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Abstract

Contemporary policy responses to unauthorized immigration, we argue, reinforce racialized anxieties by (a) focusing attention on physically distinctive and economically marginalized minorities who are defined as the nation's immigration "threat," (b) creating new spaces of enforcement within which racial anxieties flourish and become institutionalized; and thereby (c) racializing immigrant bodies. We examine three federal enforcement policies: (a) the physical border buildup that began in the 1990s, (b) partnerships with local police, and (c) Immigration and Customs Enforcement (ICE) initiatives to enhance interior enforcement. The result has been the construction of a landscape of institutionalized racial violence embedded in our current immigration regime.

Keywords

unauthorized immigrants, criminalization, racialization, immigration enforcement, racial profiling

Race has a long and complicated relationship with the nation-state. Along with ethnicity and religion, race has historically been implicated in the formation and perpetuation of the state as a social, political, and economic entity. Violence has been an inextricable aspect of this relationship, including various institutionally sanctioned methods of excluding those considered the racial "other." In contemporary times, while race is widely perceived to lack an empirical basis, it persists as a salient feature of individual, as well as group, identity, and as a significant, though often invisible, principle underlying the

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social and political order. The current role of race in determining boundaries of membership in purportedly egalitarian nations, however, is not well understood. This essay examines that role, not from the familiar vantage point of established rules for inclusion, but from less familiar locations where racialized exclusion occurs.

The essay proceeds in two parts. We first explore, at a theoretical and historical level, the role of race in contemporary policies of exclusion. These policies are both a response to popular racialized anxieties about immigrants, and, we argue, a spur to further racialization. In the United States, the primary focus of popular anxiety has been migrants arriving from Mexico in search of low-wage work. The proposed solution has been more law enforcement directed at this population and militarization of the southern border. Government's acceptance of this populist framing has further marginalized and stigmatized these immigrants, reinforcing the sense that these physically distinctive immigrants are quasi-criminals willfully taking advantage of American hospitality and prone to further law breaking. The government's harsh enforcement approach has, in effect, produced a racial identity that threatens vital U.S. interests and justifies harsh measures to prevent their entry and settlement. We substantiate this argument in the next section, which shows how the immigration-enforcement policies in vogue today in the United States target poor economic migrants from Mexico and Central America. We focus on three major areas of U.S. immigration policy; (a) border fortification, (b) federal partnerships with local law enforcement and, (c) federal initiatives for interior enforcement.

The enforcement of immigration laws offers an obvious site for racial formation (Sanchez, 1997; Winant, 2006). The British National Party, for example, recently won two seats in the European Parliament on a platform "committed to stemming and reversing the tide of non-White immigration and to restoring, by legal changes, negotiation, and consent, the overwhelmingly White makeup of the British population that existed in Britain prior to 1948" (Canseco, 2009). Neo-racism, whose dominant theme is the insurmountability of cultural differences, has also been quite prominent in various works on immigration by writers both academic and popular. Prominent examples include Peter Brimelow, who argues in *Alien Nation* that today's immigrants are "from completely different and arguably incompatible cultural traditions" (Brimlow, 1995, p. 25). Another is the late Samuel Huntington who has asserted that migration poses a threat to "the cultural integrity" of European countries and that Mexican migration into the United States, "looms as a unique and disturbing challenge to our cultural integrity, our national identity, and potentially to our future as a country" (Huntington, 2000).

This sentiment appears to be widespread. In studying the academic and popular literature on Mexican immigration, Leo Chavez (2008) finds evidence of a pervasive Latino Threat Narrative that incorporates unsubstantiated beliefs about "out-of-control" Latina fertility and refusal to assimilate. Elizabeth Theiss-Morse, surveying public-opinion research, shows that stereotypes of "American" are White, Christian, and northern European. The tendency to think in exclusive terms is particularly evident among those with a strong sense of national identity (2009, p. 185). Such works suggest that race continues to have a complicated, but significant, connection to the identity of nations and the communities they purport to represent.

Balibar (2004, pp. 23-24) argues that governments depend on exclusions and so produce and perpetuate ideas about difference for their own ends. Sometimes they do this indirectly. We know that criminal laws, by tolerating racial profiling and promoting targeted enforcement, can operate racially to exclude (Mauer, 2006; Peterson, Krivo, & Hagan, 2006; Provine, 2007; Walker, Spohn, & DeLone, 2004). In the immigration arena, exclusion from entry based on racism and essentialist ideas about national character was once the norm (e.g., Calavita, 2006; Jacobson, 1998; Ngai, 2004). Our question is whether contemporary policies around enforcement of immigration laws serve a conscious or unconscious racial function by marking a racialized other as unworthy of membership.

The Context in Which Immigration Enforcement Occurs

Contemporary debates about immigration should be understood within the broader context of insecurities about national identities in an era of ever increasing globalization. Rising levels of human mobility and settlement amid vast global inequalities in wealth have given rise to new exclusionary practices that, we suggest, involve a substantial degree of racialization. The number of immigrants around the world living and working without legal authorization has grown in the past three decades to 30 to 40 million people, with about 11 million in the United States (Passel & Cohn, 2010). Immigrant-receiving nations, which have helped to create this movement with their demand for cheap labor, are attempting to close off entry routes and devoting administrative resources to rooting out persons in the interior who lack legal status (Dauvergne, 2008). Implementation of these policies typically targets economically marginal, visibly identifiable immigrants and frequently involves ethnic or racial profiling by law-enforcement officials who enjoy broad, virtually unreviewable discretion. Such policies create new spaces in enforcement within which racial anxieties find a home, flourish, and become institutionalized.

