in 1994, crossers were just as likely to make their second try at the westernmost part of the sector, but that changed very quickly. By January 1995, only 14 percent were making their second try near Imperial Beach. The illicit border traffic had moved into "unfamiliar and unattractive territory" (Hing 1999). The tragedy of Operation Gatekeeper is the direct link between its prevention through deterrence strategy and an absolutely horrendous rise in the number of deaths among border crossers, who were forced to attempt entry over terrain that even the INS knew presented "mortal danger" due to extreme weather conditions and rugged terrain.

The death statistics are revealing. In 1994, 23 migrants died along the California-Mexico border. Of those, 2 died of hypothermia or heat stroke and 9 from drowning. By 1998, the annual total was 147 deaths: 71 from hypothermia or heat stroke and 52 from drowning. Figures for 1999 follow this unfortunate trend, and in 2000, 84 were heat stroke or hypothermia casualties. The total death count along the entire border for the year 2000 was 499. Of those, 100 died crossing the desert along the Sonora-Arizona border. The main causes of death were dehydration and drowning (Hing 1999).

The INS thought that with the combination of fencing and increased spending on border patrols at the most frequently traveled routes, undocumented immigration would slow if not come to a complete halt. But migrants were not deterred and began looking for other areas to penetrate the border. However, the new areas of travel were risky; they were more dangerous and life threatening. Given the challenges, more migrants turned to costly smugglers to help them cross the border.

In spite of the aid of smugglers, the new routes were simply too dangerous for many border crossers, and deaths of migrants surged. The number of migrant deaths increased 600 times from 1994 to 2000, and since then, about 400 deaths occur each year. More than 5,500 border deaths have resulted since 1994, the direct result of Operation Gatekeeper's pushing surreptitious entries toward treacherous eastward routes.

EMPLOYER SANCTIONS AND SILENT RAIDS

Workplace Immigration and Customs Enforcement (ICE) raids by gun-wielding agents, resulting in the mass arrests of dozens and sometimes hundreds of employees, which were common under the George W. Bush administration, appear to have ceased under the Barack Obama administration. Legally questionable mass arrests continue to occur in neighborhoods under the pretext of serving warrants on criminal aliens. However, disruptive, high-profile

worksite raids appear to have subsided. When a Bush administration–style ICE raid took place in Washington State in February 2009 soon after Janet Napolitano took the helm as secretary of the Department of Homeland Security (DHS), she expressed surprise and ordered an investigation. These types of raids were not in her strategy plan, she noted; instead, enforcement in her regime would focus on employers who hire undocumented workers, not on the workers themselves.

Make no mistake, although deportations related to worksite operations may have decreased under the Obama approach from that under George W. Bush, actual deportation numbers are not down. The Obama administration is deporting record numbers of undocumented immigrants, with ICE removing more than 410,000 individuals in 2012 and 369,000 in 2013. The total is 10 percent above the Bush administration's 2008 sum and 25 percent more than were deported in 2007. According to ICE, the increase has been partly a result of deporting those persons picked up for other crimes and expanding the search through prisons and jails for deportable immigrants already in custody. Unlike the former worksite raids that led to arrests and deportation, the "silent raids," or audits of companies' records by federal agents, usually result in firings. Just 765 undocumented workers were arrested at their jobs in 2010, compared with 5,100 in 2008, according to DHS figures (Mauer 2010).

However, the Obama administration's strategy of focusing on employers rather than workers in fact falls squarely on the shoulders of the workers. Immigration raids at factories and farms have been replaced with a quieter enforcement strategy: sending federal agents to scour companies' records for undocumented immigrant workers. While the sweeps of the past commonly led to the deportation of such workers, the "silent raids" usually result in the workers being fired, although in many cases they are not deported. The theory is that if the workers cannot work, they will self-deport, leaving on their own. However, they actually do not leave because they need to work. They become more desperate and take jobs at lower wages. Given the increasing scale of enforcement, this can lead to an overall reduction in the average wage level for millions of workers, which is in effect a subsidy to employers. During 2010 ICE conducted audits of employee files at more than twenty-nine hundred companies. The agency levied a record $3 million in civil fines in the first six months of 2010 on businesses that hired unauthorized immigrants.

Employers say the audits reach more companies than the work-site roundups of the Bush administration. The audits force businesses to fire every suspected undocumented worker on the payroll—not just those who happened to be on duty at the time of a raid—and make it much harder to hire other unauthorized workers as replacements. Auditing is effective in getting unauthorized workers fired for sure.

Echoing President Obama's theme of focusing on employers who use undocumented workers to "drive down wages" and "mistreat" workers, ICE chief John Morton says the agency is looking primarily for "'egregious employers' who commit both labor abuses and immigration violations" (Preston 2010). But American Apparel, ABM, and Gebbers Farms do not appear to fit that profile.

While American Apparel is a huge corporation that makes hundreds of millions of dollars a year, the workers dismissed there were long-term employees being paid decent wages. The company is proud of its "Made in America" labels and had a reputation for paying more than most garment shops. Before the audit, its CEO, Dov Charney, took to the streets and stood shoulder to shoulder with workers in protesting and demanding legalization for workers who have been victimized by our broken immigration system.

Similarly, Gebbers Farms had a general reputation for "doing right by its employees" (Preston 2010). It built housing and soccer fields for its workers and, unlike many other growers, provides stable year-round work. After its firings, Gebbers Farms advertised hundreds of jobs for orchard workers. But there were few takers in the state. Finally, the employer applied to the federal guest worker program to import about twelve hundred legal temporary workers—most from Mexico. The guest workers, who can stay for up to six months, also included about three hundred from Jamaica (Preston 2010). The unspoken rationale for the audits was revealed: force employers to use guest worker programs.

As for ABM, the building service has been a union company for decades, and many of the nearly five hundred workers fired had been there for years. According to Olga Miranda, president of Service Employees Local 87: "They've been working in the buildings downtown for fifteen, twenty, some as many as twenty-seven years. They've built homes. They've provided for their families. They've sent their kids to college. They're not new workers. They didn't just get here a year ago" (Bacon 2010).

