

2012

Immigrant Outsider, Alien Invader: Immigration Policing Today

César Cuauhtémoc García Hernández
Capital University

Follow this and additional works at: <https://scholarlycommons.law.cwsl.edu/cwlr>

Recommended Citation

Hernández, César Cuauhtémoc García (2012) "Immigrant Outsider, Alien Invader: Immigration Policing Today," *California Western Law Review*: Vol. 48 : No. 2 , Article 2.
Available at: <https://scholarlycommons.law.cwsl.edu/cwlr/vol48/iss2/2>

This Article is brought to you for free and open access by CWSL Scholarly Commons. It has been accepted for inclusion in California Western Law Review by an authorized editor of CWSL Scholarly Commons. For more information, please contact alm@cwsl.edu.

CALIFORNIA WESTERN LAW REVIEW

VOLUME 48

SPRING 2012

NUMBER 2

LATCRIT XVI SYMPOSIUM - GLOBAL JUSTICE: THEORIES, HISTORIES, FUTURES

IMMIGRATION, CRIME, AND NEO-SEGREGATION

CLUSTER INTRODUCTION - IMMIGRANT OUTSIDER, ALIEN INVADER: IMMIGRATION POLICING TODAY

CÉSAR CUAUHTÉMOC GARCÍA HERNÁNDEZ*

This is the story of immigration policing today. Sensors in the ground, high-intensity lights overhead, steel walls ten feet high, and drone aircraft in the air.¹ Twenty-one thousand uniformed personnel armed with automatic weaponry, their might augmented by many thousands more from local law enforcement agencies.² All tied

* Assistant Professor, Capital University Law School. César writes *crImmigration.com*, a blog about the convergence of criminal law and immigration law. Many thanks to Margaret B. Kwoka for her thoughts on an earlier version of this essay.

1. Letter from Davi M. D'Agostino, Dir., Def. Capabilities & Mgmt., U.S. Gov't Accountability Office, to Hon. Carl Levin, Chairman, Comm. on Armed Servs., U.S. Senate 14-15 (Sept. 12, 2011), *available at* <http://www.gao.gov/assets/100/97733.pdf> (discussing the use of unmanned aircraft along the southwestern border); *see* CHAD C. HADDAL ET AL., CONG. RESEARCH SERV., RL33659, BORDER SECURITY: BARRIERS ALONG THE U.S. INTERNATIONAL BORDER 1-2 (2008) (explaining that a 14-mile strip of fencing built in the early 1990s near San Diego “was constructed of 10-foot-high welded steel army surplus landing mats”).

2. Consolidated Appropriations Act, 2012, H.R. 2055, 112th Cong. (2012) (providing funding for 21,370 Border Patrol agents); U.S. CUSTOMS & BORDER PROT., DEP'T OF HOMELAND SEC., U.S. BORDER PATROL FISCAL YEAR STAFFING STATISTICS (2011) (stating that there were 21,444 Border Patrol agents in fiscal year

together through massive computerized databases containing millions upon millions of records.³ The economy putters along, but appropriations never cease⁴: more boots on the ground, more eyes on the horizon.⁵ Three hundred sixty-three thousand people imprisoned.⁶ Roughly two billion dollars spent on prison beds.⁷ Another eighty

2011); TONY PAYAN, *THE THREE U.S.-MEXICO BORDER WARS: DRUGS, IMMIGRATION, AND HOMELAND SECURITY* 116-17 (2006) (describing the gear used by Border Patrol agents). The Department of Defense has also deployed troops to the border equipped with military-issued rifles. Letter from Davi M. D'Agostino to Carl Levin, *supra* note 1 (including a photograph of a National Guard member conducting border surveillance in Arizona).

3. See *Law Enforcement Support Center*, U.S. IMMIGR. & CUSTOMS ENFORCEMENT, <http://www.ice.gov/lesc/> (last visited Feb. 2, 2012) (explaining that the DHS Law Enforcement Support Center provides state and local law enforcement agencies with “access to alien records entered with the National Crime Information Center (NCIC) and immigration information from every alien file maintained by DHS – approximately 100 million records”); see also DONALD KERWIN & SERENA YI-YING LIN, *IMMIGRANT DETENTION: CAN ICE MEET ITS LEGAL IMPERATIVES AND CASE MANAGEMENT RESPONSIBILITIES?* 9-11 (2009) (describing problems with ICE’s case tracking database).

4. MARC R. ROSENBLUM & WILLIAM A. KANDEL, Cong. Research Serv., R42057, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens 1* (2011) (explaining that congressional appropriations for programs targeting “criminal aliens” increased from \$23 million in fiscal year 2004 to \$690 million in fiscal year 2011).