In this essay, we focus on policies directed at the exclusion of unauthorized migrants from Mexico and Central America. While Muslim and Middle-Eastern immigrants have also been subject to harsh practices in the wake of the 9/11 terrorist attacks (Nguyen, 2005), the most extensive and sustained attention in recent years has been on securing the border with Mexico and interior enforcement directed at these migrants. With every increase in resources and attention devoted to enforcement, these groups are more definitively criminalized, "raced," and rejected. Law is thus implicated in multiple ways in the racialization of these immigrants and in their marginalization. Critical race theorists argue that law creates and sustains race by various means. Here we emphasize the role of law enforcement in racialization. A key element in this process is the reconfiguration of law at the federal level that allows authorities at the local level to develop their own enforcement priorities and practices. Devolution of enforcement authority opens opportunities for targeted enforcement reflecting local political preferences, a form of pernicious legal pluralism that applies only to immigrants. The complex bureaucratic and legal structures that constitute these systems function in ways that

mask their racial character, making them appear on the surface to be racially neutral and consistent with the rule of law.

Race in Immigration Policy

Popular misunderstanding of what racism is, and is not, contributes to a tendency to downplay or ignore the racial element in immigration enforcement. Both law and popular culture define racism in terms of intentional action by individuals. Contemporary racism, however, manifests itself most often not as overtly race-based hostility but as unease with the erosion of traditional racial hierarchies and as indifference to groups adversely affected by harsh policies of criminalization, confinement, and denial of basic services. At an institutional level, contemporary racism can occur within structures that make room for differentiated enforcement and also by practices and policies that exclude or target particular groups through force of habit or by rules of thumb. The racial impact of such policies and practices is usually evident in the outcomes they produce, even if the discriminatory mechanisms that produce them remain obscure. The problem is perpetuated, however, by unwillingness to consider racial impact as evidence of racially disadvantageous practices and policies. The policies associated with the war on drugs provide an obvious example of such obliviousness to racial impact (Provine, 2007).

We see contemporary immigration enforcement as a “racial project,” in Omi and Winant’s terminology, a set of practices or structures that help to form ideas about difference, which are then used to justify harsh treatment (1994). The racial project involves targeting unauthorized immigrants and dispersing authority to take strong action against them. In this process, legal immigrants are subjected to increasing scrutiny, a reminder of their provisional membership status. While an overtly racist element does exist and exert influence, that voice is to some extent muted by its disrepute as a legitimate part of public discussion. Even in the absence of overt racism, the combination of increased surveillance and sanctions, agency hype, and everyday practice together produce an immigrant “other” whose continued presence is increasingly perceived to be dangerous for the security and integrity of the nation. The process tends to be self-reinforcing.

To throw these practices into sharper relief, we choose one national context, the United States, and one relatively brief time period, the 1990s to the present. This is not to argue that the United States is unique in racializing immigrants (see, for example, Calavita, 2006; Money, 1999). Nor do we wish to argue that racialization is something entirely new in the U.S. context. For nearly two centuries, the United States restricted citizenship on racial grounds, and deportation on racial grounds was also a well-established and lawful practice through the 1950s (Ngai, 2004, p. 25). Racial priorities were prominent until 1965, when Congress abolished national-origin quotas.

What is distinctive about the current period is the formal rejection of race as a criterion for exclusion at the same time that policies and practices that racialize immigrants are being created and appear to be gaining momentum.

Punitive policies toward unauthorized immigrants and legal immigrants who commit criminal acts enjoy broad popular support, reflecting the nation's historic ambivalence toward immigration and, we argue, the mutually reinforcing relationship between racialization and criminalization. Some of that ambivalence has long been directed toward Mexican immigration. Massey notes that Mexicans, the largest immigrant minority in the United States, have historically been treated as "a subordinate stratum of people subject to widespread discrimination and systematic exclusion" (Massey, 2007, p. 117). Violence against Mexicans has peaked at various times, often corresponding to periods of perceived national crisis. Mexicans have been subjected to some of the same forms of violence as African Americans. Between 1848 and 1928, nearly six hundred Mexicans were lynched by White mobs throughout the Southwest (Gomez, 2007; Massey, 2007, pp. 123-124).

The strength of contemporary concern with Mexican immigration became evident with the passage of Proposition 187 in California in 1994, which would have deprived immigrants without legal status of virtually all social services, including schooling for their children. Although courts promptly overturned this law, it signaled a widespread sense of threat directed at low-wage Mexican immigrants (see Calavita, 1996; Sanchez, 1997; Tolbert & Hero, 1996). California's effort drew national attention and helped to propel Congress into action. In 1996 the federal government adopted new restrictions on the regularization of legal status, reduced the eligibility of many legal immigrants for federal welfare benefits, offered partnerships with states and localities to enforce federal immigration laws, and increased the grounds for deportation of legal residents while reducing judicial oversight of this process. This legislation created spaces that did not previously exist for grassroots anti-immigrant activism, for unreviewable police and administrative discretion, and for political opportunism at both local and national levels. The incorporation of the Immigration and Naturalization Service (later Immigration and Customs Enforcement, or ICE) into the new Department of Homeland Security signaled the change in tone that occurred in the wake of the attacks on the World Trade Center and Pentagon.