The softer, gentler approach to employer sanctions enforcement implemented by the Obama administration may appear more humane on the surface. After all, auditing and firing is accomplished without guns, handcuffs, or detention. However, the result—loss of work—is not necessarily softer or gentler for the thousands of fired workers who have been working to support their families.

The efficacy of employer sanctions in reducing undocumented migration is hotly debated. Proponents of increased enforcement note that few employers have been fined or punished since 1986, when employer sanctions became the law. That view, however, fails to note that hundreds of thousands of workers have been fired. In fact, punishing employers, or

threatening to do so, was always simply a mechanism to criminalize work for the workers themselves and thereby force them to leave the country or not to come in the first place.

In addition to the many social and economic phenomena that historically cause undocumented migration to the United States from Mexico, we now know that the North American Free Trade Agreement (NAFTA) and the effects of globalization create great migration pressures on Mexicans (Hing 2010). The push-pull factors are strong. As the Mexican consul from Douglas, Arizona, once noted, the border could be "mined" and migrants would still attempt to cross (Allen 2007). Labor activist Renee Saucedo points out: "So long as we have trade agreements like NAFTA that create poverty in countries like Mexico, people will continue to come here, no matter how many walls we build" (Bacon 2011). Ismael Rojas, who left his family in Mexico many times over a twenty-five-year period to work in the United States as an undocumented worker, puts it this way: "You can either abandon your children to make money to take care of them, or you can stay with your children and watch them live in misery. Poverty makes us leave our families" (Thompson 2000). Utilizing employer sanctions to address the phenomenon of Mexican migration in this context of poverty and globalization causes misery for workers, but does not reduce migration. Arresting and deporting workers for working without authorization as a means of discouraging them from coming here for a better life simply cannot be effective in the face of such grave economic and social forces. We also need to ask ourselves whether we can really justify punishing workers who are here because of the effects of many U.S. economic policies.

Another problem with employer sanctions is the discrimination that results. Long before the recent evaluation of the discriminatory effects of the E-Verify program (IPC 2008), discrimination was rampant. In its final report to Congress on employer sanctions in 1990, the Government Accounting Office estimated that of 4.6 million employers in the United States, 346,000 admitted applying IRCA's verification requirements only to job applicants who had a "foreign" accent or appearance. Another 430,000 employers only hired applicants born in the United States or did not hire applicants with temporary work documents, in order to be cautious.

Even a cursory review of the ICE raids in the past few years reveals an obvious disparity in the targeting of undocumented workers over the employers who hire them. Anyone who sympathizes with the undocumented worker's position but feels that "the law is the law" must hold employers to that same standard. That means demanding the enforcement of labor laws against unscrupulous employers who take advantage of low-income workers—documented or undocumented. All too often, the undocumented workforce

that has been paid less than minimum wage for work conditions that violate health and safety standards is hauled away, and the employer receives no punishment. Instead of deporting the workers, we should remove the barriers that stand in the way of their efforts to place pressure on the employers to improve wage and work conditions. In the process, the jobs may in fact become more attractive to native workers—something that, ironically, anti-immigrant forces want.

While employer sanctions have little effect on migration, they have made workers more vulnerable to employer pressure. Without employment authorization, undocumented workers fear protesting low wages and bad conditions. They are barred from receiving unemployment and disability benefits, although they make payments for those benefits. If they get fired for complaining or organizing, finding another job is difficult. Despite these obstacles, many undocumented immigrant workers have asserted their labor rights, organized unions, and won better conditions. But employer sanctions make that harder and riskier, because employers use the risk of sanctions as an excuse for poor wages or conditions, and workers fear losing their jobs.

Using Social Security numbers to verify immigration status has led to firing and blacklisting of many union activists. Even citizens and permanent residents feel this impact, because in our diverse U.S. workplaces, immigrant and native-born workers work together. Making it difficult for one group of workers to enforce labor laws or assert their rights creates obstacles for everyone else. The right to fair wages and work conditions in these workforces will only come about if all workers are free to make complaints and organize.

The history of workplace immigration enforcement is filled with examples of employers who use audits and document discrepancies as pretexts to discharge union activists or to discourage worker organizing. The sixteen-year union drive at the Smithfield pork plant in North Carolina, for instance, experienced a raid and the firing of fifty workers over disputed Social Security numbers (Greenhouse 2007). ICE's campaign of audits and firings targets the same set of employers the Bush raids went after: union companies or those with organizing drives. The ICE actions end up punishing undocumented workers who begin earning a fair wage or who become too visible by demanding higher wages and work conditions.

The Obama approach ends up promoting a guest worker program akin to his predecessor's vision. Remarks by Secretary of DHS Michael Chertoff in 2008 were revealing: "There's [an] obvious . . . solution to the problem of illegal work, which is you open the front door and you shut the back door" (Chertoff 2008). "Open[ing] the front door" allows employers to recruit workers to come to the United States, giving them visas that tie their ability to stay to their employment. And to force workers to come through this

system, "shut[ting] the back door" criminalizes migrants who work without "work authorization." As Arizona governor, Secretary of DHS Janet Napolitano supported this arrangement, signing the state's own draconian employer sanctions bill, while supporting guest worker programs. In 1998 the Clinton administration mounted the largest sanctions enforcement action to date, in which agents sifted through the names of 24,310 workers in forty Nebraska meatpacking plants. They then sent letters to 4,762 workers, saying their documents were bad, and more than 3,500 were forced from their jobs. Mark Reed, who directed Operation Vanguard, admitted it was really intended to pressure Congress and employer groups to support guest worker legislation. "We depend on foreign labor," he declared. "If we don't have illegal immigration anymore, we'll have the political support for guest workers" (Bacon 2004).

The undocumented population in the United States, spread over factories, fields, and construction sites throughout the country, encompasses millions of workers. Many are aware of their rights and anxious to improve their lives. National union organizing campaigns, like Justice for Janitors and Hotel Workers Rising, depend on the determination and activism of these immigrants, documented and undocumented alike. That reality finally convinced the AFL-CIO in 1999 to reject the federation's former support for employer sanctions and call for repeal. Unions recognized that sanctions enforcement makes it much more difficult for workers to defend their rights, organize unions, and raise wages.

