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# Voices of Latino/a Immigrants in Southeast Michigan: Beyond the Criminal/Victim Dichotomy

Maya Barak

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Voices of Latino/a Immigrants in Southeast Michigan: Beyond the Criminal/Victim  
Dichotomy

by

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Eastern Michigan University

in partial fulfillment of the requirements

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## ABSTRACT

Following humanitarian, social justice, and labor organizing traditions that readily incorporate Latino immigrants' voices into their work, and drawing upon postmodern, feminist, and activist schools of thought, this study illuminates the history of immigration policy and discourse in America and the Latino community's knowledge and expertise about life as an undocumented Latino immigrant in Southeast Michigan. The development of increasingly restrictive immigration policies is traced, paying special attention to the adaptation of a criminal justice/enforcement models to the realm of immigration control and the concurrent criminalization of undocumented immigrants. The effects of current immigration and immigrant-specific policies on criminal offenses committed by, with, and against Latin American immigrants are explored. Offenses are examined using a status-driven offense typology. Ultimately, it is argued that current immigration and immigrant-specific policies are criminogenic and must be reformed if the United States desires to reduce status-driven offending and victimization.

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## CHAPTER 1: INTRODUCTION

U.S. immigration policy is complicated. It involves political and ideological divides, countless interest groups, and ever-changing laws that even immigration lawyers struggle to keep up with. Of course, this is all rather obvious, yet it is still worth emphasizing as the numerous complexities of immigration are often left out of media and policy debates. Also absent from mainstream immigration conversations is the criminalization of immigrants, a trend that has dominated immigration policy since the 1980s. This trend is twofold and includes (1) the securitization and militarization of the U.S.-Mexico border and increasing interior enforcement, and (2) the incorporation of criminal justice/enforcement models into the framework of U.S. immigration and immigrant-specific policy. Treating immigrants as criminals has serious consequences from both a legal and social standpoint. Legally, immigrants are constrained by the framework of immigration policy and operate within a second-class status. Socially, the criminalization of immigrants influences how nonimmigrants interact with immigrants, as well as how immigrants interact with each other. Overall, the criminalization of immigrants perpetuates the “criminal alien” narrative and greatly influences immigrants’ daily lives, both encouraging and facilitating criminal activity.

Although immigration legislation does not explicitly single out specific immigrant groups, this criminalization takes an especially heavy toll on Latino immigrants. First, many of these policies are spatially-centered at the U.S.-Mexico border. Increased militarization of the southern border as compared with a near-complete lack of security/enforcement on the U.S.-Canada border implies a clear anti-Mexican or anti-Latin American bias. Other policies indirectly target Latino immigrants *vis a vis* their implementation. The prevalence of Immigration and Customs Enforcement raids on businesses employing large numbers of



Latino workers, several Supreme Court rulings upholding the validity of highway checkpoints targeting drivers and passengers that appear “Mexican,” and the fact that Latinos—especially Mexicans—make up a disproportionate percentage of ICE detentions and deportations is a testament to this (Bacon 2008; Hing 2004; Schrag 2010; United States Immigration and Customs Enforcement 2004; Office of Immigration Statistics 2010).

While the singling out of specific immigrant groups is nothing new, Latin American immigrants, and especially Mexicans, have experienced severe discrimination for more than a century and have borne the brunt of criminal stereotyping since the 1930s (Schrag 2010). It was at this point that news media, politicians, and the nearly-defunct federal Bureau of Narcotics used sensationalized images and testimony about marijuana-crazed Mexican criminals to pass the Marijuana Tax Act, making marijuana illegal (*Op. cit.*). This image was layered upon the already tarnished reputation of Mexicans, who had typically been thought of as extraordinarily violent in light of the rather bloody Mexican Revolution two decades earlier. To this day Mexicans and many other Latinos have been unable to shake such unfounded stereotypes.

In his groundbreaking study of Latino violence, *Latino Homicide: Immigration, Violence, and Community*, Ramiro Martinez Jr. argues that the most prevalent image of Mexicans in popular culture has consistently been that of the violent bandit or “bandito,” later represented as the “criminally inclined [x] zoot-suit-wearing gang member” and most recently (re)presented as the young gangbanger (2002). Citing authors such as Diego Castro and Alberto Mata, who have also examined the criminal Latino myth, Martinez emphasizes that popular media has solidified the image of the violent Latino in Americans’ minds. For example, Martinez highlights films such as *Scarface*, *Colors*, *American Me*, *Carlito’s Way*,

and *Traffic* as just several media portrayals of the “criminally inclined” Latino. Nearly ten years later, his argument still holds. The list of movies and television shows with plot lines that center around the tatted-up Mexican gangbanger or the Colombian drug lord with a thick Spanish accent has only grown. This is especially true of popular action films and shows set in Miami, such as *2 Fast 2 Furious* (2003), *Bad Boys II* (2003), *Miami Vice* (2006), *CSI Miami* (2002-present), *Burn Notice* (2007-present), and *Nip/Tuck* (2003-2006), all of which have had plot lines with prominent Latino villains.

To no one’s surprise, the image of the criminal Latino dominates much of the current immigration discourse and is inextricably linked to conceptions and misconceptions about unauthorized immigration and crime. As Rumbaut points out, “the perception that foreign-born, especially ‘illegal aliens,’ are responsible for higher crime rates is deeply rooted in American public opinion and is sustained by media anecdote and popular myth” (2008:1). Anti-immigrant proponents often credit floods of undocumented Mexicans with increasing U.S. crime rates despite the fact that crime has been declining in the United States since the ‘90s. This notion is further exacerbated by movies, television, and media coverage of singular events that depict immigrant communities as plagued by criminal elements (Rumbaut 2008). Furthermore, Ngai points out that “Mexicans [have] emerged as iconic illegal aliens,” and that “illegal status [has become] constitutive of a racialized Mexican identity and of Mexicans' exclusion from the national community and polity” (Ngai 2003). Along these lines, any and all Spanish-speaking immigrants are often lumped together as “Mexicans,” “wetbacks,” or “illegals” and are presumed to engage in a vast assortment of crime.

Yet is this image valid? Furthermore, is the criminalization of immigrants—specifically Latin American immigrants—justified? In other words, are Latino immigrants simply crime prone? Should they be treated like criminals and kept out of or removed from the United States whenever possible? Existing research does not support this conclusion.

The authors of historical works on immigrants and crime have often hypothesized all the reasons why immigrants should be more crime-prone than native-born folks. Many have argued that factors associated with crime, like acculturation stress, community disorganization, poverty, a high concentration of young males, and group conflict are extremely prevalent among immigrant communities and would be suggestive of high crime rates. For instance, Thorsten Sellin (1938) and Edwin Sutherland (1947) both made the claim that immigrant groups had “cultural predispositions” to certain types of crimes. Yet despite claims of immigrants’ criminal inclination, a thorough examination of immigrant offending paints a different picture. In fact, numerous studies documenting the relationship between immigrants and crime have long shown that immigrants are not nearly as crime-prone as native-born Americans, and in some instances, may actually lower crime rates.

Beginning in the early 20th century, evidence began to surface that negated the criminal immigrant myth. As early as 1901, the U.S. Industrial Commission reported foreign-born whites to be less criminal than native-born whites (Tonry 1997:21). Ten years later, the 1911 Immigration Commission not only found that rising immigration had not increased U.S. crime rates, but also noted that immigrant presence may have suppressed crime (*Op. cit.*). Subsequent studies throughout the 20th century have arrived at similar conclusions.

The National Commission on Law Observance and Enforcement's *Report on Crime and the Foreign Born*, commonly referred to as the Wickersham Commission or Report, is one of the most prominent early studies of immigration and crime. Published in 1931, the report found no demonstrable link between immigrants and crime, noting that "in proportion to their respective numbers, the foreign born commit considerably fewer crimes than the native born" (1931:400). Furthermore, while it did find that some immigrant groups were disproportionately involved in specific types of crime (perhaps lending support to the aforementioned claims of both Sellin and Sutherland), the study showed that the overall crime rates of Mexican immigrants were proportionate with their population size (Martinez 2002:23).

In *Juvenile Delinquency and Urban Areas*, Clifford R. Shaw and Henry D. McKay came to a similar conclusion. In their study of Chicago delinquency, the pair noted that foreign-born and natives, recent immigrant nationalities and older ones, exhibited similar delinquency rates (Shaw & McKay 1969). They also found that certain areas had consistently high rates of delinquency regardless of the immigrant group living there and that as immigrants moved into "better" neighborhoods their delinquency rates fell (*Op. cit.*). Overall this suggests that neighborhood characteristics, not immigrant composition, are linked to crime.

More recent studies replicate such findings. For example, in "Cross-City Evidence on the Relationship Between Immigration and Crime," Kristen F. Butcher and Anne Morrison Piehl lay out four avenues by which immigrants may impact the criminal justice system: 1) immigrants may be more likely to commit crimes than natives or commit more costly crimes than natives; 2) immigrants may negatively impact native's opportunities by "taking jobs" or

“overburdening” the welfare system, causing natives to commit more crimes; 3) immigrants may be more likely to be apprehended than natives; and, 4) immigrants may serve longer terms than natives. Exploring the first two possible impacts, the pair claimed that if either were true, crime rates should be higher in areas with high immigration concentrations controlling for all other factors.

Overall, Butcher and Piehl found that although cities with high crime rates have large populations of immigrants, controlling for the demographic characteristics of the cities reveals that immigrants have no effect on crime rates and that foreign-born youth are significantly less likely than native-born youth to be criminally active (1998). In addition, drawing on the National Longitudinal Survey of Youth (NLSY), the study also revealed that immigrants are less likely than native-born youth to report engaging in criminal activity, being stopped by the police, being arrested by the police, and being convicted of a crime—and controlling for demographic characteristics only further reinforced this finding (*Op. cit.*). Perhaps most interesting of all, Butcher and Piehl argued that immigration might actually lower the rates of native-born victimization as “new immigrants have characteristics that place them at high risk of victimization” and they quite possibly take the place of would-be native-born victims (1998:497).

In accordance with Butcher and Piehl’s findings, James Climent notes that immigration-related arrests, not arrests for property or violent offenses, dominate immigrant interaction with the criminal justice system (2001). He cites Bureau of Justice Statistics data that show that more than half of all noncitizen arrests from 1984-1994 were for immigration offenses (2001:680). What is more, these same reports show that in 1994, only 1.4% of noncitizen arrestees were charged with violent crimes, compared with 8.5% of citizens in

federal court (*Op. cit.*). However, Climent does not neglect to include the criminal underground of human smuggling from his analysis of immigration and crime, noting immigrant involvement in organized crime and pointing out that a small number of immigrants do extend organized crime networks from their native countries to the U.S. (*Op. cit.*). He concludes by arguing that criminal activity is not unique to immigrants, but emphasizes that immigration policies inextricably link immigration and crime by making unauthorized immigration extremely profitable and by supplying an exploitable labor force to the U.S (*Op. cit.*).