States and municipalities, undeterred by California's still-born initiative, have also become actively involved in the effort to deflect and discourage unauthorized immigrants. The National Center for State Courts has tracked an upsurge in immigrant-related state laws that began to take shape in 2005 and has continued to increase, reaching 208 laws and 138 resolutions in 2010, with 46 states and the District of Columbia participating (National Conference of State Legislators [NCSL], 2011). Most are hostile to unauthorized immigrants and their families. This broad-based legislative trend has been inspired in part by changes in the pattern of Mexican immigration that began in the mid-1990s when both legal and unauthorized immigrants began to seek out new destinations and to settle more permanently than in the past, frequently with family members (Massey, 2008; Singer, Hardwic, & Brettell, 2008; Zúñiga & Hernández-León, 2005). The local reception has often been hostile, with local service providers and even quasi-private and private agencies, like hospitals, trailer parks, and foster-care agencies,

becoming involved in enforcement efforts, sometimes at the behest of legislators (Varsanyi, 2010).

Arizona has become a leader in this effort, most recently with the adoption of SB 1070, a law requiring local police to question the immigration status of anyone they stop who, they suspect, lacks legal status. The law prohibits racial profiling but does not specify how that suspicion might be aroused without reference to physical appearance. The law has been challenged in the courts, but has nevertheless attracted the interest of other states. Currently Arizona is considering legislation that would criminalize failure to report civil violations of federal immigration law by local housing authorities, further blending the relationship between civil and criminal offenses.

The multilevel, patchwork campaign to reduce the numbers of unauthorized immigrants has been directed almost entirely at migrants from Mexico and Central America who come seeking low-wage jobs. People who have overstayed work or visitor visas, about 40% of the unauthorized population, have not been a particular source of concern. Economic status, Kitty Calavita argues, is an essential part of the racialization equation: "The *sine qua non* of immigrant racialization may be their status as members of the third world, their poverty, and their need" (Calavita, 2005, p. 155). As Tahar Ben Jelloun (1997, pp. xiv-xv) observes,

Poverty has never been well received. At most, difference is accepted under condition that the person be rich, under condition that he has the means to disguise it and pass unobserved. Be different, but be rich! . . . Whoever has no other riches other than their ethnic and cultural difference are consigned to humiliation and every form of racism.

Their economic vulnerability makes poor migrants from the global South an easy target for policy makers who want to be "tough" on immigration. Skin-color prejudice and xenophobia reinforce the sense of threat as numbers increase. It is evident that the old racial order is changing, with new languages and customs taking their place in the public sphere. The association of these developments with a massive global restructuring of economic opportunity adds to the pressure to act.

The principal policy initiatives that are relevant for this discussion include (a) The hardening of the border between the United States and Mexico that began in the 1990s; (b) Federal devolution of enforcement authority to local levels without effective oversight; (c) ICE initiatives to enhance interior and border enforcement. These policies reinforce each other, helping to transform migrants from Mexico and its neighbors from the unthreatening reserve labor force they were once perceived to be, to a dangerous quasi-criminal element embedded in American society.

In this transformation, unauthorized immigrants have been swept into a racial caste system that goes back to the nation's founding as a slave-holding nation. In much of the Southwest, Mexican-origin people were considered a distinctive race requiring separation from Anglos via restrictive covenants and segregation of public facilities (Gomez, 2007). Legal discrimination began to yield only after the U.S. Supreme Court declared such policies unconstitutional in 1954 *Hernandez v. Texas* (347 U.S. 475, and see

Olivas, 2006). Sidanius, Levin, Van Laer, and Sears (2008) report that Latinos remain the largest racially stigmatized group in the United States. Contemporary enforcement trends rest on and build on this unattractive foundation. It should not be surprising that the appetite appears insatiable in many segments of the American population for harder borders, for still more active efforts to ferret out unauthorized immigrants, for workplace raids, and for criminal penalties. Race and crime have always been a potent mix, particularly in times of public distress. In their efforts to satisfy public anxieties with toughened enforcement, the American government has created a monster that will not quietly retire.

Evolving Trends in Immigration Enforcement

Crime, race, and immigration control have become conflated in the details of policy implementation as well as in policy design and resourcing. Consider, for example, the recent policy of requiring every migrant returning to Mexico from the United States to be fingerprinted and photographed, with personal information entered into a national data base. The ostensible goal is to discover possible criminal smuggling of arms or currency, but the likely result will be criminalization of immigrants who have entered without inspection, with a potential prison term if reentry is attempted after formal removal. In the sections that follow, we consider the major actions taken by Congress and federal personnel to tighten immigration restrictions, examining how policy framing targets Mexican immigrants and creates spaces for racialized enforcement.

Fortification of the Border With Mexico

Beginning in the early 1990s, the U.S. Border Patrol undertook a new strategy that it labeled “prevention through deterrence” in a major departure from its previous practice of pursuing and apprehending migrants shortly after they had crossed the border into the United States. Launched in El Paso, Texas, the idea was to use a show of force at easier crossing points to deflect migrants to more inhospitable routes, perhaps discouraging them from making the trip (Dunn, 2009; Nevins, 2002, pp. 90-91). “Prevention through deterrence” continues to be the philosophy underlying more recent border buildups, including physical fencing as well as high-tech surveillance or “virtual” fencing. It is important to note that this strategy focuses on the Southwest border of the United States, not its northern border with Canada. More than 85% of U.S. Border Patrol agents are deployed along its southern border (Haddal, 2010).