Demonstrating their mean-spiritedness, some on the right complain that the Obama employer sanctions "silent raid" approach is too soft, because although the workers get fired, they do not get deported. They claim that "there is no drama, no trauma, no families being torn apart, no handcuffs" (Preston 2010). The allegation of no trauma is cold-hearted. Consider the fired San Francisco janitors who faced an agonizing dilemma. Should they turn themselves in to Homeland Security, which might charge them with providing a bad Social Security number to their employer, hold them for deportation, and even send them to prison, as was done to workers in Iowa and Mississippi? For workers with families, homes, and deep roots in a community, simply walking away and disappearing is not possible. As SEIU Local 87 president Olga Miranda points out: "I have a lot of members who are single mothers whose children were born here. I have a member whose child has leukemia. What are they supposed to do? Leave their children here and go back to Mexico and wait? And wait for what?" (Bacon 2011).

Nevertheless, whether or not they are motivated by economic gain or anti-union animus, the current firings highlight larger questions of immigration enforcement policy. Nativo Lopez, director of the Hermandad Mexicana

Latinoamericana, a grassroots organizer who organized protests against the firings at Overhill Farms and American Apparel, puts it this way:

> These workers have not only done nothing wrong, they've spent years making the company rich. No one ever called company profits illegal, or says they should give them back to the workers. So why are the workers called illegal? Any immigration policy that says these workers have no right to work and feed their families is wrong and needs to be changed. (Bacon 2011)

Whatever President Obama or Secretary Napolitano may claim about punishing exploitative employers, those who cooperate with the audit initiative seem to evade sanctions. The ICE threatened to fine Dov Charney, American Apparel's owner, but then withdrew the threat. As a result, the fired workers are punished, as the employers escape fines in exchange for cooperation.

Arguably, no one in the Obama, Bush, or Clinton administrations wants to stop migration to the United States or imagines that this could be done without catastrophic consequences. The very industries they target for enforcement are so dependent on the labor of migrants that they would collapse without it. Instead, immigration policy and enforcement consigns those migrants to an "illegal" status and undermines the price of their labor. Enforcement is a means for managing the flow of migrants and making their labor available to employers at a price they want to pay.

Increased ICE raids, stepped-up border enforcement, and employer sanctions have not reduced undocumented immigration to the United States. The failure of these harsh efforts must teach us something. The enforcement-only approach has resulted in human tragedy, increased poverty, and family separation, while undocumented workers continue to flow into the United States. This is a challenge that requires us to understand why workers come here and to address the challenge in a more sensible manner.

The inhumanity of the situation is apparent to many. As Tom Barry (2008) puts it:

> We are wasting billions of dollars at home in what has become a war on immigrants. The collateral costs of this anti-immigrant crackdown—including labor shortages, families torn apart by deportations, overcrowded jails and detentions centers, deaths on the border, courts clogged with immigration cases, and divided communities—are also immense.

And the *New York Times* (2008) mourns that after we get through this period of the "Great Immigration Panic,"

> someday, the country will recognize the true cost of its war on illegal immigration. We don't mean dollars, though those are being squandered by the billions. The true

cost is to the national identity: the sense of who we are and what we value. It will hit us once the enforcement fever breaks, when we look at what has been done and no longer recognize the country that did it.

It's time to come to our senses and realize that the enforcement-plus-guest-worker approach has failed. The rise of employer sanctions enforcement causes hardship for our fellow human travelers, who only seek an opportunity to work for an honest day's wage to feed their families. While employer sanctions enforcement has risen, I pray for its fall. Undocumented migration is the result of factors and phenomena way beyond the control of intimidation, guns, and militarization. The time to get smart has arrived; we must begin considering more creative approaches by understanding the forces at work.

Our current policies produce displaced people in Mexico, criminalize them once they arrive in the United States, and view them simply as a source of cheap labor for employers. We need to see migrants as human beings first and then formulate a policy to protect their human and labor rights, along with those of other working people in this country. Repealing employer sanctions is critical to moving us in that direction.

INSTITUTIONALIZED RACISM

Anyone who is opposed to racial profiling and racially discriminatory enforcement of laws should be concerned about the Obama employer sanctions enforcement strategy. As in the case of the Bush-style ICE raids, the Obama audit-style approach, which has resulted in layoffs of thousands of workers, has preyed almost exclusively on Latino workers. The racial effects should not be facilely cast aside.

Racism against Latinos has been institutionalized in the enforcement of U.S. immigration laws. In contemporary terms and within the black-white paradigm in the United States, institutional racism is understood to have resulted from the social caste system that sustained, and was sustained by, slavery and racial segregation. Although the laws that enforced this caste system are no longer in place, one can argue that its basic structure stands to this day. So today, one might claim that institutionalized racism deprives a racially identified group, usually defined as generally inferior to the defining dominant group, equal access to education, medical care, law, politics, housing, and the like.

By understanding the fundamental principles of institutionalized racism, we begin to see the application of the concept beyond the conventional black-white paradigm. Institutional racism embodies discriminating against certain groups of people through the use of biased laws or practices. Structures and

social arrangements become accepted, and they operate and are manipulated in such a way as to support or acquiesce in acts of racism. Institutional racism can be subtle and less visible, but it is no less destructive to human life and human dignity than individual acts of racism.

The forces of racism have become embodied in U.S. immigration laws. As these laws are enforced, they are accepted as common practice, in spite of their racial effects. We may not like particular laws or enforcement policies because of their harshness or their violations of human dignity or civil rights, but many of us do not sense the inherent racism because we are not cognizant of the dominant racial framework. Understanding the evolution of U.S. immigration laws and enforcement provides us with a better awareness of what is happening and the institutional racism that controls those policies.

Rightly or wrongly, today the "illegal immigration" problem has become synonymous with the control, or lack thereof, of the southwest border. As such, the "problem" is synonymous with Mexican migration, and Mexican immigrants have come to be regarded by many anti-immigrant voices as the enemy. The anti-immigrant activists do not regard themselves as racist; they view themselves as a voice for law and order. The history of the border, labor recruitment, and border enforcement explains how the institutionalization of anti-Mexican immigration policies has created the structure to allow these voices to claim racial and ethnic neutrality and for many Americans to accept that claim.