5. See DORIS MEISSNER & DONALD KERWIN, *DHS AND IMMIGRATION: TAKING STOCK AND CORRECTING COURSE* 9 & fig.1 (2009) (explaining that the Customs and Border Protection division of DHS “budget grew from \$6 billion to \$10.1 billion from fiscal year (FY) 2004 to FY 2009, [which] . . . has been primarily directed at SBI [the Secure Border Initiative] and SBI*net* with its goal of doubling the size of the Border Patrol and providing sizeable infusions of technology and infrastructure”).

6. OFFICE OF IMMIGRATION STATISTICS, DEP’T OF HOMELAND SEC., *IMMIGRATION ENFORCEMENT ACTIONS: 2010*, at 1 (2011). This figure includes all people imprisoned by DHS over the course of a year for allegedly violating a non-criminal immigration law.

7. U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, DEP’T OF HOMELAND SEC., *CONGRESSIONAL BUDGET JUSTIFICATION: FISCAL YEAR 2012*, at 33 (2011). A total of \$2.75 billion is allocated for detention and removal operations, including imprisonment costs. H.R. 2055. On a daily basis DHS is required to maintain “not less than 34,000 detention beds” throughout the country. See *id.*

thousand prosecuted for the federal crime of entering the United States without permission.⁸

The essays in this cluster reveal the many heads of immigration policing. From Arizona's infamous Senate Bill 1070 to the Department of Homeland Security's (DHS) fervent expansion of its "Secure Communities" program across the country, William Arrocha,⁹ Lilian Jiménez,¹⁰ and Katarina Ramos¹¹ focus on the awesome reach of immigration policing. Arizona occupies center stage in the national discourse; its legislative efforts thus rightly feature prominently in Arrocha and Jiménez's contributions. But the border is no longer resigned to the imaginary boundary between México and the United States that has risen from dusty desert into barbed wire and, now, steel fencing.¹² Today, as Ramos's essay on immigration policing in and around Chicago illustrates, immigration policing has reached into the depths of the interior.¹³

Arrocha, Jiménez, and Ramos add to our understanding of immigration policing by focusing on its more subtle roots in that ugliest of characteristics that refuses to resign itself to history—racism.¹⁴ Though different in perspective, each essay locates the anti-

8. ROSENBLUM & KANDEL, *supra* note 4, at 5 fig.2.

9. William Arrocha, *From Arizona's S.B. 1070 to Georgia's H.B. 87 and Alabama's H.B. 56: Exacerbating the Other and Generating New Discourses and Practices of Segregation*, 48 CAL. W. L. REV. 245 (2012).

10. Lilian Jiménez, *America's Legacy of Xenophobia: The Curious Origins of Arizona Senate Bill 1070*, 48 CAL. W. L. REV. 279 (2012).

11. Katarina Ramos, *Criminalizing Race in the Name of Secure Communities*, 48 CAL. W. L. REV. 317 (2012).

12. See Mark Overmyer-Velázquez, *Histories and Historiographies of Greater Mexico*, in BEYOND LA FRONTERA: THE HISTORY OF MEXICO-U.S. MIGRATION, at xix, xxxi (Mark Overmyer-Velázquez ed., 2011). For a detailed and illuminating discussion of the border wall, see ROBERT LEE MARIL, *THE FENCE: NATIONAL SECURITY, PUBLIC SAFETY, AND ILLEGAL IMMIGRATION ALONG THE U.S.-MÉXICO BORDER* (2011).

13. See MIKE DAVIS, *MAGICAL URBANISM: LATINOS REINVENT THE US CITY* 60-61 (2001).

14. See, e.g., VICTOR C. ROMERO, *ALIENATED: IMMIGRANT RIGHTS, THE CONSTITUTION, AND EQUALITY IN AMERICA* 191 (2005) (describing racism in immigration as "systemic"); Kevin R. Johnson, *Race, the Immigration Laws, and Domestic Race Relations: A "Magic Mirror" into the Heart of Darkness*, 73 IND. L.J. 1111, 1116 (1998) (arguing that race-based "[h]atred for domestic [racial] minorities is displaced to an available, more publicly palatable, target for antipathy,"

immigrant hysteria of recent years within the long-standing fear of outsiders.¹⁵ Unmasking the calls for fiscal soundness, national security, and preservation of the rule of law that proponents of harsh immigration policies recite,¹⁶ the authors separately suggest, allows modern immigration policing's true colors to shine.