Rather than deterring migrants from Mexico, “prevention through deterrence” has funneled them into more and more remote areas, creating a dramatic increase in border-crossing deaths. Estimates from the U.S. Department of Homeland Security Border Safety Initiative (BSI) put the total at 3,861 while Mexico’s Secretariat of Foreign Relations (SRE) has calculated a total of 5,607 (Jimenez, 2009, p. 17). While estimates of the precise number of deaths differ due to different methodologies used for counting, there is near uniform agreement that all of these figures are undercounts, as many bodies go unrecovered.

Border-crossing deaths are often characterized as “unintended consequences” but the Border Patrol’s own blueprint for one of its “prevention programs, (Operation Gatekeeper), predicted that it would channel migrants to locations, where “the days are blazing hot and nights freezing cold” (Doty, 2001, p. 533; Johnson, 2007, p. 112). One of the more blatant and well-publicized results of prevention through deterrence was the May 23, 2001 discovery of 14 dead migrants in the harsh deserts around Yuma, Arizona. Two months prior, the humanitarian group, Humane Borders, had asked for permits to build seven new water stations in the area, but U.S. Department of Fish and Wildlife had turned them down (Treat, 2001).

“Prevention through deterrence” continues to be a key, and arguably foundational, element in U.S. border-enforcement policy. The deaths also continue to climb, despite the fact that overall apprehensions at the border are declining (Billeaud, 2009). In fiscal year 2005, a record year for border crossing deaths, 138 of the 282 recorded deaths were from Mexico, 2 were from Guatemala and the rest were unknown (AZ Recovered Bodies Project, 2007). Nevins (2003) suggests that the current U.S. boundary enforcement regime is an example of structural violence, where there is no immediate, direct perpetrator, but rather new spaces for dying for an identifiable, racialized group.

Partnerships With Local Police

With the federal government’s encouragement, states and municipalities are joining the effort to locate and deport unauthorized immigrants at a level not seen in the past. Before 1996 the role of local police had been ad hoc and occasional, often based on a perception of mutual benefit to resolve specific problems (McDonald, 1997). This began to change in 1996 with the adoption of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Antiterrorism and Effective Death Penalty Act (AEDPA). AEDPA gives local police the authority to arrest previously deported noncitizens who become felons on their return, while IIRIRA authorizes training of local and state police to enforce federal immigration laws through a “287g” program and the development of memoranda of understanding between federal immigration authorities and cooperating local police agencies. The members of Congress who proposed or supported this program ignored concerns expressed by their colleagues and by police agencies that these new powers would encourage racial profiling and would harm relationships with immigrants developed through implementation of community-policing principles.

In April 2002, U.S. Attorney General John Ashcroft took an additional step, issuing a classified memo arguing that state and local police have inherent authority to make arrests for violations of civil immigration laws. This memo, released only after a Freedom of Information Act request by the ACLU, overturned earlier interpretations of federal law that had denied local police such authority. At about the same time, the Justice Department began to enter immigration-related data, such as outstanding deportation orders, into the database routinely employed by local police in pursuing criminal suspects across state lines, the National Criminal Information Center (NCIC; Gladstein, Lai, Wagner, & Wishnie, 2005). This made much information concerning civil violations of immigration law part of a nationwide criminal-justice database.

Local/federal partnerships and greater degrees of agency interpenetration have been promoted as a way of gaining more control over serious crime, but the primary concern of the communities that are seeking these partnerships appears to be immigration rates, not crime rates. The communities that have signed 287g agreements do not have out-of-the-ordinary crime rates, but they do tend to have high rates of recent immigration (Shahani & Greene, 2009, p. 16). And there is evidence that immigration control is often the real objective in these alliances. In a 2008 study, for example, the General Accounting Office found that some police departments were routinely using their 287g authority to process individuals for deportation after arresting them for minor traffic infractions, such as excessive speed (GAO, 2009). A 2011 report by the Migration Policy Institute finds that about half of the cases resulting in deportation involve low-level misdemeanor or traffic cases. The federal government has made this possible by failing to impose standards that would prevent racial profiling and pretextual arrests (Shahani & Green, 2009; Weissman, Parker, & Headen, 2009).

Disregard of program objectives to deport unauthorized immigrants can occur even without a 287g agreement. In New Jersey, for example, the state attorney general ordered police only to report individuals to federal immigration authorities if they had been arrested for a serious crime. A study of 68 individuals referred to federal authorities found that 65 of the 68 were Latino; 49 were turned over for traffic stops for minor infractions or for no identifiable reason at all; 19 were pedestrians stopped on the street, mostly for no reason (Farbenblum & Jansyn, 2009). The Pew Research Center reports that 1 in 10 Hispanics have been questioned about their immigration status by police or other authorities in the past year. The amount of additional surveillance to which "Hispanic-looking" residents have been subjected is, of course unknown, as is their increased vulnerability to arrest resulting from this scrutiny.