The current numerical limitation system, though not explicitly racist, operates in a manner that severely restricts immigration from Mexico and the high-visa-demand countries of Asia. The 1965 amendments represented a welcome change, but the new law was no panacea. President John F. Kennedy originally had proposed a large pool of immigration visas to be doled out on a first-come, first-served system without country quotas. If implemented, the system immediately would have facilitated the entry of large numbers of Asian immigrants, because a first-come, first-served system would benefit countries with the biggest demand. After JFK's assassination, his brother, Ted, and President Lyndon Johnson continued to promote the legislation. However, JFK's egalitarian vision did not survive the political process. Instead, a system that included per country caps of approximately 20,000 visas for each country outside the Western Hemisphere was established in the 1965 immigration act, with only 200 visas available for territories such as Hong Kong. An Eastern Hemisphere numerical limitation of 170,000 visas was established.

Between 1965 and 1976, while the rest of the world enjoyed an expansion of numerical limitations and a definite preference system, Mexico and other countries of the Western Hemisphere were suddenly faced with numerical

limitations for the first time. These countries had to share a quota of 120,000. The system was first-come, first-served, with Mexico taking a big share of the 120,000, more than 40,000 each year, because of its high visa demands. Applicants had to meet strict labor certification requirements, but waivers were available to certain applicants like parents of U.S. citizen children; many Mexicans qualified for that waiver. As one might expect, given the new numerical limitations but large visa demands, by 1976 the Western Hemisphere system resulted in a severe backlog of approximately three years and a waiting list of nearly 300,000 names.

As the framework resulted in growing visa backlogs for Western Hemisphere countries, things got worse in 1977. Congress altered the Western Hemisphere system yet again, imposing the same preference system and the numerical limitation of 20,000 visas per country that the rest of the world first confronted in 1965. Thus, Mexico's annual visa usage rate (more than 40,000) was virtually sliced in half overnight, and thousands were left stranded on the old system's waiting list.

Today's selection system does not have room for many relatives because of numerical limitations or for those who are simply displaced workers. They do not qualify for special visas set aside for professionals and management employees of multinational corporations or those visas that require substantial funds for investment. Similarly, the system has no slot for anyone whose livelihood is controlled by trade agreements and globalization, which cause job loss in low-income regions, as multinational corporations, the beneficiaries of free trade, relocate to other sites where their production costs are cheaper.

The system results in severe backlogs in certain family immigration categories—particularly for spouses, unmarried sons and daughters of lawful permanent residents, and siblings of U.S. citizens. For some countries, such as the Philippines and Mexico, the waiting periods for certain categories are ten to twenty years! Given the severe backlogs and the continuing allure of the United States (not simply in terms of economic opportunities, but because relatives are already here due to recruitment efforts or political stability), many would-be immigrants are left with little choice. Inevitably they explore other ways of entering the United States without waiting. By doing so, they fall into the jaws of the immigration exclusion laws, which provide civil and criminal penalties for circumventing the proper immigration procedures.

The basic civil sanction of removal (deportation) applies to individuals who fall into the immigration trap of following their instincts to reunite with families or to seek economic opportunities. The categories of deportable aliens include those who are in the United States in violation of the immigration laws (i.e., entry without inspection, false claim to citizenship); those

nonimmigrants who overstay their visas or work without authorization; those who have helped others enter (smuggled) without inspection; and those who are parties to sham marriages. Additional civil penalties, including fines, can be imposed for forging or counterfeiting an immigration document, failing to depart pursuant to a removal order, entering without inspection, and entering into a sham marriage.

Congress also has enacted criminal provisions that go far beyond the civil sanction of removal and monetary fines for many of these actions. For example, the following acts are criminalized (subject to imprisonment and/or monetary fines): falsifying registration information about the family; any bringing in (smuggling), transporting, or harboring (within the United States) of an undocumented alien (including family members); entry without inspection or through misrepresentation; the reentry of an alien (without permission) who previously has been removed or denied admission; and making a false claim of U.S. citizenship.

So given insufficient supply of immigrant visas to satisfy the demands for family reunification, and no supply for displaced workers, the action of traveling to the United States by circumventing the current structure can easily result in civil and at times criminal liability. The migrants who fall into those groups are from the countries whose family immigration quotas are oversubscribed or whose economy has been damaged by globalization and free trade. Those countries are primarily Asian and Latin.

It does not take long to realize that while immigration laws and enforcement policies have evolved in a manner that continues to prey on Mexicans, Asians, and other Latin migrants, the relationship of those laws and policies with other racialized institutions underscores the structural challenges that immigrants of color face. Consider NAFTA and the World Trade Organization. NAFTA has placed Mexico at such a competitive disadvantage with the United States in the production of corn that Mexico now imports most of its corn from the United States, and Mexican corn farmworkers have lost their jobs. The U.S.-embraced World Trade Organization, which advocates global free trade, favors lowest-bid manufacturing nations like China and India, so that manufacturers in a country like Mexico cannot compete and must lay off workers. Is there any wonder that so many Mexican workers look to the United States for jobs, especially when so many of the multinational corporations and companies that benefit from free trade are headquartered here?

Think also of refugee resettlement programs as an institution. When Southeast Asian refugees are resettled in public housing or poor neighborhoods, their children find themselves in an environment that can lead to bad behavior or crime. Refugee parents, like other working-class immigrant parents, often work long hours, and their children are left unsupervised. And

consider U.S. involvement in wars and civil conflict abroad. The institution of war itself produces refugees. The U.S. participation in civil conflict in countries like Guatemala and El Salvador produced refugees in the 1980s. But think also of U.S. involvement in places beyond Central America and Southeast Asia; post 9/11 U.S. military intervention in Afghanistan and Iraq also has produced involuntary migrants of color to our shores and throughout the Middle East.

Other racialized institutions that interact with immigration laws and enforcement also come to mind: think of the criminal justice system, poor neighborhoods, and inner-city schools. Even coming back full circle to enslavement of people—today's human trafficking institutions—we begin to realize a sad interaction with immigration laws that requires greater attention. These institutions can all lead to situations that spell trouble within the immigration enforcement framework.