A 2008 study by the nonpartisan Public Policy Institute of California explored immigrant impacts on the criminal justice system not addressed in the Butcher and Piehl study. Researchers found that the national incarceration rate of native-born Americans was 813 for every 100,000, while the incarceration rate of the foreign-born was a mere 297 for every 100,000 (Schrag 2010:196). Although incarceration rates are not necessarily indicative of actual offense rates, the nearly 3:1 ratio of native to foreign-born incarceration supports research that places immigrant offending at lower-than-native levels. A 2011 United States Chamber of Commerce report came to similar conclusions, stressing that among young men, incarceration rates are the lowest for immigrant men, “even for the Mexicans, Salvadorans, and Guatemalans, who comprise the majority of the undocumented population” (U.S. Chamber of Commerce 2011). Furthermore, the report noted that while America’s immigrant population nearly doubled and the number of undocumented immigrants tripled between 1990 and 2009, the national violent crime rate dropped by 41% and the property crime rate nearly mirrored this drop at 40% (*Op. cit.*). Finally, the Chamber of Commerce report emphasized that the 1994 U.S. Commission on Immigration Reform and a number of

community-level studies in cities with large immigrant populations all came to this same conclusion more than a decade earlier.

Ruben G. Rumbaut also arrived at similar conclusions in his in-depth look at undocumented immigration and crime. Using FBI crime data as well as the National Crime Victimization Survey, he found that during the '90s when America experienced unprecedented rates of growth in both the Hispanic and undocumented immigrant populations, U.S. crime rates fell significantly at the national level. This drop occurred most notably within cities with high immigrant concentrations and large numbers of undocumented immigrants (2008:7). Furthermore, he noted that although Mexican immigrants display demographic characteristics similar to incarcerated Americans—predominantly young, less educated and male—and thus would be expected to exhibit higher rates of offending, they have among the lowest offense rates alongside Salvadorans and Guatemalans (2008:8). Perhaps even more astonishing, Rumbaut found that native-born high school graduates had a higher rate of incarceration than foreign-born non-high school graduates (*Op. cit.*). This is a quite unusual finding considering that studies of U.S. incarceration tend to find that education has a negative impact on incarceration, meaning that the less educated have a higher chance of winding up in jail or prison. Finally, like many researchers before him, Rumbaut emphasized that “Americanization,” or the assimilation of second and third generation immigrants into American society, increases the risk of criminal activity and involvement with the criminal justice system (see also: Martinez 2002). Hence it is only when the criminal tendencies of American society are absorbed by the children of immigrants that those with immigrant heritages begin to exhibit crime rates mirroring

“Americans.” Overall, Rumbaut’s work supports the claim that immigrants, including Latino immigrants and the undocumented, are less crime-prone than native-born Americans.

Rumbaut’s findings are to be expected when one examines the literature on Latino crime. There tends to be a general consensus among criminologists that Latino immigrants have lower crime rates than the native-born folks and that overall Latino crime rates rank between those of native whites and blacks. Many studies that have examined the Latino-crime relationship have focused on Latino homicide rates, as these tend to be indicative of overall violent crime rates. Nearly all such studies have found Latino homicide rates to fall between those of whites and blacks for more than half a century (Martinez 2002). For example, using Houston homicide data from 1960, Alex D. Pokorny found both Latino homicide victim and offender rates to be between native white and black rates, being twice those of whites but a third less than blacks (1965). These findings were expanded by Margaret Zahn in her 1987 examination of Anglo, Black, and Latino homicide in 9 major U.S. cities. Overall, she, too, found that Latino victim and offender rates fell between those of whites and blacks (Zahn 1987).

While it is common for Latino crime studies to focus on cities with large Latino populations, Miami has been an especially popular comparison point when examining Latino crime, homicide, and the impacts of immigration on crime. This makes sense as the city has experienced several consecutive Latino immigrant waves—including a substantial number of Cubans and Nicaraguans—and continues to be a magnet for Latino immigration to this day. Overall, this research is in line with general findings on immigrants and crime.

In one study using Dade County data from 1980, William Wilbanks found that while Latinos made up the majority of homicides in Miami, they were not overrepresented relative



to population size (1984). Furthermore, he noted that Latino homicide rates fell between those of native whites and blacks (*Op. cit.*). In line with Wilbanks' research, a 1998 study of the impacts of immigration on Miami homicides by Martinez and Lee found that by the mid-1980s, Miami's Latinos and Haitians were actually underrepresented in homicide relative to group size and that, in some cases, they exhibited lower homicide rates than native-born whites (1998). Another examination of Miami homicides by Martinez and Lee found that Mariel Cubans—immigrants often credited in the media with increasing violent crime in Miami—actually tended to have lower homicide rates than native whites, explicitly refuting any stereotypes to the contrary (Martinez & Lee 2000).

More recently, researchers have begun comparing Latino crime across cities. Using crime data from five cities with large populations of native-born and immigrant Latinos—Chicago, El Paso, Houston, Miami, and San Diego—Martinez found that for all years between 1980-1995, Latinos had consistently lower homicide rates than native-born blacks in nearly all cases (2002). Furthermore, he revealed that recent immigration was unrelated to Latino homicide in four of the five cities examined (*Op. cit.*). El Paso provided the only exception, where to the surprise of many, recent immigration was actually associated with a lowering of homicide rates (*Op. cit.*).

Several other studies examining Latino crime have exposed the impact of neighborhood context on crime rates. For example, using data from 1979-1981, Rosenwaike and Hempstead showed that while recent Puerto Rican immigrants in New York City had high homicide rates, those living elsewhere had rates comparable to native whites (1990). Similarly, in examining the impact of immigration on serious youth crime in three California cities with large Latino populations, Alaniz, Cartmill, and Parker found that immigration was

not related to youth violence, noting instead that the number of alcohol outlets in an area was one of the largest contributors to crime (1998). Both studies suggest that neighborhood characteristics—not immigrant composition—impact area crime levels.

Taking such findings a step further, Martinez has even made the claim that Latino immigrant communities can and often do act as buffers against crime. He came to this conclusion after finding that urban Latino immigrant communities have lower homicide rates than urban black communities despite being equally impoverished (2002). In explaining this phenomenon, Martinez highlights several points. First, Latinos are poor but working. Moreover, despite finding work in predominantly low-paying service sector jobs, Latino immigrants often view U.S. job opportunities as substantially better than those in their home countries—a twist, he explains, on relative deprivation. Finally, many such jobs can be found in ethnic enclave communities and serve to connect new immigrants to older generations and native-born Latinos. In essence, new immigrants see themselves as much better off in the United States and, through their daily link to older immigrant groups, remind older folks how difficult life was and still is in their native lands. All in all, Martinez argues that the relative social integration of Latino communities causes their homicide rates to be lower than those of their black counterparts despite similar crime-inducing circumstances.

One notable exception to the general Latino immigrant-crime relationship is the notorious Mara Salvatrucha gang, often referred to as MS-13. With roots in the barrios of Los Angeles, this gang was originally made up of young male immigrants from El Salvador, Guatemala, and Honduras who had been brought to the United States—many illegally—by their parents escaping civil war (Arana 2005). Over the years, MS-13 grew to include a large number of first-generation Central Americans with similar family backgrounds as the gang's

founders (*Op. cit.*). The combination of “tough on crime” policies and gang crackdowns in California with IIRIRA immigration reforms in 1996 led to the imprisonment and eventual deportation of thousands of presumed MS-13 members over the past 15 years (*Op. cit.*). Unfortunately, this actually strengthened the gang, and it developed powerful transnational networks that control much of the human and drug smuggling from Central America into the United States. Today, many deported gang members have returned to the United States illegally, bringing with them numerous immigrant recruits and expanding MS-13’s network to the East Coast (*Op. cit.*). MS-13 is currently believed to operate in at least 42 states, with between 6 and 10 thousand members in Washington D.C. alone, and is one of the most violent gangs in the U.S. (FBI 2008). A thorough analysis of MS-13 would ideally include an examination of the effects of civil war on individual and group violence, an exploration of and comparison with other Los Angeles and U.S. gangs, and a socio-historical understanding of the political relationships between the United States and Central American nations; however, this is far beyond the scope of this project.

Despite a few exceptions like MS-13, as Martinez succinctly sums up, “The major finding of a century of research on immigration and crime is that while immigrants occasionally displayed tremendous variations across time and place in their criminal involvement, contrary to popular opinion they nearly always exhibit lower crime rates than native groups” (2002:22). Furthermore, in many cases immigrants appear “more able to withstand crime-facilitating conditions than native groups” (Martinez 2002:31). As we have seen, this applies both to Latino immigrants and the undocumented. Yet the story of Latin American immigrants’ experiences with the “illegal” cannot be simplified to this extent. Latin American immigrants are neither sinners nor saints. Instead, like most people, they

engage in networks and interactions that often blur the line between legal and illegal. Unlike most people, however, immigrants' experiences with the illegal are often driven by their status as immigrants *vis a vis* the way the criminalization of immigrants shapes and constrains their lives. More to the point, I argue that immigration and immigrant-specific policies encourage and facilitate status-driven civil and criminal offenses committed by, with, and against Latin American immigrants.

This argument should not be surprising when one places immigrant status among the many other statuses, labels, or categorical definitions—social or legal—that influence our lives. Like race, gender, or age, immigration status also shapes one's life experiences, both real and imagined. It not only carries legal meaning as one is legally included or excluded from various aspects of American society depending on this status, but it has significant social connotations as well. Hence laws that govern what immigrants can and cannot do, as well as the social meanings attached to being an immigrant, determine the range of interaction, both legal and illegal, in which Latin American immigrants participate. Furthermore, both actual immigration status and perceived immigration status shapes how others—including immigrants and nonimmigrants alike—interact with Latino immigrants.

Since current immigration and immigrant-specific policies are extremely restrictive and often criminalize Latino immigrants, this sets the tone both legally and socially for increased status-driven offending and victimization if just one of four possible tenets is true: 1) immigration and immigrant-specific policies *actually* deny Latino immigrants the ability to perform or participate in certain “daily” activities through legal means, leading them to adapt *vis a vis* illegal means; 2) Latino immigrants *perceive* that immigration and immigrant-specific policies deny them the ability to perform or participate in certain “daily” activities

through legal means, leading them to adapt *vis a vis* illegal means; 3) Latino immigrants are vulnerable to victimization because immigration and immigrant-specific policies *actually* deny them equal protection from victimization; or, 4) Latino immigrants are vulnerable to victimization because immigration and immigrant-specific policies are *perceived* to deny them equal protection from victimization by victimizers and/or victims.

More than proving this connection between immigration policy, status, and crime, however, this study aims to uncover the specifics of status-driven immigrant offending and victimization. Do specific policies engender crime or does the overall tone set by such policies create an environment within which the crimes and victimizations of Latino immigrants are rationalized? In other words, do policies place real constraints on immigrants that lead to offending and victimization? Under what circumstances do Latino immigrants offend? Are these offenses victimless? How does this look in the workplace as compared with the home? What is the underlying motivation for these offenses? Under what circumstances are Latino immigrants victimized? Who are the victimizers—other Latino immigrants or American-born citizens or a mixture of both? To whom, if anyone, do those who had been victimized turn to for support? How common are offending and victimization in Latino immigrants' lives? Are they simply a part of the daily grind or are they actually anomalous occurrences?