The explicit calls for white supremacy that dominated much of the nation's history are tarnished by the guilt of its memory and the bloodshed of its manifestation. Except for small but growing pockets of extremists, explicit racial subordination receives little heed today. Its implicit tentacles, however, run deep.¹⁷ As Jiménez explains in *The Curious Origins of Arizona Senate Bill 1070*, "[t]oday the majority of Americans conform to the norm of racial equality and believe that white supremacy is morally and empirically bankrupt. At the same time, racism is an integral part of our culture and we are exposed daily to racial and ethnic stereotypes."¹⁸

immigrants); George A. Martínez, *Immigration and the Meaning of United States Citizenship: Whiteness and Assimilation*, 46 WASHBURN L.J. 335, 335-36 (2007) (arguing for a turn away from a racialized immigration policy).

15. See SASKIA SASSEN, GUESTS AND ALIENS, at xvi (1999) (describing common conditions of racialized marginalization of immigrant populations throughout United States and European history).

16. The web site of the Center for Immigration Studies, a prominent proponent of stringent immigration laws, provides a bevy of publications claiming that immigrants have an adverse economic impact on the country, present a danger to its people, and threaten its legal foundations. See, e.g., Steven A. Camarota, *A Need for More Immigrant Workers?: Unemployment and Underemployment in the First Quarter of 2011*, CENTER FOR IMMIGR. STUD. 3 (June 2011), <http://www.cis.org/articles/2011/need-more-immigrant-workers-q1-2011.pdf> (promoting increased immigration law enforcement as a method of reducing unemployment among U.S. citizens); James R. Edwards, Jr., *Obama's Rule of Lawlessness*, CENTER FOR IMMIGR. STUD. (May 8, 2011), <http://cis.org/edwards/holder-decision-same-sex-marriage> (describing as "lawlessness" the Obama Administration's temporary delay of two removal proceedings involving same-sex couples); Janice Kephart, *Connecting the Dots: Administrative Amnesty and the Thousands of Watchlisted Terrorists Residing in the United States*, CENTER FOR IMMIGR. STUD. 1 (Dec. 2011), <http://www.cis.org/articles/2011/administrative-amnesty-and-terrorists.pdf> (attempting to link immigration and terrorism).

17. See, e.g., Neil Gotanda, *A Critique of "Our Constitution is Color-Blind,"* 44 STAN. L. REV. 1, 2 (1991) (arguing that the ideological foundations of "color-blind constitutionalism . . . fosters white racial domination").

18. Jiménez, *supra* note 10.

Arizona, with its controversial cast of characters, epitomizes the modern ugliness of implicit racially tinged policymaking. Senate Bill (S.B.) 1070, the state's attempt to regulate immigration through its traditional civil and criminal lawmaking authority, was born of the concerted efforts of activists with eugenicist or nativist leanings, Republican politicians, and private prison companies.¹⁹ By “perfect[ing] their use of language so as to appear mainstream and hide their white supremacist roots,” writes Jiménez, organizations and politicians that led the campaign for S.B. 1070, such as the Federation for American Immigration Reform (FAIR), now-recalled Arizona state Senator Russell Pearce, and current Kansas Secretary of State Kris Kobach, are able “to claim that the law is race neutral because it does not specifically refer to any race or ethnicity and the revised language explicitly prohibits the use of racial profiling.”²⁰ But by “repeatedly utiliz[ing] metaphors that have been historically used to attack Latinos . . . public safety, national security, public welfare, and jobs,” S.B. 1070's proponents “appeal to white Americans with conscious or subconscious negative views of Latinos.”²¹

Such appeals are successful, Arrocha argues in *From Arizona's S.B. 1070 to Georgia's H.B. 87 and Alabama's H.B. 56: Exacerbating the Other and Generating New Discourses and Practices of Segregation*, because they target the basest of emotions, racism, and the most profound of worries, personal security.²² “[A]n alien,” he writes, “is not just a foreigner owing allegiance to another government, but a subject who, due to his or her cultural or physical characteristics, can represent a potential threat to . . . [American] exceptionalism.”²³ The “alien” is by custom and statute an outsider. In popular culture the alien is a little green creature from another planet intent on destroying our way of life if not our lives altogether. In law the alien is everyone not ordained, through accident of birth or individual effort, with United States citizenship.²⁴ Contemporary

19. *Id.*; Arrocha, *supra* note 9.