The experience in Irving, Texas with a stepped-up version of ICE's Criminal Alien Program (CAP) suggests that racial profiling will be likely in the more technologically sophisticated relationships that are currently evolving. Irving has a population of over 196,000 people, with Hispanics making up 41.2% of the population. The Warren Institute at the University of California at Berkeley, working with the ACLU of Texas, was able to analyze county arrest records for a 23-month period (January 2006-November 2007). What had been an agreement to hold detainees for up to 48 hr to allow for a visit to the jail by ICE officials changed dramatically in April 2007 when ICE granted Irving police officers round-the-clock access via teleconferencing. At this point immigration referrals nearly tripled, and so did arrests of Hispanics (but not other racial groups) for petty offenses. The trend was particularly notable for traffic offenses where the officer alone identified the violation. Most of the increase, ironically, was of Hispanics living legally in the United States. The Warren Institute concluded that police were racially profiling residents in the area and conducting pretextual arrests to get them into the jail system where they could be referred to ICE. Only 2% of those detained were charged with felony offenses; 98% of the cases involved only misdemeanors (Gardner & Kohli, 2009).

The number of people detained who are then charged with immigration violations has increased dramatically with the "force multiplier" of local participation in immigration enforcement. In 2006 ICE charged 67,000 people detained by local police in the

nation's interior, but that number rose to 164,000 in 2007, and to 220,000 in 2008 (Gardner & Kohli, 2009). These numbers will grow further under a new Department of Homeland Security policy, Secure Communities, which will replace the 287g program with a computerized system to run the fingerprints of all arrestees in local jails against the agency's immigration databases. As of January 2011, 969 jurisdictions in 37 states had signed up for the program. The program is scheduled to go nationwide by 2013.

Many community agencies have expressed concerns about racial profiling and intimidation by police (GAO, 2009, p. i). Empirical data lend credibility to these concerns, suggesting that local enforcement tends to focus almost exclusively on Mexican and Central American nationals in their search for immigrants, though they make up only 56% of those residing illegally in the United States (Brotherton, & Kretsedemas, 2008, p. 349 and see Passel, 2006). Gladstein et al. report that 71% of those identified as immigration violators by local police from 2002 to 2004 were from Mexico (2005, p. 14). By way of comparison, it can be noted that European and Canadian nationals, who constitute 6% of those residing illegally in the United States, made up only 1% of the immigration violators identified by local police, while Asian nationals and Pacific Islanders, who compose 13% of the illegal population, were also underrepresented (at 2% of arrests).

Federal Initiatives to Enhance Interior Enforcement

Federal authorities have greatly increased their own enforcement activities in the interior of the United States in recent years. Raids of workplaces and sweeps of residential areas, once a rarity, have become common, and federal prosecutions for immigration violations have greatly increased. More ICE agents are being deployed in the nation's interior than ever before. The most significant initiatives include

1. National Fugitive Operations Program (NFOP)

Created in 2003, NFOP set up eight 7-person teams to locate, arrest, and remove immigrants with old orders of deportation, giving priority to cases involving fugitives who pose a threat to national security and to the community. Since 2003, the size, scope, and cost of this federal program have expanded, with approximately 100 teams now operating across the country. Spending has also increased, from \$9 million in 2003 to nearly US\$130 million in 2008. In 2006, ICE dropped the requirement that the teams focus on "criminal aliens" and allowed arrests of civil status violators to count toward program goals. During this period, home raids became a weapon of choice in the effort to find alien violators. An analysis conducted by the Migration Policy Institute found that almost 73% of the individuals apprehended between February 2003 and February 2008 had no prior criminal convictions. Twenty-two percent of arrests were ordinary status violators, not dangerous fugitives (Mendelson, Strom, & Wishnie, 2009, p. 11).

A group of researchers from the Benjamin N. Cardozo School of Law at Yeshiva University studied the adherence of these teams to constitutional requirements against breaking into homes without legal authority, seizing innocent people, searching without authority, and racial profiling. The researchers found numerous violations in the 100 New York and 600 New Jersey cases they examined, including failure to obtain consent to search (86% failure rate in New York, 24% in New Jersey) and lack of reasonable suspicion to seize and question (65% failure rate in New York, 67% in New Jersey). The data also strongly suggest racial profiling of Latinos. In both locations, the collateral arrests of Latinos outstripped, by more than 20%, the targeted arrests, suggesting that these people were seized and questioned (illegally) on the basis of appearance alone (Chiu, Egyes, Markowitz, & Vasandani, 2009).

2. Workplace raids and investigations

Federal immigration authorities have also stepped up enforcement of rules forbidding employment of workers without legal status. The Postville, Iowa raid of a kosher meatpacking plant in May 2008, which resulted in the arrest of more than 300 people, became infamous. A May 2009 unanimous ruling by the U.S. Supreme Court was sharply critical of the overcharging that occurred in connection with that raid, which involved mostly poor, rural Guatemalans. These workers appeared before a federal judge in batches of 10, charged with crimes they did not commit, and pled guilty to avoid long jail terms. Some spoke neither English nor Spanish.

ICE has conducted other, less publicized raids in a variety of low-wage work sites, but never in an institution where immigrants are white-collar workers. The agency has also identified “locations such as trailer parks and apartment buildings with known concentrations of Latino residents, then conducted unconstitutional stops and detentions of individuals based solely on the individual’s race or apparent national origin” (Mendelson et al. 2009, p. 24). Enforcement is facilitated by the willingness of the courts to allow “Mexican appearance” as a legitimate factor in justifying a stop by immigration authorities (*United States v. Brignoni-Ponce*, 1975). Morales (2009, p. 145) argues that the entire logic of raids is racial:

As enforcement tools they are blunt instruments meant (when combined with the power of news media) to make an example out of employers and employees. For raids to succeed in this way they must be seen to confirm the populace’s racialized predispositions. Parading a handcuffed line of white immigrants for the cameras will be less effective at assuaging the populace’s desire for enforcement because whites are not negatively racialized.