In answering these questions, I explore the nature of immigrants and crime from an untouched perspective. I am not interested in non-status-driven illegal activities of Latino immigrants, such as theft, assault, or murder. As previously noted, Latino immigrants do not have higher crime rates than native-born folks and, in fact, tend to have lower crime rates. What I am interested in are those criminal activities for which immigration status is a

determining factor. For example, this might include theft of social security numbers or identity fraud for employment purposes; domestic violence sustained through threats of deportation; or wage theft that targets immigrant workers purely because they are undocumented. I hold that such crimes actually add significantly to criminal activity within the United States, although in most cases the harm being done is not to the average American citizen, as pundits and politicians would like us to believe, but instead falls on Latino immigrants, specifically those who are undocumented.

In commenting on the state of literature on immigration and crime, Ruben G. Rumbaut notes that, for the most part, “immigration scholars [have] focused on the incorporation of the latest waves of newcomers, [and] have all but ignored the areas of crime and imprisonment...[and] criminologists in turn have paid no attention to the surge in immigration” (2008:5). Surprisingly, while there exists much research about immigrant identity, immigrant communities, undocumented immigration, immigrants and labor, and immigrants and crime in the traditional sense, research on the complexities of the immigration-crime story is conspicuously absent. Specifically, no existing study examines the civil and criminal offenses that spring up, in part, due to Latin American immigrants’ second-class status from a holistic, interdisciplinary perspective. Furthermore, little research has incorporated the actual voices of undocumented Latin American immigrants, let alone the voices of Latin American immigrants in general, into an analysis of immigration and lawbreaking. This is a crucial shortcoming of existing immigration and criminological literature.

Taking heed from the humanitarian, social justice, and labor organizing traditions, all of which readily incorporate the voices of Latino immigrants into their work, and drawing

upon lessons from postmodern, feminist, and activist schools of thought, this study illuminates both the history of immigration policy and discourse in America as well as the Latino community's knowledge and expertise about life as an undocumented Latino immigrant in Southeast Michigan. First, I trace the development of increasingly restrictive immigration policies in the United States, paying special attention to the adaptation of a criminal justice/enforcement models to the realm of immigration control and the concurrent criminalization of undocumented immigrants. Then, based upon an analysis of 12 in-depth interviews, I explore how current immigration and immigrant-specific policies encourage and facilitate civil and criminal offenses committed by, with, and against Latin American immigrants as the specific result of their immigration status. Ultimately, I argue that the current state of immigration in America actually increases the proliferation of crime by creating a vulnerable immigrant underclass and hold that progressive immigration reform, including some type of legalization for America's nearly 13 million undocumented immigrants, is necessary in order to curb these offenses.

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## CHAPTER 2: METHODS

Mainstream criminologists and immigration scholars have yet to thoroughly explore the relationship between immigration policy, status, and crime. Furthermore, while there is much literature on the securitization and militarization of the U.S-Mexico and a fair amount of literature on the adoption of a criminal justice/enforcement model within the realm of immigration control, research has yet to link these two phenomena to the production of crime. In addition, while it has been thoroughly documented that immigration enforcement is biased towards immigrants of Latin American descent, the effects of such skewed enforcement on crime have been ignored (*see* Bacon 2008; Hing 2004; Schrag 2010; United States Immigration and Customs Enforcement 2004; Office of Immigration Statistics 2010).

Instead, alongside popular media, securitization and criminalization have perpetuated the image of Latino immigrants—especially Mexicans—as violent criminal aliens (*see* Martinez 2002; Rumbaut 2008). This image continues to exist despite that fact that the majority of scholarly work has shown immigrants to be no more criminal than native-born folks and, in fact, less criminal in many cases (*see* Butcher & Piehl 1998; Shaw & McKay 1969; Tonry 1997). Furthermore, immigrants may even suppress crime (Martinez 2002; Tonry 1997). This has also been proven true for Latino immigrants on the whole (*see* Martinez 2002; Martinez & Lee 2000; Rosenwaike & Hempstead 1990; Rumbaut 2008; Pokorny 1965; Wilbanks 1984; Zahn 1987).

Yet crimes involving Latino immigrants cannot be simplified to this extent. The criminalization of immigrants has serious consequences and actually encourages and facilitates criminal activity by, with, and against Latin American immigrants. This suggests that although Latino immigrants may not commit more crimes than native-born Americans,

the crimes they do become involved with are often inextricably linked to their immigration status. To fully explore this relationship, however, it is necessary to create a composite frame of analysis and methodology from across several disciplines.

#### DEVELOPING AN IMMIGRANT OFFENSE TYPOLOGY FOR STATUS-DRIVEN CRIME

Research within the fields of criminology, anthropology, sociology, and applied social justice examines immigration policy, undocumented immigration, and crime in a rather fragmented way. First and foremost, the discussion of undocumented immigrants and crime is conspicuously absent from most criminological work. This includes the work of critical, comparative, and global criminologists who examine both nontraditional crimes and crime in nontraditional ways including topics such as crimes of the powerful/powerless, white collar or corporate crime, environmental crime, human rights crime, state crime, nonviolence, peacemaking criminology, animal rights criminology, the construction of crime and criminals from both legal and social standpoints, and so on.

Furthermore, research that does address the immigration policy-crime connection or the undocumented immigrant-crime connection tends to do so from a social justice or human rights perspective. For instance, such writings detail ever-tightening immigration restrictions and document immigrant rights abuses at the hands of Border Patrol or Immigration and Customs Enforcement. Or perhaps they document increasing migrant death tolls at the border or acts of violence against immigrants and the expansive underground economy involved in moving such migrants. In other cases they explore the labor exploitation of undocumented immigrants in America's restaurants, factories, and fields. While an

important contribution to the field of knowledge on immigration, this research suffers from two shortfalls.

First, it fails to explore these occurrences using a criminological framework. All of the aforementioned actions can and *should* be framed as criminal. Abuse of immigrant rights can be unpacked as excessive use of force, failure to comply with federally mandated detention and removal standards, and, in some cases, rape, assault, or even murder. Racially/ethnically motivated violence against immigrants becomes hate crime. The underground economy at the U.S.-Mexico border responsible for the unauthorized immigration of millions can be seen to include a whole host of crimes from human trafficking to extortion to fraud. Labor exploitation often translates to discriminatory wage and hiring practices, wage theft, or the failure to comply with health and safety standards mandated by the Occupational Safety and Health Administration. Shall we not also include the hiring of someone without permission to work, which is yet another crime? Thus the major critique here is that researchers are writing prolifically on the immigration-crime connection but are failing to recognize it as such.

The second shortfall is that the majority of this research almost completely ignores immigrant offending, and when it is acknowledged, it is never labeled as crime and never discussed within a criminological context. Perhaps this is due to a desire to disassociate undocumented immigrants from their existing criminal stigma. As such, the failure to report on immigrant offending may be a conscious effort to refute the unjustified criminal-immigrant stereotype, a just, yet perhaps misguided, endeavor. On the other hand, this may just be because few criminologists have picked up the subject, and researchers and social

justice workers in other fields are not comfortable borrowing from or adopting a criminological standpoint.

But immigrants *do* offend. Not only do they offend, most undocumented immigrants offend every day and their offending is *directly linked* to their immigrant status. Again, the concern is not violent or property crimes because the introduction to this study reviewed research on how immigrants—including Latino and undocumented immigrants—tend to have lower offending rates than native-born Americans when discussing “traditional” crime. Rather, the crimes referred to are crimes that are derived from immigrants’ status. In other words, the motivating factor behind these crimes is immigrants’ immigration status, and were it not for this status, there would exist no motivation to offend in such a manner.

For example, many undocumented immigrants obtain work by using false SSNs or other identity documents. In immigration literature, this is typically cast as one of life’s necessities for the undocumented who are unfairly denied legal permission to work, making them susceptible to exploitation. Is it unjust to deny immigrants permission to work? Many would say yes and there are strong arguments to support this conclusion. Does a lack of legal work permission make immigrants more susceptible to exploitation? Yes it does; this has been extensively documented (*see* Bacon 2008; Thompson 2010). However, neither of these points changes the fact that most immigrants commit identity fraud to obtain work, and identity fraud is a crime.

Driving provides another example. Until recently, most states did not require proof of valid residency in the United States to obtain a driver’s license. This allowed even undocumented immigrants to take a driving test and receive a driver’s license. Now most states require a valid SSN, U.S. passport, American birth certificate, or Green Card

(permanent resident card) to obtain a drivers license. Without one of these proofs, many undocumented immigrants choose to drive without a license. While unlicensed driving is discussed as a negative consequence of immigrant-specific policy, it is rarely labeled a crime, but it *is*.

Such immigrant offending cannot be cast aside or covered up for fear of tarnishing the already sullied reputation of undocumented immigrants. Without examining immigrant offending, in addition to immigrant victimization, we cannot fully understand the ways immigration policy and status influence crime. Similarly, we cannot address the negative and often harmful consequences of existing immigration policy without fully understanding this relationship. This is extremely important because if, as I argue, current immigration and immigrant-specific policies actually encourage and facilitate crime—whether immigrants are the offenders or victims—it is worth considering policy alternatives.

## GROUNDING THE PROJECT

Grounded in the traditions of post-modern, feminist, and participatory research, this project intends to fill a glaring hole in the realms of both immigration and criminological knowledge by examining offender and victim patterns linked to the immigration status of Latino immigrants. The analysis of 12 in-depth, semi-structured interviews on immigration and crime serve as the crux of this study. By exploring how immigration policy and immigrant status impacts crime through the words of Latino immigrants themselves, I aim to bring a new level of clarity and realism to analysis of this topic. In short, this project aims to personalize immigration policy and its impacts, two things that often appear rather intangible and distant for many people.

By attempting to personalize the political, I reject traditionally held research norms of objectivity, distance, and absolutes as the markers of rigorous knowledge production. Instead, throughout this project I embrace subjectivity, the breaking down of barriers between “researcher” and “participant,” and nuances of relativity. In essence, while I put this project in motion, participants and current events pulled me through to the project’s completion.

On the note of subjectivity, I want to briefly discuss my time spent as a community organizer with a local worker center predominantly serving the Latino community, one of the major catalysts that sparked this research. In addition to relating my experience as an organizer as a prelude to the actual research, it also signifies my awareness and acceptance of potential biases that may be present; as many feminist and activist researchers have noted, acknowledging and incorporating one’s standpoint into one’s projects is crucial as this is what shapes the activist research from the beginning (Villalon 2010).

I embrace my experience as an organizer and do not view it as a handicap in anyway. Working with the local center, I was exposed to the elaborate, and often harsh, realities of immigrant life in Southeast Michigan. Day after day I heard stories of exploitation, extortion, and maltreatment—granted, I worked for one of the few Latino-focused support organizations in the area. People also spoke of daily troubles and minor headaches related to being an immigrant in the United States, along with coping strategies that sometimes flirted with or blatantly crossed into the illegal. It became clear that, at least for many local Latin American immigrants, life was often a mix of successes and failures, good fortune and victimization, and attempts to get by—all of which frequently involved the illegal.