20. Jiménez, *supra* note 10.

21. *Id.*

22. Arrocha, *supra* note 9.

23. *Id.*

24. Immigration & Nationality Act, 8 U.S.C. § 1101(a)(3) (2006). Nationals of the United States are also excluded from the definition of “alien.” *Id.* A “national of the United States” is either a U.S. citizen or someone who “owes permanent

immigration policies in states such as Arizona, Georgia, and Alabama, Arrocha posits, have bridged the gap between the alien of custom and law. Today Latina/o immigrants, and especially those from México, have been transformed from alien outsider to alien “invader.”²⁵ While an outsider might inspire discomfort, the invader inspires fear. It is only rational to repel the invasion with the full force of the state.²⁶

If organizations such as FAIR and individuals such as Pearce, Kobach, and the coterie of like-minded legislators in state houses throughout the country who have promoted bills similar to S.B. 1070 are the knights in shining armor of this Hollywood alien invasion story, then the knights’ swords are the prison beds provided by the Corrections Corporation of America (CCA) and other private prison companies. As do innumerable companies, CCA doles out millions of dollars to legislators to promote its business interests.²⁷ But as the largest private prison company in the country, CCA thrives off human incarceration.²⁸ Thanks in no small part to its ability to win contracts to house immigration prisoners—“the new face of imprisonment in America,” writes border security analyst Tom Barry²⁹—it has been thriving quite well in recent years.³⁰ More than 129,000 individuals

allegiance to the United States.” *Id.* § 1101(a)(22). “[O]nly certain persons from American Samoa and Swains Islands are noncitizen nationals under current law.” RICHARD D. STEEL, *STEEL ON IMMIGRATION LAW* § 15:6 (2011) (citing 8 U.S.C. § 1408 (2006)).

25. Arrocha, *supra* note 9.

26. See PAYAN, *supra* note 2, at 114, 125; see also SASSEN, *supra* note 15, at 78 (describing the World War I era construction of the refugee as a foreigner who posed a threat to the state, thus enabling the state to attempt to exclude the refugee-foreigner).

27. See Cody Mason, *Too Good to be True: Private Prisons in America*, SENT’G PROJECT 14-15 (Jan. 2012), http://sentencingproject.org/doc/publications/inc_Too_Good_to_be_True.pdf.

28. See Geiza Vargas-Vargas, *White Investment in Black Bondage*, 27 W. NEW ENG. L. REV. 41, 41 (2005). As CCA explained, “Further [revenue] growth is expected to come from increased focus and resources by the Department of Homeland Security dedicated to illegal immigration, stricter sentencing guidelines, longer prison sentences and prison terms for juvenile offenders.” *Id.* (citing Corr. Corp. of Am., Annual Report (Form 10-K) 16 (Mar. 12, 2004)).

29. TOM BARRY, *BORDER WARS* 4 (2011).

30. Press Release, Corr. Corp. of Am., CCA Announces 2011 Third Quarter Financial Results (Nov. 2, 2011), *available at* <http://ir.correctionscorp.com/phoenix.zhtml?c=117983&p=irol-newsArticle&ID=>

incarcerated for state or federal crimes were held in privately operated prisons in 2009.³¹ Another 15,942 individuals were held each night that year in private immigration prisons³² with CCA alone housing 6,199.³³

Such an impressive body count could not exist without a well-oiled policing apparatus. Secure Communities, one of a panoply of DHS initiatives to identify immigration law violators with past interaction with the criminal justice system,³⁴ explicitly links the public's desire for security to the removal of immigrants. A secure community, the program's name unmistakably suggests, is one where "the removal of criminal aliens, those who pose a threat to public safety, and repeat immigration violators" is prioritized.³⁵ By tapping the latest technology, Secure Communities takes fingerprints gathered by local law enforcement officers and sent to the Federal Bureau of Investigation, sifts them through DHS records, and identifies individuals who may be removable.³⁶ An Immigration and Customs

1625258&highlight= (noting that its revenue increased in the third quarter of 2011 in part due to \$188.4 million it earned from the federal government compared to \$186.3 million received from the federal government in the third quarter of 2010). According to Barry, "Since 2001 the prison giants CCA (\$1.7 billion in annual revenue) and GEO Group (\$1.2 billion) have racked up record profits, with jumps in revenue and profits roughly paralleling the rising numbers of detained immigrants." BARRY, *supra* note 29, at 11. The GEO Group is one of the largest private prison companies in the world, claiming management or ownership of 116 prisons with 80,000 beds. See *Who We Are*, THE GEO GROUP, INC., <http://www.geogroup.com/about.asp> (last visited Feb. 2, 2012).

31. PAUL GUERINO ET AL., BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, PRISONERS IN 2010, at 30 app. tbl.19 (2011). BJS collects data from the state corrections departments and the Federal Bureau of Prisons. *Id.* at 8.

32. *The Influence of the Private Prison Industry in Immigration Detention*, DET. WATCH NETWORK, <http://www.detentionwatchnetwork.org/privateprisons> (last visited Feb. 2, 2012).

33. *Research Methodology*, DET. WATCH NETWORK http://www.detentionwatchnetwork.org/privateprisons_note1 (last visited Jan. 26, 2012). DWN explains that it arrived at these figures by cross-referencing a list of average daily populations for ICE facilities, included contract prisons, with government and industry announcements about which facilities were privately operated. *Id.*

34. See ROSENBLUM & KANDEL, *supra* note 4, at 13.

35. *Secure Communities*, U.S. IMMIGR. & CUSTOMS ENFORCEMENT, http://www.ice.gov/secure_communities/ (last visited Feb. 2, 2012).