Thus, the immigration admission and enforcement regimes may appear neutral on their face, but they have evolved in a racialized manner, and when the immigration framework interacts with other institutions such as the criminal justice system, NAFTA, globalization, poor neighborhoods, and schools in which many immigrants and refugees are situated, we realize that the structure generates racial group disparities as well. NAFTA and globalization provide a major reason why many migrants of color cannot remain in their native countries if they are to provide for their families. The criminal justice system and poverty prey heavily on poor communities of color, leading to deportable offenses if defendants are not U.S. citizens.

The construction of the U.S. immigration policy and enforcement regime has resulted in a framework that victimizes Latin and Asian immigrants. These immigrants of color ended up being the subject of ICE raids during the Bush administration. They are the ones who comprise the immigration visa backlogs. They are the ones who attempt to traverse the hostile southwest border. Today, Latino and Latina workers are the primary victims of the Obama audit strategy.

Their victimization has been institutionalized. Thus, any complaint about immigrants—fiscal or social—can be voiced in nonracial, rule-of-law terms, because the institution has masked the racialization with laws and operations that are couched in nonracial terms. Anti-immigrant pundits are shielded from charges of racism by labeling their targets "lawbreakers" or "unassimilable." Deportation, detention, and exclusion at the border can be declared race-neutral by the DHS because the system already has been molded by decades of racialized refinement. Officials are simply "enforcing the laws." The victimization of Latinos by immigration laws and enforcement policies has been normalized, allowing Americans to accept statistics that

have disproportionate racial impact, just as they have with respect to racial inequities in, for example, the educational or criminal justice systems, as "just the way things are." Like white privilege, institutionalized racism generally goes unrecognized by those who are not negatively impacted.

We should know better. The cards are stacked against Latin migrants—especially Mexicans. The immigration law and enforcement traps are set through a militarized border practice and an anachronistic visa system. It's no surprise that Mexican immigrants are the victims of those traps. They have been set up by the vestiges of a border history of labor recruitment like the Bracero Program, U.S. Supreme Court deference to enforcement, and border militarization that laid the groundwork for current laws and enforcement policies. The resulting statutes and operations can be implemented through seemingly nonracial approaches that actually result in severely racist outcomes.

Deportation of Cambodian Refugees

Discretionary relief from deportation for longtime lawful permanent residents convicted of serious crimes, even those classified as aggravated felonies, was available from 1976 to 1996. During that time, an immigration judge could consider a range of issues if potential deportees had entered as refugees or as immigrants, as long as they had become lawful resident aliens and had resided in the country for at least seven years. These "Section 212(c)" cases permitted immigration judges to examine the respondent's crime, prison experience, current living situation, demeanor, attitude, job skills, employment status, family support, friends, social network, and efforts at rehabilitation in deciding whether to exercise favorable discretion. Judges were even able to postpone the case to monitor the respondent's behavior before rendering a decision.

In 1996, however, Congress enacted legislation that repealed Immigration and Nationality Act Section 212(c) relief as it had been applied for twenty years. In its place, a cancellation of removal provision was added that precluded even the possibility of relief for many who had been able to at least apply for discretionary relief under the prior provision (Brady 1996). The new provision, INA § 240A(a), permits the attorney general to "cancel removal" for certain aliens who commit crimes if the alien (1) has been a lawful permanent resident for at least five years, (2) has resided in the United States continuously for seven years after having been admitted in any status, but (3) has not been convicted of any aggravated felony.[1] The no aggravated felony requirement thus eliminated relief for many lawful resident aliens and refugees who would have been eligible for Section 212(c) relief.

The deportation of Cambodian refugees convicted of aggravated felonies began in the summer of 2002. The backgrounds of the potential returnees vary. The parents of Touch Rin Svay were among those who fled the killing fields of the Pol Pot regime, ending up in a Thai refugee camp. Touch was born in that camp, and like thousands of other Cambodians, his family was eventually admitted to the United States as refugees. Touch grew up in Portland, Maine, and joined the Marines. At the age of twenty-two, however, Touch's life took a disastrous turn. He crashed his car while driving drunk, and his sister, a passenger, was killed. In an awful twist that is one of those "only-in-America" stories of justice, Touch was convicted of manslaughter. The tragedy does not end there. Once Touch completed a term of eighteen months in prison, he faced deportation to Cambodia, a land with which he is totally unfamiliar (Mydans 2002, A3).

Mao So was one year old when he left Cambodia in 1979. His grandmother took him across the border to Thailand and from there to the United States. Growing up, he always believed that she was his mother. Only when he was about to be deported did she tell him that his real mother was living in Cambodia. When he was fourteen, he began to sell drugs to fellow students at Santa Ana High School. At fifteen, he could make $500 in a day. He joined a gang and dropped out of school. He worked his way up in the gang until he was handling drug deals throughout the United States. Mao had twenty armed men working for him and sold cocaine, ecstasy, and "anything you can think of." Eventually he was caught after he paid cash for an Integra. He pleaded guilty to drug charges and served two and a half years of a five-year sentence. By the time of his arrest, a rival gangster had put a price of $225,000 on his head. Mao was eventually deported in December 2002 (Paddock 2003, A27).

Not all the potential Cambodian refugee deportees are murderers, drug dealers, or gang members. One returnee, Sor Vann, was a thirty-four-year-old construction foreman in Houston who was charged with indecent exposure for urinating in public (Mydans and Roja 2003, 35). He was placed on six years' probation. He was caught urinating in public again just one month before his six-year probation would have been completed. Although the offense was only a misdemeanor, violating probation was a felony, and he served four years in prison (Paddock 2003, 56). He has a wife and two young children in Houston, Texas. Before he entered the United States as a refugee, the Khmer Rouge murdered his parents (56).

Louen Lun, who escaped the killing fields as a baby, committed a crime as a teenager: He fired a gun in a shopping mall as he fled a group of black teens (Sontag 2003). Charged with second-degree assault, he served eleven months in county jail. For the next six years he lived as a model American, building a family and maintaining steady employment (Sontag 2003). Louen decided to

apply for citizenship, and after two years he thought that the INS would finally approve his application. When he showed up at the INS office, he was incarcerated and held for deportation because of his prior conviction (Sontag 2003). Within two weeks of his arrest, Cambodia signed the repatriation agreement, and in May 2003 the United States deported Louen to Cambodia, twenty-two years after he first arrived in America (Sontag 2003). For Louen, leaving the United States forever means being separated not only from his mother, but also from his wife and two young daughters (Sontag 2003).