Moreover, I was inundated with critical theories of race and labor relations, as well as strategies for community collaboration, advocacy, and social justice at the local and international levels through which I could process and respond to what I observed and became entangled with. I participated in—and later coordinated—bilingual community dialogues, one-on-ones, and participatory research projects aimed at improving local labor conditions and immigration realities. Through this, I experienced the importance of collaborative ground-up knowledge production firsthand and learned valuable tactics for incorporating these philosophies into my own research. Furthermore, were it not for my organizing work, I would not have been granted such open access to the Latino community—especially as I, myself, am a white American-born citizen. First, it is quite possible that I would have remained somewhat oblivious to the offenses and victimization of Latin American immigrants as these are not always apparent to outsiders. Second, without my organizing and personal ties, it is unlikely that Latino immigrants would have been willing to discuss with me exactly what it is to be an immigrant in southeast Michigan. In essence, this project was made possible by my ties to both the Latino and social justice communities.

## PROJECT METHODS

It would be nearly impossible to thoroughly understand the current relationship among immigration policy, immigrant status, and crime without first exploring a history of U.S. immigration, immigration policies, and immigrant-specific policies, i.e., policies that target immigrants but do not form a part of the nation's immigration regulatory system. For instance, while introducing his book on the rise of social control and risk assessment responses to criminality in recent years, *Threat Perceptions: The Policing of Dangers from Eugenics to the War on Terrorism*, Saran Ghatak addresses this point:

...in order to understand [x] current policies it is important to situate these in a broader historical perspective...Michel Foucault has called [this] a ‘history of the present.’ Historical knowledge in this case is not just an exercise in uncovering facts about the past. Rather, the purpose of historical knowledge in this context is to show the tortuous ways in which certain ideas and concepts about criminality and social control have developed and influenced those of contemporary times... In order to assess the scientific, legal, and political ramifications of contemporary risk assessment techniques it is essential to see how past history weighs on the present...(Ghatak 2011:6)

From this perspective, it is near impossible to comprehend current political, social, or economic issues without understanding their origins and predecessors. This perspective can and should be applied to understanding the nexus of immigration and crime.

Hence the first half of this project is dedicated to establishing an immigration “history of the present.” Through a combination of historical research, policy analysis, and an examination of current immigration discussions in the media, I provide a socio-historic analysis of U.S. immigration and related policy from the days of the colonies onward. The majority of this analysis centers approximately around the past 150 years as immigration was nearly unregulated prior to this. This review emphasizes the impacts of nativism, xenophobia, racism, politics, international relations, labor, and capitalism in shaping immigration regulation, enforcement and control. It highlights the racialization of immigration policy, the progressive securitization of the U.S.-Mexico border and the nation’s interior, and the increasing criminalization of Latino immigrants. I also pay special attention to recent developments in immigration and immigrant-specific policy and the constraints such policies have placed on immigrants, especially the undocumented. Overall, based in

archival and secondary sources, this section provides the necessary contextual knowledge for linking immigration policy, status, and crime, which is the major task of the other half of this project.

The study's second half focuses on the fruits of 15 in-depth, semi-structured interviews with Latin American immigrants residing in Southeast Michigan, from which I examine immigration and lawbreaking as a social phenomenon *vis a vis* the individual realities of project collaborators (participants). Because unauthorized immigration is a sensitive and complex topic, because there is little existing information on the criminalization of undocumented immigrants at the individual level, and because undocumented immigrants are difficult to access, it would be extremely difficult to examine this phenomenon using quantitative methods. Moreover, one-on-one interviews are conducive to deep-level analysis that other methods cannot facilitate (O'Leary 2010). Using this method, participants can recount personal experiences and opinions in rich detail absent in quantitative measures or qualitative, structural-level analyses. Accordingly, a qualitative study of the daily lives of Latino immigrants employing flexible interviews to capture micro-level data will make a substantial contribution to existing literature on Latin American immigration.

As such, primary data were acquired through qualitative interviews and analyzed using both inductive and deductive approaches. In accordance with the philosophies of participatory research and critical/radical ethnography, participants were not merely data sources to be mined and discarded. Instead, they were project collaborators and experts of their experiences and communities. Participant insights and contributions are the driving force behind this research. As such, not once during the project process did I view myself as "expert researcher." Instead, I found myself experiencing the project as

an “inquisitive student” seeking to learn from participants. At the same time, I did not neglect my role in facilitating a comfortable flow of information while being cautious not to infuse the interview with personal biases/opinions. Ultimately, like Pierrette Hondagneu-Sotelo in *Domestica: Immigrant Workers Cleaning and Caring in the Shadows of Affluence*, a qualitative examination of immigrant household workers, I strived to “[enable] the voices” of research participants to be heard (2001:xxv). In other words, I wanted to create a space where people could speak for themselves.

Interviews were conducted with Latin American immigrants above 18 years of age currently residing in Washtenaw and Wayne Counties. I was confident that the average Latino immigrant, regardless of immigration status, would have knowledge about life as an undocumented Latino. This assumption was based on my experience as a community organizer with the local Latino community, during which the prevalence of mixed status families and social networks among Latino immigrants was made obvious. For example, children brought to the United States by their undocumented parents without authorization may have earned permanent residency or citizenship and then had citizen children of their own. Individuals may have undocumented parents or siblings living nearby. Latinos born in the U.S. may have married undocumented Latino immigrants. The possibilities for family structure and immigration status are endless. Furthermore, while a Latin American immigrant may not have any direct or indirect family members who are currently or were previously undocumented, it is likely that their expanded social network includes one or more undocumented Latino immigrants. Hence it seemed safe to assume that most Latino immigrants would have at least some

knowledge on the daily activities of undocumented Latino immigrants regardless of their own immigration status.

As it turned out, although participants were not asked about their immigration status, in the end, 11 participants alluded to or openly referenced their status as undocumented during the interview. The 12<sup>th</sup> participant openly discussed himself as documented. In fact, many participants discussed the limitations one faces as an undocumented Latino immigrant using personal experiences as examples. When participants did not directly reference personal experiences in responding to interview questions, they often shared the experiences of undocumented friends or coworkers. Hence despite not targeting undocumented participants, my population parameters fulfilled the project goals.

Because even many documented Latino immigrants have close family members or friends who are undocumented and in constant danger of deportation, Latino immigrant communities are tight-knit and somewhat closed-off to outsiders (Hondagneu-Sotelo 2001). Furthermore, Latino immigrants are unlikely to discuss topics related to immigration with people they do not trust. Taking this into consideration, I connected with participants using convenience and snowball sampling techniques. Both snowball and convenience sampling are nonprobability sampling techniques commonly used in field research (Babbie 2007). As Earl Babbie notes, these methods are most appropriate when working with members of a special population that are difficult to locate, including the homeless, migrant workers, or undocumented immigrants (Op. cit.). The basic concept behind both methods is to find study participants by asking key community members and individuals who have participated in the study to recommend potential

participants. Hence drawing on prior connections to the local Latino community, I tapped into key informants and community gatekeepers who could link me with people who met the population parameters (see O’Leary 2010). Participants were also asked if they knew anyone else who might be interested in being interviewed. By accessing participants through trusted family, friends, and colleagues who could vouch for me, participants were not only willing to be interviewed, but were able to trust me, increasing the likelihood of open, honest responses.

The downside to snowball and convenience sampling techniques is that they do not necessarily produce representative samples (O’Leary 2010), meaning that it is more difficult to assume that information gleaned from a study using these techniques applies to the target population as a whole. Although convenience and snowball sampling risk producing non-representative samples, generalizability was not as important as depth and complexity of information for the purposes of my research. In order to lessen any biases, such as a desire to provide answers expected to please the interviewer, I attempted to interview people with whom I had not previously had direct contact. Ultimately, of the 12 interviewees, I had prior contact with only two.

Most participants were recruited over the phone and had been suggested by my community informants or other participants. I always asked that referees checked with potential participants before giving me their phone numbers, and to the best of my knowledge, they always did. In addition, I was introduced to several participants by mutual friends and colleagues at community events.

During the participant recruitment process, all potential subjects were either shown an informed consent form or given the specifics of the form over the phone. I

made sure to explain: (1) the purpose of the study; (2) the confidentiality of any personal information collected; (3) participant anonymity; and (4) that participation was voluntary and that participants could refuse to discuss any topics or stop the interview at any time without any negative consequences. When scheduling interviews, participants' first names and phone numbers were recorded in my personal calendar, but I made no notes that connected participants to the study, making participants indistinguishable from any other names in my calendar.

Interviews always took place in a location of the participants' choosing. Generally, women were more inclined to do the interview in their home. Men tended to ask me to suggest a location, at which point I always suggested a coffee shop with a private area or alcove. I offered to buy participants a coffee or a snack when at a cafe, but not a single participant took me up on my offer. In fact, several participants insisted on buying my coffee.

Although interview participants were not involved in the development of interview questions, nor did they interview others, key community informants did assist in this process. Interviews were informal, semi-structured—i.e. flexible in nature—and included 12 of open-ended questions. The purpose of questions was not necessarily to solicit specific answers, but to encourage detailed, yet focused, conversation. Questions explored specific scenarios and hypothetical situations regarding certain activities Latino immigrants may or may not engage in [see Appendix A]. Overall, interview questions, scenarios, and examples were based upon a thorough review of relevant literature and my experiences, training, and knowledge gained as a community organizer with the Latino community.

Participants were given the option of conducting the interview in English or Spanish. All but one participant opted for Spanish. Interviews lasted anywhere between 40 minutes and 2.5 hours. At the start of each interview, participants were given two copies of the informed consent agreement in English or Spanish—whichever they preferred. One copy was kept by the participant and the other was signed and collected by me. Participants were given the option to sign the consent form with a pseudonym or an “x.” Time was taken to ensure that participants understood the entire form and to go over any questions participants had, although they usually had none. Participants were also given a resource list with names of local service providers and support organizations in the event that the interview caused participants to experience any form of emotional distress. If legal questions arose, participants were referred to the resource list. At this point participants were also given the option to have the interview tape-recorded or not. All of the participants agreed to tape-recorded interviews.

During the interviews, participants were not called by their name to protect their anonymity. Aside from this, the interviews, as well as the overall time spent with participants, was rather informal. My goal throughout our time together was to make the participants comfortable, as well as establish some form of credibility with the participants. This was important, first because I did not want the study to cause participants any discomfort, and second because I wanted them to be willing to discuss the interview themes frankly.

To facilitate this, I made an effort to make polite small talk to set the participant at ease in the moments leading up to the actual interview. I would comment on the weather, the location, my coffee habits, and so on. Another easy way to break the ice was to bring



up something I noticed the participant and I had in common. For example, one participant's living room was covered in beautifully embroidered pillows, tablecloths, and blankets. This was a great conversation point for the participant and I because I knit and crochet. In other instances, participants were from areas of Mexico I had traveled to. This was another valuable icebreaker as Mexican participants were always excited to hear that I had been to and had some knowledge of Mexico. Overall, I found that if the participant and I were both laughing, or at least smiling, prior to beginning the interview, naturally awkward aspects of discussing personal topics with a near-stranger melted away.