36. See HOMELAND SEC. ADVISORY COUNCIL, U.S. DEP'T OF HOMELAND SEC., TASK FORCE ON SECURE COMMUNITIES: FINDINGS AND RECOMMENDATIONS 11

Enforcement official then decides whether to initiate removal proceedings based on a three-tiered prioritization—“prioritizing the removal of individuals who present the most significant threats to public safety as determined by the severity of their crime, their criminal history, and other factors,” according to DHS.³⁷

If only this were true. Without considering whether its prioritization of individuals arrested for allegedly committing a crime is wise policy, by now it has become apparent that DHS is doing a poor job of realizing its own priorities.³⁸ In the suburban Chicago counties that Ramos discusses in *Criminalizing Race in the Name of Secure Communities*, over sixty percent of individuals taken into ICE’s custody as a result of Secure Communities had no criminal record and seventy-eight percent had not committed a violent crime.³⁹ DHS’s remarkable failure to realize its priority of removing “individuals who present the most significant threats to public safety”⁴⁰ while nonetheless expanding the number of counties in which the program operates has converted Secure Communities into “a hidden trap” for Chicago-area immigrants.⁴¹ Any interaction with local law enforcement can become a nightmarish trip into the bowels of immigration imprisonment and, ultimately, removal from the United States.⁴² In this way, local police officers become synonymous with immigration officers and the fear that Latino communities have

(2011).

37. *Secure Communities*, *supra* note 35.

38. See EDGAR AGUILASOCHO ET AL., MISPLACED PRIORITIES: THE FAILURE OF SECURE COMMUNITIES IN LOS ANGELES COUNTY 3-5 (2012); Elise Foley, *No Conviction, No Freedom: Immigration Authorities Locked 13,000 in Limbo*, HUFFINGTON POST (Jan. 27, 2012), http://www.huffingtonpost.com/2012/01/27/immigration-detention_n_1231618.html (reporting that of approximately 32,300 individuals detained by ICE on October 3, 2011, 40.8% had not been convicted of a crime and another 28.6% had been convicted of “low-level offenses” or “minor drug and property offenses”).

39. Ramos, *supra* note 11.

40. *Secure Communities*, *supra* note 35.

41. Ramos, *supra* note 11.

42. *Id.*; see Julia Preston, *In Deportation Policy Test, 1 in 6 Offered Reprieve*, N.Y. TIMES (Jan. 20, 2012), http://www.nytimes.com/2012/01/20/us/in-test-of-deportation-policy-1-in-6-offered-reprieve.html?_r=2&ref=immigrationandemigration.

long had of immigration officials is transferred to the police.⁴³ People living in heavily-immigrant communities, Ramos writes, “don’t trust those who are supposed to protect them.”⁴⁴

Broken trust is not a byproduct of the immigration policing trends examined by Arrocha, Jiménez, and Ramos. Rather, they suggest, it is both the cause and effect, building upon itself one frightened moment at a time. Immigration law, writes Victor C. Romero, allows “the government . . . to protect privileged groups from less privileged ones.”⁴⁵ Former Arizona senator Pearce’s defense of S.B. 1070 provides an unusually candid glimpse of one legislator’s effort to do this: “Enough is enough. . . . People need to focus on the cost of not enforcing our laws and securing our border. It is the Trojan horse destroying our country and a republic cannot survive as a lawless nation.”⁴⁶ Hyperbole aside, Pearce’s words are reminders of the powerful emotional battles waged in the language of immigration law policy debates: fear for self, fear for country.⁴⁷

Few areas of law are more capable than immigration law of allowing powerful segments of our local and national communities to act on these fears at the expense of those with fewer receptive ears sitting in the halls of local, state, or federal government. Immigration law openly allows race-based policing and provides almost unfettered power to the federal government to do as it will to protect the homeland.⁴⁸ Those who bear the brunt of these policies, individuals

43. For an example of one Chicago-area county sherriff’s explanation of the fear that Secure Communities instills in Latina/os and immigrants, see *Sheriff Mark Curran: Why He Changed His Mind*, PBS (Oct. 18, 2011), <http://www.pbs.org/wgbh/pages/frontline/race-multicultural/lost-in-detention/sheriff-mark-curran-why-he-changed-his-mind-about-secure-communities/>.

44. Ramos, *supra* note 11; see also INT’L ASS’N OF CHIEFS OF POLICE, POLICE CHIEFS GUIDE TO IMMIGRATION ISSUES 24 (2007) (“Relationship building must also occur between the police and the leaders of immigrant communities. . . . Law enforcement simply cannot function adequately without the support and cooperation of the populations it serves.”).