In recent months, the strategy for enforcing the ban on working without legal authorization has become less visible and therefore less likely to reinforce racial stereotypes. ICE has shifted its emphasis to audits of employment records, moving away from surprise, military-style raids, leaving to employers the task of dismissing workers.

3. Deportation of criminal aliens

Federal immigration law permits deportation of noncitizens for a variety of crimes. The list, once limited to serious crimes like rape and aggravated assault, has expanded over the years to include much lesser crimes, including shoplifting, tax evasion, and most recently, illegal entry. There has been a 100% increase in federal prosecutions since 2003, and a 37% increase between 2008 and 2009, with 2010 reaching an all-time high in the deportation of criminal aliens (Transactional Records Access Clearinghouse [TRAC], 2010). The federal government justifies this program as a public-safety measure, but in fact illegal entry was the lead charge in the vast majority of these cases, which now make up more than half of all federal criminal prosecutions. As the number of deportation-eligible crimes has grown, procedural guarantees and grounds for humanitarian relief have been reduced. At least 20% of those deported are legal residents, many convicted of petty crimes (Human Rights Watch, 2009).

Race is implicated in the deportation of criminal aliens. Human Rights Watch reported that over a 10-year period, among deportees with criminal convictions (often for illegal entry), Mexican-origin residents were vastly overrepresented, at 78.2% of the total. (Mexicans represent only 27.9% of the foreign-born population in the United States.) This disproportion is likely to increase with the “zero tolerance” approach the federal government inaugurated in 2005. Under Operation Streamline, every person caught crossing illegally can be charged criminally. Five federal district courts, each located in a state bordering Mexico, handle most of these cases, accepting plea bargains in a manner that one observer labeled a “virtual kangaroo court” (Blumenthal, 2010).

4. Summary

The impact of these federal initiatives has been dramatic. The Department of Homeland Security reports that it apprehended 613,000 foreign nationals in 2009, 86% of whom were natives of Mexico. Border apprehensions were down in comparison to earlier years, but interior enforcement was up, with 393,000 removals, the seventh consecutive record high; of this total, 72% were Mexican, and 7% each were from Guatemala and Honduras. Another 580,000 people accepted an offer to return “voluntarily” to their countries of origin, mostly, that is, to Mexico or Central America. (Department of Homeland Security [DHS], 2010).

The dramatic increase in arrests and deportations has been accompanied by a steep rise in detention, largely because 1996 federal legislation created mandatory detention without bond for certain categories of immigrants. Between FY2003 and FY2007, the total number of noncitizens detained by ICE per year increased from 231,500 to 311,213 (Meissner & Kerwin, 2009). The intensified surveillance of Mexican and Central American immigrants over the past decade makes them more susceptible to detention than many other nationalities. A recent snapshot of ICE custody figures by the Migration Policy Institute reveals that of the 32,000 immigrants in ICE custody on January 25, 2009, 37% were from Mexico and 28% were from Central America (Kerwin & Lin, 2009, p. 11).

Conclusion

Given their numbers—immigrants from Mexico are estimated to be slightly more than half the unauthorized population in the United States—it is not surprising that enforcement prioritizes Mexican immigrants. Under and around concerns about efficiency and law and order, however, preexisting racial categories, antipathies, and fears tend to reassert themselves. There is little that stands in the way of this process. Americans tend to believe that only citizens enjoy civil rights, including the right to be free of arbitrary treatment by government. Immigrants without legal status are conceived to have no rights at all. So from the southwest desert killing fields, to the streets Irving, Texas, and the meat-packing plants in Postville, Iowa, an implicit consensus has emerged that law enforcement must have a free hand. Evidence that the nation's immigrants are not terrorists and are less involved in crime than native populations (see, for example, Reid, Weiss, Adelman, & Jaret, 2005) is irrelevant in this climate.

Treating unauthorized immigrants as quasi-criminals stigmatizes not only them but also all immigrants who “look Mexican.” A 2006 study using a “stereotype content model” found the most despised out-groups to be South Americans, Latinos, Mexicans, farm workers, and Africans. Undocumented migrants were the most despised of all, ranking so low as to imply that they were not perceived as fully human and “thus opening a door to the harshest, most exploitive, and cruelest treatment that human beings are capable of inflicting on one another” (Lee & Fiske, 2006, cited in Massey, 2007, p. 150). Arizona's Latinos are feeling some of that sentiment in the wake of SB 1070 and other initiatives designed to create a hostile climate for unauthorized immigrants. Polls reveal a strong sense among Latinos in the state that they are under special scrutiny and that SB1070 has exposed “a deeper sense of racism” in the community (Gonzales, August 2, 2010; and see “Legacy of distrust,” 2010).

King and Smith (2005) argue that the political order in the United States was founded on, and remains, a product of two competing visions: a “white supremacist” normative order and an “egalitarian transformative” order. These authors assert that each of these orientations helps to shape immigration policy (p. 89). The federal government's current approach to immigration enforcement, in our view, favors the white supremacist side by targeting Mexican immigrants, a group that has been the victim of past discrimination and harsh treatment, much of it legal in an earlier era of racial apartheid. Race thus continues to maintain an intimate relationship with the nation state, limiting options for a more effective, just, and humane policy.