Yuthea Chhoueth grew up in a rough Sacramento neighborhood. At age eighteen, his attempt to rob a bank was foiled, but that was enough to get him a three-year stint in federal prison (Swilley 2002). After his release U.S. immigration authorities required him to check in on a regular basis and to stay out of trouble (Swilley 2002). More than a dozen years later, Yuthea was caught driving without a license. Ironically, he was traveling to the INS for his routine visit (Swilley 2002). The problem was that the traffic infraction made him a parole violator, and he had to go back to jail. To make matters worse, the violation made him deportable. When travel documents are obtained, authorities plan to remove Yuthea back to Cambodia, the land he fled as a toddler (Swilley 2002).

The environment that many young immigrants and refugees fall into on their arrival in the United States is a far cry from images of America that their parents have in their minds prior to arriving. Consider the world experienced by many young Cambodian refugees. Criminality in the Cambodian and other Southeast Asian refugee communities presents a serious challenge. Even back in 1990, when Southeast Asians made up only 1.5 percent of California's population, of the roughly nine thousand wards of the California Youth Authority (the state's most incorrigible youth), 4.5 percent were Southeast Asians.[2] Reflecting California's gang wars, many were young Cambodians. By 2000, an analysis of juvenile arrests in San Francisco and Alameda (including the city of Oakland) Counties in California disclosed that Cambodian and Vietnamese youth have "higher arrest and recidivism rates as compared to most other racial and ethnic groups" (Le et al. 2001, 43–45).

What explains the relatively high levels of criminality in the Cambodian refugee community? Criminologists, social scientists, parents, and the criminals themselves offer a variety of explanations. All of these explanations seem to flow from refugee status itself.

Refugee Camp Environment and Experience

The experience and environment for refugees at the camps prior to entering the United States was not positive. Food and simple shelter were provided by

a staff that was overwhelmed (Du Phuoc Long with Ricard 1996, 111). Activities were scarce, and there was little opportunity to be productive (111). Men, the traditional "rulers" of the home, had lost control, and as one said, "I watch my children grow up behind barbed wire. . . . We [have been] here two years. And what can I do? What do I do? Nothing" (111).

Post-Traumatic Stress Disorder

The task of acculturation is enormous for many newcomers, but Cambodians, who are ethnic Khmer, arrived with other challenges (Du Phuoc Long with Ricard 1996, 5). Many parents who survived the trauma of Pol Pot's autogenocide were in shock and continue to suffer from post-traumatic stress disorder (PTSD) (5). Some refugees suffered long periods of starvation, which caused long-term mental deterioration (5). Many children are left unsupervised because their parents experience depression (Ko 2001). Even when at home, a parent may remain isolated in a corner, still depressed over the loss of a loved one in Cambodia.[3]

Disruption of the Family

Refugee status itself can disturb the conventional family relationships and structures. Individual members negotiate new surroundings without familiar cultural cues (Ko 2001, 24). The rates at which different family members adapt may be poles apart, placing strain on relationships and producing discord (24).

Cultural Challenges to Parental Control

The new environment into which Cambodian refugees in the United States are thrust could not be more different from that in Cambodia. Their family-oriented, Southeast Asian farming civilization was based on a "highly stratified social order" (Ko 2001, 26). Gender roles, deference to elders, and respect for parents were understood, and children accepted, without question, that they were permanently indebted to their parents (26).

Poverty

Cambodian refugees are poor. They earned $5,120 per person in 1990, compared to $14,143 for all Americans and $18,709 for other Asian Americans (Cahn and Stansell 2005, 242). A decade later there was little improvement, as 37 percent of Cambodian households were making less than

$12,000 a year (242). The 2010 U.S. Census reveals that 11.3 percent of Americans overall live in poverty, compared to Cambodian Americans, who have a poverty rate of 18.2 percent (SEARAC 2012). Lacking higher valued human capital skills in the U.S. labor market, many adults had to take on more than one minimum-wage job, at the expense of time to supervise their children. Socioeconomic factors and immigrant status often combine to exacerbate the problem of delinquency as parents work long hours and are thus unavailable to their children (Ko 2001, 34). The limited English-speaking ability, financial pressures, and traumatic effect of war on parents add up to serious emotional separation in families. "[R]efugee youth may feel reluctant to burden mothers and fathers with problems that seem unimportant compared with their parents' need to make a living in a strange country, and to deal with a past filled with suffering that the children only dimly comprehend" (Cahn and Stansell 2005, 243).

Low-Income Neighborhoods

Because of refugee status, the resettlement process, and poverty, most Cambodian refugees live in low-income neighborhoods (Tizon 1994). Not surprisingly, the neighborhood environment has a great impact on how children develop, especially when the neighborhood is dangerous (Ko 2001, 18). When danger lurks, seeking out a strategy that provides protection is natural (18). The poverty rate among Southeast Asians is comparable to that of blacks and Latinos, and the rate for Cambodians is the lowest (34). Some researchers have identified the connection between poverty and delinquency: "Socioeconomic status is consequential for violent offending primarily because it affects the cultural contexts encountered by youths (i.e., family and peer contexts) and thus indirectly shapes the learning of cultural definitions about violent delinquency" (34–35, citing Heimer 1997, 799–833).

Poor Academic Performance

Youngsters who get bad grades, are unenthusiastic about school, truant and more likely to show signs of delinquency (Ko 2001, 85). Little formal education was afforded to refugee children while they were in the camps. After arriving in the United States, few were provided with bilingual education or ESL classes in school (Cahn and Stansell 2005, 243). Many Cambodian youths simply did not have happy experiences in school or in other social environments because they looked and sounded "foreign" (243). In addition, parents were clueless about their children's experiences (243).