45. ROMERO, *supra* note 14, at 5.

46. Arrocha, *supra* note 9.

47. See SASSEN, *supra* note 15, at 135-36.

48. See *United States v. Martinez-Fuerte*, 428 U.S. 543, 563 (1976) (sanctioning referrals to secondary immigration checkpoints “largely on the basis of apparent Mexican ancestry”); KEVIN R. JOHNSON, THE “HUDDLED MASSES” MYTH: IMMIGRATION AND CIVIL RIGHTS 30-38 (2004) (describing the constitutional

who are legally or socially excluded from the polity, historically have lacked the ability to defend themselves from political assaults because they lack suffrage and the financial resources to sway elections and elected officials.⁴⁹ It remains to be seen just to what extent state governments can regulate the lives of immigrants and those United States citizens who are caught in the whirlwind of paranoia.⁵⁰

If history is any indicator, states and localities, with occasional allies in Washington, academia, and the press, are bound to continue their efforts to juridically mark immigrants, especially Latina/os today, as worthy of fear and a proper target of the government's surveillance and imprisonment powers.⁵¹ The list of local and national politicians who have made a career of spreading vitriol about the hallucinated threat of hordes pouring across our southern border is too long to count.⁵² There are too many academics who have dedicated their impressive intellects to spreading false fears about Latina/os or immigrants, often conflating these categories.⁵³ And there is no

sanctioning of race-based immigration policing); ROMERO, *supra* note 14, at 173 (“[P]lenary power over immigration effectively immunizes the federal government from equal protection scrutiny when it decides to treat noncitizens worse than citizens”); NATSU TAYLOR SAITO, FROM CHINESE EXCLUSION TO GUANTÁNAMO BAY: PLENARY POWER AND THE PREROGATIVE STATE 5 (2007) (describing the plenary power doctrine).

49. See SAITO, *supra* note 48, at 6; see also ELIZABETH HULL, WITHOUT JUSTICE FOR ALL: THE CONSTITUTIONAL RIGHTS OF ALIENS 30 (1985) (explaining that as lawful permanent residents’ “political influence waned, their ability to protect their interests declined proportionately. As a consequence even today they enjoy decent, but scarcely equal, treatment”).

50. The Supreme Court granted certiorari in *Arizona v. United States*, 641 F.3d 339 (9th Cir. 2011), *cert granted*, 80 U.S.L.W. 3090 (U.S. Dec. 12, 2011) (No. 11-182). The Court is expected to decide whether federal law preempts Arizona Senate Bill 1070. Petition for Writ of Certiorari, *Arizona v. United States*, No. 11-182 (U.S. Aug. 10, 2011), 2011 WL 3562633.

51. See, e.g., ROMERO, *supra* note 14, at 26 (arguing that “we often settle for . . . using race and citizenship as proxies for (dis)loyalty”).

52. See, e.g., JOSEPH NEVINS, OPERATION GATEKEEPER AND BEYOND: THE WAR ON “ILLEGALS” AND THE REMAKING OF THE U.S.-MEXICO BOUNDARY 105 (2d ed. 2010) (describing California Governor Pete Wilson’s role in “raising the anti-immigration banner”); *id.* at 106 (describing California Congressman Elton Gallegly’s “project of reducing immigration” and his claims that “our cities and town are being overrun with immigrants, both legal and undocumented”).

53. For an example, see SAMUEL P. HUNTINGTON, WHO ARE WE?: THE CHALLENGES TO AMERICA’S NATIONAL IDENTITY (2004).

shortage of media personalities who have attained astonishing fame by fanning xenophobic flames.⁵⁴

Unlike the recent past, however, when Latina/os were concentrated in a handful of states, today measurable pockets of Latina/os live in every corner of the United States.⁵⁵ The modern anti-immigrant wave of legislation has followed suit. Alabama, Georgia, and South Carolina suddenly find themselves home to Latina/o newcomers.⁵⁶ Much like Pennsylvania when it became home to German immigrants,⁵⁷ California when it became home to Chinese and Japanese immigrants,⁵⁸ and countless other states and municipalities throughout our nation's history, the new immigrant destinations turned their fears toward their newest neighbors.

The sheer size and geographical reach of the Latino population complicates matters. There are simply too many Latina/os in many communities to demonize Latina/os or immigrants without some risk of political reprisal. Republican senatorial candidate Sharron Angle learned this lesson in Nevada when she lost an election and Arizona's Pearce learned it when he became the first state senator successfully recalled.⁵⁹ Even local politicians in parts of rural Iowa must recognize positive contributions made by Latina/os and immigrants.⁶⁰

54. For an example, see PATRICK J. BUCHANAN, *THE DEATH OF THE WEST: HOW DYING POPULATIONS AND IMMIGRANT INVASIONS IMPERIL OUR COUNTRY AND CIVILIZATION* (2001).