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References

- Arizona Recovered Bodies Project. (2007, January). *A project of the Coalicion de Derechos Humanos*. Retrieved from <http://www.derechoshumanosaz.net>
- Balibar, E. (2004). *We, the people of Europe? Reflections on transnational citizenship*. Princeton, NJ: Princeton University Press.
- Billeaud, J. (2009, October 3). Deaths in fiscal '09 May exceed previous year's toll of 390. *Arizona Republic*, p. A1.
- Blumenthal, M. (2010, February 14). Profiting from immigration injustice. *Truthdig*. Retrieved from http://www.truthdig.com/report/item/profitting_from_immigration_injustice_20100214/
- Brimlow, P. (1995). *Alien nation: Common sense about America's immigration disaster*. New York, NY: Random House.
- Brotherton, D. C., & Kretsedemas, P. (Eds.). (2008). What does an undocumented immigrant look like? *Keeping the other out—A critical introduction to immigration enforcement today*. New York, NY: Columbia University Press.
- Calavita, K. (1996). The new politics of immigration: "Balanced-budget conservatism" and the symbolism of Proposition 187. *Social Problems*, 43, 284-305.
- Calavita, K. (2005). *Immigrants at the margins: Law, race, and exclusion in southern Europe*. New York, NY: Cambridge University Press.
- Calavita, K. (2006). Collisions at the intersection of gender, race, and class: Enforcing the Chinese exclusion laws. *Law & Society Review*, 40, 249-281.
- Canesco, M. (2009, August 21). Anti-immigrant sentiment high in Britain, not Canada. *Vancouver Sun*. Retrieved from <http://communities.canada.com/vancouver/blogs/communityofinterest/archive/2009/08/21/anti-immigrant-sentiment-rising-in-britain.aspx>
- Chavez, L. (2008). *The Latino threat: Constructing immigrants, citizens, and the nation*. Stanford, CA: Stanford University Press.
- Chiu, B., Egey, L., Markowitz, P., & Vasandani, J. (2009). *Constitution on ICE: A report on immigration home raid operations*. New York, NY: Cardozo Immigration Justice Clinic.
- Dauvergne, C. (2008). *Making people illegal: What globalization means for migration and law*. New York, NY: Cambridge University Press.
- Department of Homeland Security. (2010). *Annual Report. "Immigration enforcement actions: 2009."* Retrieved from http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement_ar_2009.pdf
- Doty, R. (2001). Statecraft in remote places. *Alternatives*, 26, 523-543.
- Dunn, T. J. (2009). *Blockading the border and human rights*. Austin: University of Texas Press.
- Farbenblum, B., & Jansyn, J. (2009). *Crossing the line: Damaging immigration enforcement practices by New Jersey police following attorney general law enforcement directive 2007-3*. Newark, NJ: The Center for Social Justice, Seton Hall University School of Law.
- Gardner, T., & Kholi, A. (2009, September). *The C.A.P. effect: Racial profiling in the ICE Criminal Alien Program* (Policy Brief). Berkeley, CA: Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity, University of Berkeley Law School. Retrieved from http://www.law.berkeley.edu/files/policybrief_irving_FINAL.pdf

- General Accounting Office. (2009, January). *Immigration enforcement: Better controls needed over program authorizing state and local enforcement of federal immigration laws*. Washington, DC: U.S. Government Accountability Office.
- Gladstein, H., Lai, A., Wagner, J., & Wishnie, M. (2005). *Blurring the lines: A profile of state and local police enforcement of immigration law using the national crime information center database, 2002-2004*. Washington, DC: Migration Policy Institute.
- Gomez, L. (2007). *Manifest destinies: The making of the Mexican American race*. New York: New York University Press.
- Gonzales, D. (2010, August 2). Poll: Many say migrant debate stirs racism. *Arizona Republic*, pp. A1 and A4.
- Haddad, C. C. (2010, March 3). Border security: The role of the U.S. border patrol. *Congressional Research Service report*. Retrieved from www.crs.gov RL32562
- Human Rights Watch. (2009). *Forced apart (by the numbers)*. New York, NY: Human Rights Watch.
- Huntington, S. P. (2000). The special case of Mexican immigration—Why Mexico is a problem. *American Enterprise*, 11(8), 20-22.
- Jacobson, M. F. (1998). *Whiteness of a different color: European immigrants and the alchemy of race*. Cambridge, MA: Harvard University Press.
- Jelloun, T. B. (1997). *Le pareti della solitudine* [The walls of solitude]. Turin, Italy: Giulio Einaudi Editore.
- Jimenez, M. (2009). *Humanitarian crisis: Migrant deaths at the U.S.-Mexico border*. San Diego, CA: ACLU of San Diego and Imperial Counties and Mexico's National Commission of Human Rights.
- Johnson, K. R. (2007). *Opening the floodgates—Why America needs to rethink its border and immigration laws*. New York: New York University Press.
- Kerwin, D., & Lin, S. Y. (2009, September). *Immigrant detention—Can ICE meet its legal imperative and case management responsibilities?* Washington, DC: Migration Policy Institute.
- King, D. M., & Smith, R. M. (2005). Racial orders in American political development. *American Political Science Review*, 99(1), 75-92.
- Lee, T. L., & Fiske, S. T. (2006). Not an out-group, but not yet an in-group: Immigrants in the stereotype content model. *International Journal of Intercultural Relations*, 30, 751-768.
- Legacy of distrust puts Arizona's future in doubt. (2010, August 8). *Arizona Republic*, p. B8.
- Massey, D. S. (2007). *Categorically unequal—The American stratification system*. New York, NY: Russell Sage.
- Massey, D. S. (Ed.). (2008). *New faces in new places: The changing geography of American immigration*. New York, NY: Russell Sage.
- Mauer, M. (2006). *Race to incarcerate*. New York, NY: New Press.
- McDonald, W. (1997). Crime and illegal immigration: Emerging local, state, and federal partnerships. *National Institute of Justice Journal*, (232), 2-10.
- Meissner, D., & Kerwin, D. (2009). *DHS and immigration: Taking stock and correcting course*. Washington, DC: Migration Policy Institute.
- Mendelson, M., Strom, S., & Wishnie, M. (2009, February). *Collateral damage: An examination of ICE's fugitive operations program*. Washington, DC: Migration Policy Institute.