The Gang as Family

The camaraderie of gangs offers a surrogate family for many Cambodian youngsters (Ko 2001, 37–38). As many children reject their parents' culture, but also do not find themselves a part of the American culture, they may become disillusioned (37–38). They search for acceptance and often find a sense of common understanding with their peers who are experiencing similar feelings of ostracism from mainstream and Cambodian culture (37–38). Once they find a place where they have a sense of belonging or feel comfortable, they may assume the ethics of their friends, rather than those of their elders (37–38). Sometimes those values are not good and can lead to delinquency (37–38). For many Cambodian teens, the popularity of gangs is a response to feeling isolated from their families as well as from their peers of other backgrounds. Often, young Cambodians cite the need for protection as a reason for joining gangs.

By deporting noncitizens who have grown up here, we essentially "throw away" their lives. Ridding the country of noncitizen criminals is an admirable goal; however, the policy overlooks several considerations when it comes to long-term residents. The first is the impact the policy has on family members and employers. Second, many deportable foreign nationals have resided in the United States since infancy. Third, the policy implies that the criminal justice system is a failure for noncitizen criminals, who serve sentences imposed by U.S. courts and should be expelled from our borders immediately after release, to protect the public.

Rethinking removal and developing reasonable approaches to the challenges presented by criminality in immigrant communities from a community-based perspective is not an easy task. But something is terribly wrong with a system that results in the deportation of individuals who entered the country as infants and toddlers, when their criminality is the product of their U.S. environment. Short of a total bar on deportation, which may be difficult to achieve in a get-tough era of immigration enforcement, policy makers should be urged to provide an alternative to deportation, especially one that helps to build community. If we are interested in taking responsibility as a society for the environment that has resulted in high crime rates among certain immigrant and refugee communities, we have to roll up our sleeves and move forward, rather than remain paralyzed by the law and the difficulty of the task.

In our hearts, we know that deportation is not always appropriate, especially when our country bears culpability for creating the problem. In our souls, we know that when we repatriate refugees and immigrants who have grown up in our society, we further destroy a family at a time when the family needs, more than ever, to be whole. The right response requires the

involvement of community, school, neighborhood and government institutions, and parents. But policy makers must first provide the opportunity for us all to assume our responsibilities by giving the potential deportees and their supporters a second chance.

CLOSING

The values that underlie a more expansive view of migration are far different from those that some regard as the populist views of neonativists. However, the ethics or values of a more expansive view of migration are not elitist. Most people have convictions about what is right and wrong based on religious beliefs, cultural roots, family background, personal experiences, laws, organizational values, professional norms, and political habits. These may not be the best values by which to make ethical decisions—not because they are unimportant, but because they are not universal (Josephson 2002).

In contrast to consensual ethical values—such basics as trustworthiness, respect, responsibility, fairness, caring, and citizenship—personal and professional beliefs vary over time, among cultures, and among members of the same society. They are a source of continuous historical disagreement, even wars. There is nothing wrong with having strong personal and professional moral convictions about right and wrong, but unfortunately some people are "moral imperialists" who seek to impose their personal moral judgments on others. The universal ethical value of respect for others dictates honoring the dignity and autonomy of each person and cautions against self-righteousness in areas of legitimate controversy (Josephson 2002). The universal ethical values of fairness and respect for others are the ones to which I would appeal.

Our current border policy is not an ethical one. It fails to respect the dignity of workers and families who cross the border. It fails to recognize how NAFTA and other global phenomena have helped to exacerbate the economic imbalance between the United States and Mexico. It fails to seriously consider the implications of U.S. trade and agricultural subsidies for developing nations and future migration flows. Yes, failed leadership in Mexico has been a problem, but the United States helped to set the stage for many of those failures. The militarization of the border and stepped-up emphasis on raids in residential neighborhoods, as well as at workplaces, are difficult to justify in that light.

Calls to eliminate the undocumented workforce are not only impractical, but foolhardy. Removing this workforce would have devastating economic consequences. Low-skilled workers help agricultural, textile, industrial, and food service companies thrive and then benefit the local economies where those businesses are located. Consider Arizona. Before the state enacted the

Legal Workers Arizona Act, it experienced decades of growth, boosted by its estimated 12 percent undocumented labor force. The new law has caused many headaches and loss of production for Arizona employers who need workers (Bowers 2006).

Those who persist in labeling undocumented immigrants as "lawbreakers" are unfamiliar with the details of immigration law. Legal avenues for obtaining status under current immigration law are quite complicated. Considering the irrationality of certain immigration provisions may help the naysayer understand why many would-be immigrants do not or cannot pursue legal means of obtaining status. Backlogs in family immigration categories can range up to twenty years. Visas for those who want to work or be with family members for part of the year are extremely difficult to obtain.

We can be innovative in addressing immigration challenges. Under the circumstances, one approach is to consider a pure open border. Another might be something along the lines of more flexible, innovative visas. Still another—which is my preference and will be more beneficial to Mexico in the long term—is helping Mexico keep committed, able workers in Mexico by helping to improve economic and social opportunities there. An EU-style approach of serious investment would diminish incentives to migrate. Vicente Fox's pre-9/11 call for a common market in North America with the free movement of labor as well as goods, services, and capital was on the right track (Pastor 2001, 98).

When the worldwide economic crisis hit, the Group of Twenty Finance Ministers and Central Bank Governors, from nineteen of the world's largest national economies plus the EU, met in November 2008 and again in April 2009 to discuss strategies. President Obama attended the gathering in 2009. The United States, Canada, and Mexico are all members, but so are Great Britain, France, and Germany. To work in this international economic setting, the three NAFTA countries should do all they can to establish heightened "leverage and credibility" and influence on the international stage (Pastor 2001, 111). This collaboration is important, given the economic challenges presented by the power of the EU and the omnipresence of China. In the fall of 2009, President Fox urged the United States to invest 2 percent of its GDP in Mexico in order to narrow the wage gap, while helping the economies of both countries to compete with China (Clark 2009).