55. See JEFFREY S. PASSEL ET AL., PEW HISPANIC CTR., *CENSUS 2010: HISPANICS ACCOUNT FOR MORE THAN HALF OF NATION'S GROWTH IN PAST DECADE* 6 tbl.6 (2011) (noting that the state with the fewest Latinos, North Dakota, had 13,000 Latinos in 2010, constituting 2% of the state's population and a 73% increase from 2000).

56. *Id.* (reporting that Alabama's Latino population grew from 76,000 to 186,000 from 2000 to 2010, a 145% increase; Georgia's grew from 435,000 to 854,000, a 96% increase; and South Carolina's grew from 95,000 to 236,000, a 148% increase).

57. HULL, *supra* note 49, at 9; DANIEL KANSTROOM, *DEPORTATION NATION: OUTSIDERS IN AMERICAN HISTORY* 30 (2007).

58. See HULL, *supra* note 49, at 11; Brant T. Lee, *A Racial Trust: The Japanese YWCA and the Alien Land Law*, 7 *UCLA ASIAN PAC. AM. L.J.* 1, 6-18 (2001).

59. Jiménez, *supra* note 10.

60. See Valeria Fernández, *In Iowa, Hispanics 'Used Like a Punching Bag,'* LA OPINIÓN (L.A.) (Elena Shore trans., Jan. 3, 2012), <http://newamericamedia.org/2012/01/in-iowa-hispanics-used-like-a-punching->

Equally important, Latina/os are able to count among our 50 million a committed cadre of engaged advocates and allies.⁶¹ Building on the efforts of our antepasados, individuals such as Arrocha, Jiménez, Ramos, and the dozens of others who participated in LatCrit XVI endeavor in countless ways to intervene in policy discussions on immigration and other matters.⁶² The challenge, as articulated by Enrique Carrasco in the LatCrit I symposium, is to do this with a bridge across the “great gulf between us and the people we have targeted as beneficiaries of our activism.”⁶³ Not only must those of us with the privilege and platform from which to engage in advocacy learn from “the actual experience, history, culture, and intellectual tradition of people of color in America,”⁶⁴ we must be sure to appreciate the diversity of Latinidad. We are a mixed bag of languages, genders, national origins, abilities, ideologies, sexual orientations, class positions, religions, and more—often within one person.⁶⁵ Despite these differences, as the essays that comprise this cluster illustrate, we are frequently constructed as one—an

bag.php; Dominique Paul Noth, *Latino Growth Could Flip State Politics—But Will It?*, MILWAUKEE AREA LAB. COUNCIL (Jan. 26, 2012), http://www.milwaukeelabor.org/in_the_news/article.cfm?n_id=00230 (contemplating the impact of Latino population increases in Wisconsin electoral races).

61. See PASSEL ET AL., *supra* note 55, at 1.

62. See, e.g., Benny Agosto, Jr., Lupe Salinas & Eloisa Morales Arteaga, *But Your Honor, He's an Illegal! Can the Undocumented Worker's Alien Status Be Introduced at Trial?*, 74 TEX. BAR J. 286, 287-92 (2011) (illustrating LatCrit traveler Salinas's participation in discourse about the rights of undocumented workers); Nelson Maldonado-Torres, *The Latina/o Academy of Arts and Sciences: Decolonizing Knowledge and Society in the Context of Neo-Apartheid*, 14 HARV. LATINO L. REV. 283, 291-92 (2011) (advocating the creation of a Latina/o Academy of Arts & Sciences as a method of collective engagement in public policy discourses).

63. Enrique Carrasco, *Intellectuals, Awkwardness, and Activism: Towards Social Justice via Progressive Instability*, 2 HARV. LATINO L. REV. 317, 318 (1997).

64. Mari Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, in CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT 63, 63-64 (Kimberlé Crenshaw et al. eds., 1995).

65. STEVEN W. BENDER, GREASERS AND GRINGOS: LATINOS, LAW, AND THE AMERICAN IMAGINATION 14-15 (2003).

essentialized being composed of many stereotypes⁶⁶: immigrant outsider, alien invader.

The vilification of immigrants and Latina/os shows no sign of abating. Legislators across the country continue to propose new bills targeting immigrants by promoting the myth of immigrant and Latina/o criminality. For its part, the Obama Administration, though it has recently taken some steps toward humanizing immigration law enforcement,⁶⁷ continues to expand the federal government's immigrant surveillance network and imprisonment capacity. At the same time, it continues to treat immigration as a national security threat that requires reliance on military-grade hardware to police the nation's boundaries. These are not new developments, but they are being pursued with renewed vigor.