At the end of each interview participants were asked if they wanted to add anything that had not been discussed or if they had any questions. Most of the time participants did not want to add anything and had no questions; however, some were interested in learning more about me and the project's purpose. In fact, after several interviews the participant and I continued chatting for up to an hour and one woman even insisted I stay for dinner at her home.

Interview data were collected via tape recordings and note taking. I then transcribed the interviews and, following the procedures used by Hondagneu-Sotelo (2001), translated only the sections chosen for quotation. This was a lengthy and arduous process despite having had prior knowledge of and experience with transcription, translation, and interpretation. I have translated numerous documents in my own research, as well as while working as a community organizer and a volunteer translator. I have also spent numerous work, volunteer, and personal hours acting as an English-Spanish interpreter. None of this truly prepared me for the painstaking labor required of

transcription and translation within the context of this project. Fortunately, aside from a few technology issues, the process went smoothly. Furthermore, I had very few transcription/translation questions, but consulted key informants in the few instances where they arose.

To further this inquiry, Figure 1.1 presents the connections between immigration policy, status and crime from a non-traditional, holistic perspective that simultaneously focused on immigrant offenses *and* victimization. It is a five-point offense typology to explore all offenses that can be linked to immigration policy and status. The offense typology is as follows: status offenses, circumstantial offenses, opportunity offenses, predatory offenses, and due process offenses [see Figure 1].

*Status offenses* are the most straightforward of all offenses. These are activities that immigrants—due to their status—are forbidden or unable to perform without violating one or more laws. These acts are not *malum en se*, or inherently wrong, but are merely viewed as unacceptable for specified groups. More importantly, most non-immigrants are not barred from these activities. Working and driving could both be status offenses as one’s legal ability to participate in these activities depends upon one’s immigration status. Working without permission, just like driving without a license, is a criminal offense. So is using a false identity document to do so, but immigrants may choose to do this if their status prevents them from legally obtaining work or driving.

*Circumstantial offenses* are similar to *status offenses* in that they include “normal acts,” like hiring an employee or giving someone a ride to the grocery store, that become illegal due to one or more of the participants’ immigration statuses. For example, driving a car with an undocumented passenger is not only a crime—it is a felony. This highlights an

interesting aspect of *circumstantial offenses* that differentiates them from the other four offenses: individuals may be guilty of these offenses without being aware that they have violated the law. Most people do not check the passport of everyone they hire to do yard work or, for that matter, everyone who rides in their car. It should be noted that offenses that may appear to be circumstantial on the surface could easily fit into one of the other offense types when motivation enters the analysis. For example, hiring immigrants who lack permission to work because one is sensitive to the difficulties these individuals face in finding acceptable work is very different from hiring immigrants with intentions of exploitation, which I would label a *predatory offense*; I will return to this shortly.

#### STATUS-DRIVEN OFFENSE TYPOLOGY

<b>Offense</b>	<b>Definition</b>	<b>Examples</b>
Status Offense	Act that is illegal because of prohibitions or restrictions connected to an immigrant's immigration status	Fraud; identity theft; forgery; employment without authorization; unlicensed or uninsured driving; unlawful presence in the United States;
Circumstantial Offense	Act that is illegal because of one or more participants' immigration status—or—an act that is done as a favor for an undocumented immigrant because his or her status restricts the person from achieving a desired outcome through legal means	Employment of someone unauthorized to work; harboring an illegal alien; transporting an illegal alien; aiding or inciting someone to enter the United States without authorization;
Opportunity Offense	Illegal provision of goods or services predicated upon immigrant consumer wants/needs due to the consumer's immigration status—or—illegal act from which one profits off of another due to his or her immigration status, not including acts with malicious intent	Aiding or inciting someone to enter the United States without authorization; production and sale of fraudulent or forged documents; identity theft; harboring and/or transporting an illegal alien; soliciting and/or accepting bribes; employment of someone without authorization to work; business tax evasion and payment of wages in cash;
Malicious Offense	Illegal act in which an immigrant is targeted due to	Harassment; extortion; exploitation; wage theft;

	his or her real or perceived immigration status; the offender may or may not profit financially	robbery and/or theft; physical and/or sexual assault; domestic abuse; enslavement;
Due Process Offense	Illegal act involving immigration or criminal justice actors—such as police, ICE agents, judges, or corrections officers—in which an immigrant’s rights are overlooked or an immigrant is purposefully discriminated against due to his or her real or perceived immigration status	Racial profiling and/or discrimination; harassment; unreasonable stop/search/seizure; warrantless search; excessive use of force; extortion; failure to comply with Detention and Removal Operations Standards (detainee rights abuses); physical and/or sexual assault;

*Opportunity offenses* include all service-related offenses and comprise the “black-market of immigration.” *Opportunity offenses* range from the illegal provision of goods and services, such as travel into the U.S. or false identification papers, to various payoffs and bribes given to officials to spare immigrants negative interaction with police, Border Patrol, or Immigration and Customs Enforcement. These offenses contribute substantially to crime along the U.S.-Mexico border, where an economy based heavily on unauthorized immigration has arisen in response to U.S. immigration and border policies that push immigration underground. Demand for legally unattainable services does not stop at the Border; once residing in the U.S. there are still a number of illicit goods and services sought by immigrants. In essence, *opportunity offenses* are a product of the market; if there is a demand, it will be satisfied regardless of potential legal recourse as with the famous black markets of Nazi-occupied territories, the USSR, and Cuba. Profit is the driving force behind all *opportunity offenses*.

*Predatory offenses* encompass all offenses perpetrated against immigrants because offenders believe they are somewhat immune to apprehension and punishment due to immigrants’ perceived and actual vulnerability. These offenses are carried out by people who know or presume to know an immigrant’s immigration status and purposefully exploit,

extort, assault, or violate the immigrant under the pretense that the immigrant will not report them for fear of immigration consequences like deportation. Specific examples include fraud in which immigrants are charged for services never provided, domestic abuse attached to threats of deportation, and the violation of labor laws—such as the Fair Labor Standards Act that dictates federal minimum wage and overtime regulations—and threats of deportation to any worker who speaks up. Unfortunately for immigrants without documentation, sometimes-empty threats of deportation can appear to have very real consequences. What is more, if immigrants are engaged in some form of law violation—like being in the country without documentation—they are unlikely to seek the assistance of formal law enforcement for fear of self-incrimination.

A fifth and final class of offense, due process offenses, includes offenses committed by government actors such as Customs and Border Patrol (CBP), Immigration and Customs Enforcement (ICE), police, judges, and so on, which violate the rights immigrants are legally entitled to regardless of their status. Racial profiling and illegal searches may be the most common due process offenses; however, this category includes actions such as not informing individuals of their rights, denying access to lawyers, and so on. Despite being illegal, government actors are inclined to engage in these activities because they assist in the detention and deportation of individuals. Furthermore, unlike “typical” court cases in which neglecting due process can result in a case being thrown out, it makes no difference in deportation proceedings whether or not the law has been properly followed.

Yet to fully understand this typology of offenses, it is necessary to provide a working definition of crime for the purposes of this project. As put forth by several critical

criminologists over the last 20 years (Michalowski 1985; Reiman 1979), many injurious acts are not labeled or defined as criminal or regulatory offenses by the state. Hence in many instances, a working definition of “crime” that includes acts prohibited under criminal regulatory law *and* analogous forms of social injury, or “legally permissible acts or sets of conditions whose consequences are similar to those of illegal acts,” is necessary to truly understand criminal phenomena. The concept of analogous social injury applies to the study of the interaction between immigration status and crime because not all crimes, whether harmful or merely deceptive, connected to immigration status are labeled or defined as offenses by the state. By incorporating this concept into the understanding of crime for the purpose of this study, one is able to see the crime-immigration status relationship from a holistic perspective and can move beyond contemporary legal understandings of crime and criminal behavior.

As such, this offense typology encompasses all forms of criminality that can be linked to immigration status. Furthermore, when taken together, the offense typologies themselves can be grouped into two categories: immigrants as perpetrators and collaborators (status, circumstantial and opportunity offenses), and immigrants as victims (predatory and due process offenses). By viewing immigrant criminality and victimization using this framework, the nuances of the immigration-crime relationship are revealed.

Overall, this typology is one of the driving forces behind this project as it is the lens with which to examine Latino immigrant offending and victimization. However, I also draw on historical and current accounts of Latino offending and victimization from a variety of outside sources including articles, nonprofit reports, and academic studies to

support interview data organization and analysis. Together, this creates a multifaceted look at immigrant status-driven crime.

#### FINAL THOUGHTS ON METHODS USED

In sum, this study blends together a variety of research methods and disciplines in the hopes of providing a thorough, multifaceted examination of policy, immigration, and crime. Yet although influenced by a variety of sources and techniques—specifically those adopting a postmodern, feminist, or social justice perspective—this is still a criminological work as the central analysis is carried out from a criminological standpoint. This is extremely important, for as previously noted, criminology currently lacks a vibrant conversation/dialogue on immigration and crime. By combining a socio-historical policy analysis, or a “history of the present” of American immigration control with the actual voices of Latino immigrants on status-driven crime, this study lays out a new lens from which to study both immigration and crime. Perhaps more importantly, it reminds us how valuable interdisciplinary study and the recycling and reinvention of social science methodology and frameworks can be.

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### CHAPTER 3: HISTORY, POLICY, AND LATINO IMMIGRATION: THE ROLES OF NATIVISM, SECURITIZATION, AND CRIMINALIZATION

The United States is a nation of immigrants. America's first immigrant settlers were primarily British conservatives in search of religious freedom and other Brits merely hoping for a better life. Along with them, however, were several thousand criminals. In fact, between 1717—when “transportation” of criminals to the New World became an official punishment—and the start of the American Revolution in 1776, England sent approximately 40,000 convicted criminals to the American colonies as indentured servants (Hughes 1987:41). And thus began American immigration. Yet by the early talks of independence Americans no longer felt the need to house England's unwanted, especially since the slave trade had made indentured servants obsolete. In 1788, the Congress of the Confederation adopted a resolution urging individual states to enact laws preventing the transport of criminals to the U.S. (Hing 2004:14). In subsequent years, Massachusetts, Pennsylvania, South Carolina, Virginia, Maine, Maryland, New Jersey, New York, and Rhode Island all passed such laws, putting an end to “convict” immigration and perhaps making America's first attempt at regulating immigration and distinguishing those who deserved a place in the New World from those who did not (*Op. cit.*).

So begins the story of American immigration. A story yet unfinished, but up to this point, that could be summed up in just one word: exclusion. While immigration policy has not remained stagnant since the Colonial days, experiencing both periods of openness and repression, excluding the “unwanted” or the “other” from full participation in American society has always been the underlying goal. First it was the criminals, the paupers, and the public charges, typically lumped into the same category well into the 19<sup>th</sup> century. Then it

was the Catholics and those Southern and Eastern Europeans who spoke languages other than English. Next it was the Chinese—practically considered to be aliens at the time—and all other Asians. This was followed by a near total exclusion of all nonwhites through various restrictions and quotas. For the past half-century, however, the group of choice for exclusion has been immigrants from Latin America.