Environmental and health values also provide a strong incentive to change U.S. border policy and invest in the development of Mexico. Sharing more than two thousand miles of border provides an automatic reason for the United States to be concerned about environmental and health issues in Mexico. Data indicate that U.S. economic and border policies have led to environmental degradation in Mexico that is dangerous for both nations. For example, the

U.S.–Mexican border includes large deserts, numerous mountain ranges, rivers, wetlands, large estuaries, and shared aquifers. Air, water, and other natural resources flow back and forth in this area, regardless of the border. In recent years the border region has experienced explosive growth. Currently 90 percent of the border population resides in fourteen paired, interdependent sister cities. Rapid population growth in urban areas has led to unplanned development, greater demand for land and energy, increased traffic congestion and waste generation, overburdened or unavailable waste-treatment and waste-disposal facilities, and more frequent chemical emergencies. Residents in rural areas suffer from exposure to airborne dust and pesticides, as well as inadequate water supply and waste-treatment facilities. Border residents suffer disproportionately from many environmental health problems, including waterborne diseases and respiratory problems. Projected population growth rates in the border region exceed anticipated U.S. average growth rates (in some cases by more than 40 percent) for each country. The border area population is expected to reach 19.4 million by 2020 (U.S. EPA 2009).

Public safety concerns are also relevant. Drug trafficking between the United States and Mexico is widespread, and the drug trade and the war on drugs are becoming increasingly violent on both sides of the border (Archibold 2009; Johnson 2009; AP 2009). The United States is "ready" to increase military assistance in Mexico to fight the war on drugs (San Pedro 2009). It would be wiser, however, to improve its economic and border policies if it wants to weaken the drug trade and improve public safety. Economic policies that increase poverty in Mexico also fuel the drug trade.[4] In a report on the Latin American drug problem, the International Crisis Group (ICG) emphasized the need to increase economic opportunity and infrastructure to reduce the supply of drugs fueling the international drug trade. The ICG stated that, to reduce supply, "much greater recognition is also needed of the pressures produced by extreme poverty, lack of economic opportunities and basic infrastructure, and government abandonment of indigenous populations in the Andean countryside" (2008).[5] If the United States wants to be realistic about the war on drugs and improve public safety, it has to seriously invest in developing the Mexican economy to protect the rights and minimize suffering of poor Mexicans.

I choose to believe that most Americans are decent, well-meaning individuals with a solid sense of right and wrong, who often are silenced by a vocal minority of neonativists. Americans who have had the opportunity to work or socialize with people of other backgrounds come to realize how much we all have in common. In our hearts, we understand that reaching out rather than lashing out is the right thing to do. Emotionally, we know that having an open heart is the best path. We should strive to be thoughtful and treat

people right, to adhere to high standards of truth, justice, humility, compassion, and forgiveness. I believe that the vast majority of Americans, if given the choice, would endorse a welcoming approach toward immigrants—documented and undocumented—but they sense no immediate way to intervene in mean-spirited immigration enforcement methods. Thus, as in many other policy debates, the "fervor and activism of [a] small minority greatly magnify their influence, especially within the U.S. Congress"[6] when it comes to immigration policy and enforcement.

The quiet majority of Americans who would not condone the callous or insensitive treatment of immigrants and the failure to implement smart integration strategies do have the power to redirect our government's commitments to moral and civil principles of justice and community. In our day-to-day lives, we can show our true preference by making choices and taking actions that are receptive to newcomers. We can listen to, we can learn from, and we can share our ideas with immigrants and refugees. Taking just a little time for such an effort would be noticeable to a newcomer. These small, individual actions can make a difference in our neighborhoods and communities. The little things matter, especially if we couple those efforts with ignoring, if not objecting to, the intolerance espoused by those who are narrow-minded. And they can matter even more if we demand tolerance, humanity, and fairness from our political and civic leaders as well.

The experiment that we call America is a test of our character and our willingness to believe that we can have a strong country that is caring and diverse. Showing compassion and fairness in our immigration policies is not a sign of weakness. Rather, those traits demonstrate confidence in a rule of law and system of government that metes out punishment when necessary, but understands that regulating the lives of those who seek to live within our borders must be done with the utmost compassion, dignity, and understanding. As in previous generations, there is much to admire about individuals who come to our shores seeking freedom and a better life. Whether they are fleeing persecution or entering to seek work in order to better their lives, the newcomers of today are not much different from those of the past. Once here, welcoming newcomers and understanding the challenges that they will be facing are imperative. As they become part of our neighborhoods and communities, some may make mistakes, but we would do well to remember that supporting rehabilitation, giving a second chance, and providing ways for individuals to mature are essential elements of a civil society. Although these forgiving traits may immediately benefit the individual, in the end we all benefit. When an individual finally turns the corner and becomes a contributing member, the entire community benefits socially, emotionally, and economically.

Thus, when it comes to the treatment of our fellow human beings who have crossed boundaries into our territory, we should consider what has driven or attracted them here before we become too judgmental. There is a reason why Chinese immigrants in the 1800s referred to the United States as "Gold Mountain." These immigrants initially may have been lured by the stories of the discovery of gold, but eventually the attraction of gold was a metaphor—not to be underestimated—for the vast emotional as well as economic opportunities that the new world presented.

We are in this together. Let us welcome the migrant worker—documented or undocumented—into membership because we have recruited him here and benefited from her labor. Give the convicted alien criminal who has resided here since infancy a second chance to escape the inner-city environment he or she grew up in. End the Operation Gatekeeper death trap. Embrace the emotional and economic contributions that kinship immigrants bring with them to the country each day. Recognize that reaching out to and incorporating newcomers advances the national security. And welcome the newcomer into the civic life of our society, so that he or she too can more fully contribute to the community. This is how we continue to build our nation of immigrants. This is how it's done, in a just, humane, intelligent, and moral manner.

NOTES

1. 8 U.S.C. § 1229(a) (2004).
2. Swilley (2002). Southeast Asians also made up 8.5 percent of the 1991 incoming freshman class at the University of California, Davis.
3. Mydans (1991, A1). One teen spoke with bitterness of his mother, who lost her husband in Cambodia and now spends much time sitting quietly alone.
4. That is, Mexican farmers' losing their ability to compete against subsidized products.
5. ICG (2008).
6. Carter (2006, 11). President Carter pointed out this phenomenon in noting that a persistent majority of Americans believe that assault weapons should be banned, and a majority think that abortions should be legal in all or most cases.

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