Through the eyes of immigrants and those who devote themselves to advocating for more rational, humane, and productive immigration policies, the future often seems quite bleak.⁶⁸ Reason for hope, however, is plentiful. Critical scholars, especially those affiliated with LatCrit, constantly pierce the rhetoric of dangerousness that motivates so much anti-immigrant sentiment.⁶⁹ Community activists in cities large and small pressure local officials to encourage immigration and

66. *Id.* at 16; Margaret E. Montoya & Francisco Valdes, "Latina/os" and "Latina/o" Legal Studies: A Critical and Self-Critical Review of LatCrit Theory and Legal Models of Knowledge, 4 FLA. INT'L U. L. REV. 187, 190-91 (2008).

67. *See, e.g.*, The Legal Action Ctr. & Alexa Alonzo, *Practice Advisory: DHS Review of Low Priority Cases for Prosecutorial Discretion*, AM. IMMIGR. COUNCIL 1 (Dec. 12, 2011), http://www.americanimmigrationcouncil.org/sites/default/files/DHS_Review_of_Low_Priority_Cases_9-1-11.pdf (describing the Department of Homeland Security's use of prosecutorial discretion "to eliminate low priority cases from the immigration court dockets").

68. For a glimpse at one long-time immigration scholar and advocate of humane immigration policies assessment of the current state of affairs, see Douglas S. Massey, *The Past and Future of Mexico-U.S. Migration*, in BEYOND LA FRONTERA: THE HISTORY OF MEXICO-U.S. MIGRATION, *supra* note 12, at 251, 258 ("In a very real way . . . the United States increasingly looks like a police state to Mexican immigrants, irrespective of their documentation.").

69. *See, e.g.*, Francine J. Lipman, *Bearing Witness to Economic Injustices of Undocumented Immigrant Families: A New Class of "Undeserving" Poor*, 7 NEV. L.J. 736 (2007); Sylvia R. Lazos Vargas, *Emerging Latina/o Nation and Anti-Immigrant Backlash*, 7 NEV. L.J. 685 (2007); Veronica Nelly Velez, *Challenging Lies LatCrit Style: A Critical Race Reflection of an Ally to Latina/o Immigrant Parent Leaders*, 4 FLA. INT'L U. L. REV. 119 (2008).

treat immigrants justly.⁷⁰ Public interest litigators wage battle after battle defending constitutional norms of equality and repelling mean-spirited legislation.⁷¹ None of these interventions is ever perfect and many ultimately do not achieve the desired outcome. All of these interventions, however, lay the foundation for another and another. Standing on those efforts, those of us who long for a country devoid of mythical stories of alien invaders hope that one day, sooner rather than later, we can raise the height of our advocacy enough to tower above the quivers of fear that for too long have propelled immigration policymaking.

70. See, e.g., Jeremy P. Kelley, *City OKs Immigrant-Friendly Plan Unanimously*, DAYTON DAILY NEWS (Oct. 6, 2011), <http://www.daytondailynews.com/news/dayton-news/city-oks-immigrant-friendly-plan-unanimously-1264736.html> (describing Dayton, Ohio's policies intended to attract immigrants); Antonio Olivo, *Cook County Bucks Immigration Officials*, CHI. TRIBUNE (Sept. 8, 2011), http://articles.chicagotribune.com/2011-09-08/news/ct-met-county-immigration-policy-2-20110908_1_illegal-immigrants-detainers-sanctuary-ordinances (describing one county's response to ICE's practice of requesting that local law enforcement officials prolong custody of certain individuals thought to be eligible for removal).

71. For a sample of the immigrants' rights litigation brought by the Mexican American Legal Defense and Education Fund (MALDEF), see *Immigration: Protecting Immigrants Rights*, MALDEF, <http://www.maldef.org/immigration/index.html> (last visited Feb. 2, 2012). For MALDEF's role in litigating *Plyler v. Doe*, 457 U.S. 202 (1982), the Supreme Court decision that protected access to public elementary and secondary education for undocumented children, see MICHAEL A. OLIVAS, NO UNDOCUMENTED CHILD LEFT BEHIND: *PLYLER V. DOE* AND THE EDUCATION OF UNDOCUMENTED SCHOOLCHILDREN 10-19 (2012). For an example of public interest litigation on behalf of immigrants by a law professor, Wendy Parmet, working with health care advocates, see *Finch v. Comm. Health Ins. Connector Auth.*, 959 N.E.2d 970, 973, 984 (Mass. 2012) (holding that a state statute denying state subsidies to lawful permanent residents with less than five years residency in the United States violated the state constitution's equal protection clause).