While the groups targeted for exclusion have changed, the tactics of exclusion have both expanded and become more comprehensive over time, first incorporating nativist racism, next employing securitization, and ultimately through criminalization. Hence immigrants were first excluded on the basis of protecting American interests and the success of its stock—morally, socially, and biologically. During this time, it was believed that non-white, non-Protestant immigrants would deteriorate the quality of the American people mentally and physically, and such discriminatory ideologies were justified in immigration and immigrant-specific policies. Changing understandings of “American,” “white,” and the fall of eugenics as a legitimate science ushered in an age of immigration exclusion through securitization. This meant securing America’s physical borders through surveillance and a closer examination of those who entered and exited the country.

Securitization was easily justified by fear of enemy combatants during WWI, WWII, and later, the Cold War. Coincidentally (or perhaps not) this was also when Latin Americans—specifically Mexicans—became the excluded immigrant group of choice. Nativist policies had already managed to control unwanted flows of immigrants from across the Atlantic and Pacific, but they had failed to address immigration within the Western Hemisphere. Despite sharing more than 5500 miles of border with Canada, border control efforts were and still are centered on the U.S.-Mexico border, making it glaringly obvious

that America either felt Mexico posed a greater threat to the U.S. than Canada and was a more strategic location for foreign nationals intent on harming the U.S. or that the U.S. was simply unconcerned with white, English-speaking Canadian immigration. Securing America's physical boundaries was thus an attempt to control the flow of Latin American foot traffic across the nation's border.

While securitization is still a primary aspect of immigration policy and a vibrant method of exclusionary immigration (especially post-9/11), the primary immigration tool for excluding unwanted immigrants over the past fifteen years has been the criminalization of immigrants. This criminalization—or the transformation of immigrants into criminals—has occurred in several ways. First recent immigration policies have designated a number of immigration offenses as severe criminal offenses with criminal penalties including prison time. Furthermore, other immigration and immigrant-specific policies have restricted immigrant participation in “normal” daily activities, leaving some immigrants little choice but to break the law. Finally, immigration authorities have both embraced a law enforcement/criminal justice model in regard to immigration policy creation and enforcement, as well as begun to work together with local law enforcement to execute immigration law. Moreover, this criminalization targets Latin American immigrants—specifically Mexicans—through enforcement, which is geographically, racially, and ethnically biased in practice. Together, this not only conflates immigrants with criminals but also reinforces stereotypes of criminal Latino immigrants, leading average Americans to view immigrants as criminal. Overall, while nativism and securitization have had major impacts on immigrants for decades and have been used to justify increasingly repressive

policy, the recent criminalization of immigrants has made life extremely difficult for Latino immigrants in America today.

All in all, transformation in immigration and immigrant-specific policy, as well as immigration politics, over the last 200 years has been guided by nativism, securitization, and the criminalization of immigrants—especially Latinos and the undocumented. Together, this has crystallized immigrants’ second-class position in the United States legally, socially, and economically. Despite early immigrants’ ability to assimilate into American society through physical and cultural similarities as well as fewer barriers to economic mobility, more recent waves of immigrants have faced mounting social intolerance and legal restrictions to participation in American society. In an age of terrorism, securitization, risk management, and economic instability, immigrants—especially the undocumented—are increasingly targeted in policy and discourse as the problematic “other.” As such, they are singled out for discriminatory treatment by the federal immigration system, the justice system, and society at large. Thus while immigration policy no longer blatantly discriminates against specific immigrant groups, the legacies of such discriminatory policies are not only still visible but have paved the way for the rationalization of anti-immigrant policies that, ultimately, encourage and facilitate crimes by, with, and against Latino immigrants.

#### 19<sup>TH</sup> CENTURY IMMIGRATION AND NATIVISM IN THE U.S.

Prior to the mid-1800s, American immigration policy was relatively underdeveloped. There were few immigration or immigrant-specific policies on the books, and immigration operated within an “open-door” framework. This was a moment of massive expansion that required a constant supply of cheap labor well in excess of what natural population growth could supply. In 1790, Congress passed, as Schrag calls it, “one of the world’s most liberal

naturalization laws,” requiring just two years of residency in the U.S. and one year in a particular state to become a citizen, as long as the immigrant was a white person of “good moral character” (Schrag 2010:23). In 1798 Congress passed the more restrictive Naturalization Act as part of the Alien and Sedition Acts, lengthening the residency period to 14 years (scaled back to 5 years in 1802) and authorizing the president to deport “dangerous” foreigners; again, only whites need apply. It should be noted, then, that America’s “liberal” immigration system was not a product of some sort of “warm welcome” immigration ideology, but more likely the result of the need for labor and a realization that the nation did not have the technological or infrastructural capacity to thoroughly control the movement of people through its borders.

Throughout the 19th century, the federal government, individual states, and private employers encouraged emigration from Europe with targeted promotional campaigns and facilitated immigration through liberal policy. Individuals from Andrew Carnegie to Abraham Lincoln raved about the economic benefits of immigration. For instance, in December of 1863, President Lincoln asked Congress to consider new legislation to further induce immigration, noting that there was “still a great deficiency of laborers in every field of industry...[and] while the demand for labor is thus increased here, tens of thousands...are thronging our foreign consulates and offering to emigrate” (Hing 2004:21). In essence, America was a blossoming nation in need of labor and bodies to push westward expansion, and as Hing notes, “as long as they were the right kind of immigrants, the new nation wanted them” (Hing 2004:20).

Subsequently, America’s image as the land of opportunity—in combination with the numerous political, social, and economic struggles happening throughout the rest of the

world—made the U.S. an immigrant magnet. As Peter Schrag stresses, this magnetism was exponential (2010). In the 1820s, roughly 143,000 immigrants made their way to the U.S. (Op cit.). That number jumped to 600,000 in the 1830s, 1.7 million in the 1840s, and reached a height of 2.3 million in the 1850s just before plummeting during the Civil War (Op. cit). Initially these waves were composed of mostly Irish and Germans; however, the numbers of Eastern and Southern Europeans—Jews, Italians, Greeks, Russians, Poles, Czechs, Hungarians, Romanians, Turks, and Armenians—rose steadily throughout the 1800s until overtaking immigration from western Europe around the turn of the century. For example, of the 14.5 million immigrants that entered the U.S. during the first two decades of the 20th century, 60% were from Italy, Austria, Hungary, and the area that later became the Soviet Union (Hing 2004:4). On the West Coast, western expansion and the 1850s Gold Rush first drew a number of Chinese—many fleeing a widespread rice shortage and the fallout of the Taiping Rebellion—French, Brits, and even Chilean miners (Hing 2004; Schrag 2010). Moreover, the annexation of large portions of modern-day California, New Mexico, Arizona, and Texas after the Mexican War and the Treaty of Guadalupe-Hidalgo added another 80,000 Mexicans—given the option to become citizens—to America’s immigrant pool.

By the 1830s, the continuous arrival of hundreds of thousands of relatively poor, undereducated, non-Protestant immigrants ignited nativist fears. Tensions ran high and it was said that new immigrants were facilitating the destruction of American cities and a breakdown in American ethics. This was supposedly evidenced by the dirty, destitute, and relatively violent conditions in immigrant slums, as well as the gross “drinking and debauchery” of Irish and German Catholics that ran counter to Puritan mores (Schrag 2010).

In some instances, anti-Catholic sentiment exploded into the streets in the form of angry mobs, riots, arson, and even lynchings. For example, anti-Catholic anger led to both the 1834 burning of the Ursuline Convent in Charleston and, ten years later, three days of rioting in Philadelphia (Hing 2004:17). The more “civilized gentry” expressed their frustrations vis a vis the political system, only inciting others to actual violence. It was during this time that America witnessed the growth of parties such as the American Party, the American Republican Party, the fraternal Order of the Star Spangled Banner, the Order of the United Americans, the Patriot Party and various other groups in line with the Know-Nothing movement opposed to “the insidious policy of the Church of Rome, and all other foreign influence against our republican institutions” (Schrag 2010:30).

As the immigrant pool shifted away from northern and western Europeans to other immigrant groups, anti-immigrant ideology began to shed some religious animosity and take on an ever-increasing racial character. Many immigrant groups, especially the Irish, were viewed as non-white and “negroized” in both commentary and depiction. That being said, fair-skinned, English-speaking immigrants were able to assimilate into American society as they looked and, in about a generation, sounded like America’s Protestant founders. Aiding their normalization was the influx of non-white, non-English speaking immigrants who were unable to mask their “otherness.” Hence despite strong anti-immigrant sentiments targeting Catholics in the first half of the 19th c.e., the first anti-immigrant policies actually targeted the Chinese, who, as Schrag notes, “were a purely alien breed” (2010:36).

#### Anti-Asian Immigration Policies

Despite the active recruitment of Chinese laborers with westward expansion and the Gold Rush, it was not long before anti-Chinese sentiment spilled into American politics. In



1850, California passed the Foreign Miners' License Tax law requiring all foreigners to pay a \$20 fee to mine. Although affecting all foreigners, the fee was intended to curb both Chinese and Mexican presence in California (Hing 2004:29; Schrag 2010:36). In 1851 the law was repealed but was followed by a new miner's tax directed specifically at the Chinese the next year (Hing 2004:30). That same year, Governor John Bigler called for a law prohibiting the Chinese from mining and disqualifying them from serving as jurors or trial witnesses as they "would never honor an oath" (Op cit.).

Two years later, the California Supreme Court classified the Chinese with Indians, blacks, and mulattoes, making them ineligible to testify at trials involving whites (Schrag 2010:36). In 1856, with increasing anger over Chinese miners' success at claims abandoned by whites, Mariposa County ordered all Chinese to leave the country or be forcibly removed (Op. cit.). This was followed by an 1858 state-wide ban on Chinese and Mongolian immigration, which was struck down as unconstitutional in 1859. Nonetheless, many states drew upon Californian policies in their efforts to control or prohibit Chinese immigration, naturalization, suffrage, and the right to own property (Op. cit.). State-level attempts such as these were just the start of anti-Asian immigration agreements and policies that lasted well into the mid-twentieth century.

Similar to anti-Catholic ideology turned violent on the East Coast, anti-Chinese attitudes manifested in a number of "anticoolie" clubs and mob attacks. Such clubs' less severe actions included evicting miners from their production areas and confronting railroad workers on site, often rolling rocks at workers (Hing 2004:31). More violent actions ranged from physical violence against individual Chinese to the burning of Chinese homes and factories that employed Chinese workers (Op. cit.).

Facing mounting anger over Chinese laborers, the federal government passed a series of anti-Chinese bills. This began in 1870 when Congress rewrote the 1790 Nationality Act to extend citizenship to Africans and those of African descent, but deliberately left out the Chinese due to their “undesirable qualities” (Hing 2004:36). This was followed by an 1875 law prohibiting the importation of Chinese women for “immoral purposes,” effectively barring all Chinese women from the U.S. (Op. cit.). Then came the Chinese Exclusion Act in 1882 just a few short years after the completion of the transcontinental railroad, for which construction had primarily depended upon Chinese labor. The 1882 act banned the immigration of Chinese laborers, but permitted the entry of professors, students, merchants, and their servants; it was extended in 1892 and made permanent in 1902. The law also included a “right of return” for U.S.-born Chinese Americans, legal U.S. residents, and foreign-born children of U.S. natives. Despite having the right to legally enter the U.S., many Chinese-Americans and their family members were detained at Angel Island’s immigration detention camp in the San Francisco Bay for weeks, months, and in some cases, longer than a year (Schrag 2010:62). In addition, official exclusion of the Chinese increased the number of “paper sons,” or undocumented Chinese, who attempted to enter the U.S. using fraudulent documents certifying them as U.S. natives or their children born abroad (Schrag 2010:70). Although illegal immigration was nothing new—even immigrants not restricted from entering the U.S. had long depended on the practice of avoiding border checkpoints and health inspections to successfully get into America—illegal Chinese immigration was significant.