- Money, J. (1999). *Fences and neighbors: The political geography of immigration control*. Ithaca, NY: Cornell University Press.
- Morales, D. I. (2009). *In democracy's shadow: Fences, raids and the production of migrant illegality* (Legal Studies Research Paper Series No. 1068). Madison: University of Wisconsin Law School.
- National Conference of State Legislators. (2011). *2010 Immigration-related laws and resolutions in the states (January 1-December 31, 2010)*. Retrieved from <http://www.ncsl.org/default.aspx?tabid=21857>
- Nevins, J. (2002). *Operation gatekeeper—The rise of the “illegal alien” and the making of the U.S.–Mexico boundary*. New York, NY: Routledge.
- Nevins, J. (2003). 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, 171-190.
- Ngai, M. (2004). *Impossible subjects: Illegal aliens and the making of modern America*. Princeton, NJ: Princeton University Press.
- Nguyen, T. (2005). *We are all suspects now: Untold stories from immigrant communities after 9/11*. Boston, MA: Beacon Press.
- Olivas, M. (Ed.). (2006). *Colored men and hombres aquí: Hernandez v. Texas and the emergence of Mexican American lawyering*. Houston, TX: Arte Público Press.
- Omi, M., & Winant, H. (1994). *Racial formation in the United States: From the 1960s to the 1990s*. New York, NY: Routledge.
- Passel, J. S. (2006, March 7). *The size and characteristics of the unauthorized migrant population in the U.S.: Estimates based on the March 2005 Current Population Survey*. Washington, DC: Pew Hispanic Center.
- Passel, J. S., & Cohn, D. (2010). *U.S. unauthorized immigration flows are down sharply since mid-decade*. Washington, DC: Pew Research Center.
- Peterson, R. D., Krivo, L. J., & Hagan, J. (2006). *The many colors of crime: Inequalities of race, ethnicity, and crime in America*. New York, NY: New York University Press.
- Provine, D. M. (2007). *Unequal under law: Race in the war on drugs*. Chicago, IL: University of Chicago Press.
- Reid, L. W., Weiss, H. E., Adelman, R. M., & Jaret, C. (2005). The immigration-crime relationship: Evidence across U.S. metropolitan areas. *Social Science Research*, 34, 757-780.
- Sanchez, G.J. (1997). Face the nation: Race, Immigration, and the Rise of Nativism in late twentieth century America. *International Migration Review*, 31, 1009-1030.
- Shahani, A., & Greene, J. (2009, February). Local democracy on ICE: Why state and local governments have no business in federal immigration law enforcement. *Justice Strategies*, p. 2.
- Sidanius, J., Levin, S., Van Laer, C., & Sears, D. O. (2008). *The diversity challenge: Social identity and intergroup relations on the college campus*. New York, NY: SAGE.
- Singer, A., Hardwic, W. S., & Brettell, C. (Eds.). (2008). *Twenty-first century gateways: Immigrant incorporation in suburban America*. Washington, DC: Brookings Institution.
- Theiss-Morse, E. (2009). *Who counts as an American? The boundaries of national identity*. New York, NY: Cambridge University Press.

- Tolbert, C. J., & Hero, R. E. (1996). Research notes: Race/ethnicity and direct democracy: An analysis of California's illegal immigration initiative. *Journal of Politics*, 58, 806-818.
- Transactional Records Access Clearinghouse. (2010). *Current ICE removals of noncitizens exceed numbers under Bush administration*. Retrieved from <http://trac.syr.edu/immigration/reports/234/>
- Treat, J. (2001, July 1). Activists: Deaths in Arizona Desert Could Have Been Avoided. *Borderlines*, 79(9), 6.
- United States. v. Brignoni-Ponce, 422 U.S. 873, 886-87 (1975).
- Varsanyi, M. (2010). *Taking local control: immigration policy Activism in U.S. cities and states*. Stanford, CA: Stanford University Press.
- Walker, S., Spohn, C., & DeLone, M. (2004). *The color of justice* (3rd ed.). Belmont, CA: Wadsworth.
- Weissman, D., Parker, K., & Headen, R. (2009, February). *The policies and politics of local immigration enforcement law*. Chapel Hill: American Civil Liberties Union of North Carolina and Immigration and Human Rights Policy Clinic.
- Winant, H. (2006). Race and racism: Towards a global future. *Ethnic and Racial Studies*, 29, 986-1003.
- Zúñiga, V., & Hernández León, R. (Eds.). (2005). *New Destinations: Mexican Immigration in the United States*. New York, NY: Russell Sage.

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