Anti-Asian sentiment was not only directed at the Chinese but at the Japanese as well. In the wake of Chinese exclusion, Japanese laborers began migrating first to Hawaii and then

the west coast. The Japanese were soon regarded with the same contempt once reserved for the Chinese as American farm workers feared Japanese competition. The situation only worsened after Japan's show of strength in defeating the Chinese in 1895 and Russia in 1905 (Hing 2004:42). Facing mounting political pressure, President Roosevelt negotiated the Gentlemen's Agreement with Japan in 1907. Under the agreement, Japan effectively halted emigration to the U.S. by refusing to issue passports to Japanese laborers. In exchange the U.S. agreed not to officially exclude the Japanese and allowed Japanese wives and children to reunite with husbands and fathers in America (Op. cit.). This was later followed by California's Alien Land Act of 1913 prohibiting Japanese aliens from owning land or other real property, and eventually, a restriction against the immigration and naturalization of almost all Asians.

#### *Furthering Racialized Immigration Policy*

With a second spike in immigration predominantly composed of Eastern and Southern European immigrants and intensifying labor conflicts and union-busting from the 1880s onward, nativist fears were exacerbated once more. As Peter Schrag notes:

Fear of immigration took all manner of forms, expressed in countless ways: as complaints about the burdens immigrants placed on charitable institutions and the numbers of immigrants in prisons and asylums; as the problems of immigrant children in schools; with photographs of urban slums; with muckraking exposés of political corruption and the city bosses who thrived on immigrant votes; with liberal complaints about immigrants as the exploited labor pool of the economically privileged; and, beginning in the first decades of the twentieth century, with intelligence test scores. All of these fears would be

the subtext—a mixture of social reform and nativism—of the immigration restriction movement and policies to this day. (2010:50)

Accordingly, Congress, in a trigger-happy fashion, began adding to the list of European immigrants eligible for exclusion starting with contract laborers in 1881; preexisting restrictions against “lunatics,” paupers, and people likely to become public charges had been on the books for decades. By 1903 excludable immigrants also included “persons suffering from a loathsome or dangerous disease,” those convicted of a crime of “moral turpitude,” polygamists, idiots, insane persons, epileptics, and people who had been insane with the past five years, people who have had two or more attacks of insanity, professional beggars, anarchists, or anyone who “advocated or believed in the overthrow of the United States government by force or violence or of all government or of all forms of law or the assassination of public officials,” and prostitutes and “persons who procure or attempt to bring in prostitutes or women for the purpose of prostitution” (Schrag 2010:72).

Within this context, the U.S. Immigration Commission performed a 3-year study of the nation’s immigration situation resulting in a 41-volume report released in 1910. The report was expansive to say the least and covered a multitude of issues: conditions affecting emigration from Europe; the jobs held by immigrants in American factories, mines, and agriculture; historical immigration statistics by year and “race” or national origin; data on the “problem” of immigrant children in American schools; data on the “fecundity” of immigrant women; information on conditions in the steerage quarters of immigrant ships; data “on the importation and harboring of women for immoral purposes”; the number and national origins of immigrant inmates in jails, charitable hospitals, and asylums; an abstract of the government’s official “dictionary of races and peoples” used to classify new arrivals; and,

numerous other statistics that painted a comprehensive picture of immigration prior to the 20th century (Schrag 2010:70). Overall, the report found that the majority of Southern and Eastern European immigrant children were “retarded,” that unskilled immigrants were the least likely to assimilate properly into American society, and that immigration should be heavily restricted, limiting entries by ethnic origin and race (Op. cit.). In essence, as Schrag notes, the report’s “essential message was the danger from, and need to curb, the new immigration” [italics added] (Op. cit.).

Following the report, Congress passed a bill requiring all adult aliens seeking to immigrate—with the exception of Russian Jews fleeing pogroms—to pass a literacy test. The test was intended to stem the flow of Eastern and Southern European immigrants, yet as Schrag points out, by the end of WWI many such immigrants were becoming literate, rendering the law ineffective (Hing 2004:57; Schrag 2010:73). The law also contained a provision restricting the immigration and naturalization of people from what it called the Asiatic Barred Zone—also referred to as the Asia-Pacific Triangle—again along the recommendation that the United States restrict immigration by ethnic origin and race (Schrag 2010:110). The restricted area ran from Turkey to Southeast Asia and included all of the Middle East, India, Burma, Thailand, the Malay States, the East Indian Islands, Asiatic Russia, and the Polynesian Islands (Hing 2004:46).

At this point, citizenship and the franchise were guaranteed to anyone white, black, or of African nativity or descent born or naturalized in the United States. Moreover, many Asians, including most Chinese and Japanese, were already explicitly prohibited from naturalization. Hence the passage of the 1917 law further complicated immigration matters and sparked a series of court decisions to determine who was white and who was not—a task

that was much more difficult than it sounds (Schrag 2010:111). While the details of these court cases extend beyond this chapter, a sprinkling of court decisions up to the 1950s highlights the complexity of race, immigration, and naturalization in the U.S. Syrians were white sometimes (Op. cit.). Asians were white, then they weren't (Op. cit.). Asian Indians and Koreans were not white (Op. cit.). Afghanis weren't white, and neither were "Arabians," but then it was decided they were white because European civilization originated in the Middle East (Op. cit.). Mexicans were usually white "for most official purposes" (Op. cit.). Persons who were half white and half Asian were not white and persons who were part Native American and part African were not black or African (Op. cit.). Sicilians were not white (Op. cit.). It would not be until the 1943 repeal of the Chinese Exclusion Act and the 1952 passage of the McCarran-Walter Act that the ban on Asian immigration and racial restrictions on naturalization would be lifted.

Several years later, influenced by the U.S. Immigration Commission report and a plethora of studies detailing the genetically inferior makeup of non-Anglo peoples—which were propped up by the faulty "science" of eugenics and based on a mélange of incorrect research techniques and the misapplication of Darwinism and Mendelian inheritance—Congress passed the Immigration Acts of 1921 and 1924. The 1921 act imposed America's first-ever immigration quotas, limiting the total number of immigrants of any nationality to 3% of the foreign-born population of said nationality living in the U.S. in 1910 (Schrag 2010:113). This was a part of a post-war understanding of the nation-state system and sovereignty based upon hardened borders and enhanced control over the movement of people (Op. cit.). Greatly influencing the passage of the act was Congressman Albert Johnson's 1920 report to Congress that alluded to tens of millions of undesirable Europeans—many

with fraudulent passports and visas, many adhering to Socialist ideas, and many of them Jews—primed and ready to catch the next ships to America (Schrag 2010:115). Overall, the act set a limit of 350,000 immigrants annually and allowed only one-fifth of the any nation’s annual quota to immigrate in any single month. Interestingly, countries in the Western Hemisphere, including Canada and all of Latin America, were excluded from the quotas.

Despite angering the business community, who argued that the U.S. was experiencing a labor shortage and that new restrictions would increase illegal immigration, Congress continued tightening immigration controls. In 1924, the Johnson-Reed Act revised the initial provisions of the 1921 reforms, further restricting immigration to the United States. As Schrag notes, widespread support for reducing immigration had existed for quite some time, thus “the question was never what to do, but only how to do it without seeming too blatantly racist and/or ruffling too many diplomatic feathers abroad” (2010:117). Therefore when it was initially proposed that immigration quotas be based upon numbers of foreign-born populations from the 1890 Census—when Italians, Greeks, Poles, Hungarians, Russians, and Jews were still a relatively small portion of total U.S. immigration—it was apparent that the bill would never pass as it blatantly discriminated against the American descendants of such immigrant groups, which by that time comprised a large portion of the voting public (Schrag 2010:120). The solution was a “sort of ethnic genealogy” tracing the descendants of all immigrant groups in the U.S., including acceptable Northern and Western Europeans, to calculate a percentage breakdown of the entire U.S. population by national ancestry.

Regardless of the fact that 300 years of intermarriage and changing national boundaries, along with the difficulty of establishing national origins at all, made the new quota system arbitrary, it went into effect in July 1927 (Schrag 2010:123). The new system

limited overall immigration to just 150,000 people annually and restricted immigration by country to just 2% of the total number of ethnic descendants from any given nation living in the U.S. in 1920: 5,802 for Italy, 6,524 for Poland, 2,784 for Russia, 15,957 for Germany, 17,853 for Ireland, and 65,721 for Great Britain and Northern Ireland (Op. cit.). Many nations were given quotas under 1,000, with Spain's quota, for example, being set at 131 immigrants annually. Other nations were given token minimums of 100 even if their actual quota would have been smaller based on the population figures used in the calculation. Spouses and minor children of American citizens were exempt from the quotas, and immigration from countries in the Western Hemisphere remained unrestricted, despite, as Schrag notes, Southwestern anger at the continual influx of Mexicans (Op. cit.). The law also removed the statute of limitations on deportations for illegal entry among other offenses. As Hing notes, the 1924 act was praised as "the 'most far reaching change that occurred in American during the course of this quarter century,' enabling a halt to 'the tendency toward a change in the fundamental composition of the American stock'" (2004:69). In sum, the reform allowed Congress to successfully curb immigration based upon racial and ethnic preferences without appearing overtly racist or discriminatory, making it clear that despite claims otherwise, nativist racism was the fundamental tool of immigration exclusion at the time.

### Immigration Reforms of 1965

At the height of the Civil Rights movement, immigration reform made its way to the forefront of political debates. It was undeniable that the national origins quotas were discriminatory, if not explicitly racist and classist. In fact, numerous politicians and activists had spoken out against the quotas since they went into law for that very reason. Dislike for



American immigration policy reached as high as the Executive Office, as evidenced by President Truman's open opposition to the national origins quotas during his veto of the McCarran-Walter Act of 1952, which included provisions to exclude subversives, Communists, and homosexuals:

I have long urged that racial or national barriers to naturalization be abolished. This was one of the recommendations in my civil rights message to the Congress...the [McCarran-Walter Act] would continue, practically without change, the national origins quota system...the greatest vice of [this] quota system, however, is that it discriminates, deliberately and intentionally, against many of the peoples of the world. The purpose behind it was to cut down and virtually eliminate immigration to this country from Southern and Eastern Europe...The idea behind this discriminatory policy was, to put it baldly, that Americans with English or Irish names were better people and better citizens than Americans with Italian or Greek or Polish names. Such a concept is utterly unworthy of our traditions and our ideals. It violates the great political doctrine of the Declaration of Independence that 'all men are created equal.' It denies the humanitarian creed inscribed beneath the Statue of Liberty proclaiming to all nations, 'Give me your tired, your huddled masses yearning to breathe free.' In no other realm of our national life are we so hampered and stultified by the dead hand of the past, as we are in this field of immigration. (Veto of Bill to Revise the Laws Relating to Immigration, Naturalization, and Nationality, June 25, 1952)

While President Truman's brutally honest analysis of the national origins quota system, as well as America's stagnant, discriminatory stance on immigration policy in general, was both poignant and inspirational, Congress overturned his veto. In many ways, Truman and others

calling for immigration reform were ahead of their time. The first two world wars, followed by the Red Scare and the Cold War, threw America into an uber-conservative state of nativism, xenophobia, and dislike for all things “different” that was hard to shake. It was not until 1960s, imbued with liberalism, progressivism, and optimism, that American would see true immigration reform.

In 1965 Congress passed the Immigration and Nationality Act, commonly referred to as the Hart-Celler Act. The new law did away with national origins quotas, setting an Eastern Hemisphere limit of 170,000 and a Western Hemisphere limit of 120,000 (Schrag 2010:160). In 1976 an annual limit of 20,000 visas per country was set, and in 1978 the Eastern and Western hemisphere totals were combined for a global annual limit of 290,000 (Hing 2004:98). It also established a new set of immigration priorities based upon skills and family unification, giving priority to the educated, as well as spouses and unmarried minor children. The total number of annual immigrant visas has slowly risen since 1965, but it still remains relatively low in comparison with the number of immigrant visa applications the US receives each year. Currently, family sponsored preference categories are limited to 226,000 per year, and employment based preference visas are limited to 140,000 per year (U.S. Citizenship and Immigration Services 2011). There are still limits on the percentage of visas that can be allotted to each country.

As Schrag points out, the new bill was not expected to have a great impact on immigration, and as Hing notes, even President Johnson stated that the bill was not revolutionary nor would it reshape America (Hing 2004:95; Schrag 2010:161). This analysis seems apt when one considers the relatively insignificant rise in the annual number of admitted immigrants. Furthermore, the new priorities still favored those immigrant groups previously favored

under the national origins quotas—at least for a time—as these immigrants had a larger pool of family members in the United States to pull upon in applying for a visa and because, coming predominantly from developed western European nations, they likely had more access to higher education. Despite the Act’s conservative position, it did suggest an easing of nativist and labor tensions:

...the law [x] seemed to reflect the fact that prior immigration restrictions had done their work, sharply reducing the number of foreigners in the United States and reducing the tensions that had historically been associated with them...the nation [x] had assimilated many millions of immigrants, nearly all of whom were now generally regarded as Americans...[and] had officially become white (Schrag 2010:161).

Yet the next several decades of political conflicts and upheavals throughout the globe—especially the numerous military dictatorships and civil wars throughout Latin America—would bring a substantial number of new immigrants, again often very different from America’s white Protestant founders, to the United States through both legal and extralegal means. To prevent the successful incorporation of these “undesirables” into the U.S., America would turn almost entirely to immigration control by securitization of the U.S.-Mexico border and, eventually, the criminalization of immigrants. Once more, however, policy would be insufficiently prepared to cope with the fierce desire of millions to immigrate to the United States.

## EMBRACING THE SECURITIZATION OF AMERICA AND THE CRIMINALIZATION OF IMMIGRANTS

Even prior to the fall of racially/ethnically discriminatory immigration policy, America had already begun exploring alternative methods of exclusion, including

securitization and the criminalization of immigrants. These methods were an easy sell and complemented each other quite nicely. New understandings of national sovereignty, heightened global awareness, and a rise in unauthorized immigration strengthened the argument for tighter controls of America's geographic boundaries. Furthermore, by controlling the movement of people across America's borders, the U.S. believed it would be able to curb Mexican and other Latin American immigration, effectively excluding an unwanted minority group without turning to blatant racial discrimination.

As Border control increased, however, so did America's population of undocumented immigrants, of whom, many were Mexican. When it was apparent that Border policies had not achieved the desired effects, America began adopting policies that criminalized immigrants once in the United States. This resulted in the solidification of the image of the "illegal Mexican," portraying Mexicans and Latino immigrants in general as both "illegal"—i.e. in the United States unlawfully—and "criminal." Furthermore, such criminalization has actually encouraged crime as immigrants have fewer and fewer legal ways to participate in American society and have also been made extremely vulnerable to becoming the victim of crime because many fear criminal consequences related to their immigration status if they denounce their victimizers.

### *Illegal Immigration, Border Security, the Undesirable Mexican*

Prior to the early 1900s, the prevalent meaning of the U.S.-Mexico border was that of a "frontier" (Payan 2006:6). The border region was relatively decentralized and detached from the economic and legal worlds of the heavily populated East coast—in other words, it was somewhat "out of sight and out of mind." Furthermore, as Hing notes, after the Southwest was acquired from Mexico, "Mexicans and Americans paid little heed to the

newly created international border, which was unmarked and wholly unreal to most...[and] Mexicans continued to cross all along the border with the feeling that in reality nothing had changed” (2004:118). Hence the Border was merely political; it was not used to inhibit the mobility of people or goods. During this time, the vast majority of immigration officers were stationed on Ellis Island, and only a handful of men patrolled U.S. land borders.

Understandings of the Border aside, as briefly noted, unauthorized—or illegal—immigration existed well before the tightened immigration controls of the early 1900s. Even prior to the quotas of 1921 and 1924, immigrants from around the globe chose to bypass official points of immigration for a variety of reasons ranging from a fear or inability to pass health inspections or literacy tests to an inability to pay the \$8 head tax and \$10 visa fee. Furthermore, as most Asians were barred entry to the U.S. by the turn of the century regardless of personal circumstances, many attempted to enter the U.S. illegally. Of course, the passage of the 1921 and 1924 Immigration Acts resulted in an increase in the number of European immigrants entering the country illegally. Interestingly, there was a legal loophole to the quotas: any quota immigrant who lived in the western hemisphere (outside the U.S.) for five years could enter as a non-quota immigrant (Schrag 2010:129).

Regardless of the loophole and the fact that non-quota immigrants could freely enter the U.S. (in theory), a growing number of both quota and non-quota immigrants opted for illegal immigration. This quickly caught the attention of nativists and government officials alike. For instance, in 1923 Secretary of Labor Davis reported that the growing demand for labor had led to an increase in both immigration of legal non-quota immigrants from Mexico and Canada, as well as the establishment of “far-reaching organizations that take the alien from his home in Europe, secure a passport for him (a fraudulent one if necessary), purchase

his steamship passage, place him on the ship, arrange for his entry into Cuba, Canada, or Mexico, and late conduct him by various underground routes into the United States—all for a fixed price...” (Schrag 2010:126). Shortly afterwards, the U.S. Border Patrol was established to control the movement of goods and people into and out of the United States. While border “patrollers” such as the Texas Rangers and, later, the Congressionally approved “mounted guards” had operated since the late 1800s, they were small in number and poorly trained (U.S. Customs and Border Protection 2009). Despite formal support, Border Patrol was ill-equipped to make any real dent in illegal immigration, and operations remained relatively small and received little funding until well into the second half of the twentieth century.

Prohibition and later, WWII, further exacerbated concerns over unauthorized immigration across the Canadian and Mexican borders. The strong desire to keep bootleg liquor out of the country and fears of enemy combatants sneaking into the United States weighed heavily in immigration conversations. Despite these somewhat legitimate concerns, by the 1920s immigration politics along the Border had become dominated by an overtly anti-Mexican slant. As Schrag comments, prior to WWI, “Mexican immigration had been of little interest to anybody”; however, the coupling of a strong American economy with a series of “revolutionary upheavals” in Mexico had caused the southwest’s Mexican population to rise steadily throughout the first quarter of the 20th century (2010:126).

Arguments against Mexican immigration were characteristic of anti-immigration positions of the century before, blending nativist fears, labor concerns, and racialized “science.” For instance, the Order of the Native Sons of the Golden West argued that it was “evident that, unless an end is put to the influx of Mexicans, this country will have merely substituted a low-grade Westerner for a European immigrant, with a new race problem

thrown in” (Schrag 2010:133). Similarly, others argued that Los Angeles had become a “dumping ground for poverty-stricken Mexicans,” and still others claimed that Mexicans were not only carriers of dangerous diseases but genetically predisposed to them (Op. cit.).

A perfect example blending politics, labor and race comes from a warning about the explosion of Mexican immigration in the southwest from Harry Laughlin, director of the Eugenics Record Office from 1910-1939, to Albert Johnson’s House committee on immigration in 1928:

There have been established a great many Mexican immigrants who seem to be driving out the Americans. How will this situation ultimately work out? The common Mexican, of course, is, as we know him, of mixed racial descent—principally Indian and Spanish, with occasionally a little mixture of black blood. The Mexican comes in freely because there is no quota against him. And during the last few years he has come here in such great numbers as almost to reverse the essential consequences of the Mexican War. The recent Mexican immigrants are making a reconquest of the Southwest more certainly...than American made the conquest of 1845, 1848, and 1853 (Schrag 2010:128).

All in all, Laughlin called for a Mexican immigration quota at worst and the barring of all non-Caucasian immigration—recall that the meaning of “white” was still a hotly debated term in the legal world. By using the term “Caucasian” Laughlin aimed to permit immigration of light-skinned western Europeans. Laughlin was not the first to advocate for the restriction of Mexican immigration. In fact, on two separate occasions—1926 and 1928—Congress debated ending the quota exemption for countries in the western hemisphere, but as the State Department feared Mexican retaliation against the growing

number of American businesses in Mexico, the U.S. opted for tougher Border enforcement (Schrag 2010:129).

In 1929 Congress made unauthorized entry to the U.S. a crime. The first offense was only a misdemeanor, but subsequent offenses were charged as felonies. This was the moment at which undocumented immigrants became defined as criminals, situating “the principle of national sovereignty in the foreground [and making] state territoriality—not labor needs, not family unification, not freedom from persecution, not assimilation—the engine of immigration policy” (Ngai 2003). Armed with a new commitment to immigration enforcement, the 1929 law criminalizing unauthorized entry, and facing the Depression, stricter Border enforcement measures quickly became an effective means of controlling the population of Mexicans and Mexican Americans in the southwest, who were often swept up and deported, unable to adequately demonstrate residency or citizenship or merely the victims of targeted racism. As Schrag points out, immigration enforcement was used to drive Mexicans out during moments of high unemployment, but would turn a blind eye to immigrants during labor shortages (2010:129). Hing echoes his sentiments: “if Mexicans were needed for [x] jobs, their temporary presence was to be encouraged and accommodated; if not, they were to be kept out and if necessary driven out” (2004:125).

Enforcement was sloppy, complicated, and often arbitrary. Border Patrol and other immigration officers were able to exercise a substantial amount of discretion on the job and, as Schrag highlights, after nearly a half-century of immigration restrictions and a lack of formal due process rights, “the legal threshold justifying deportation became both murkier and easier to cross” (2010:130). Warrantless raids and random interrogations of anyone perceived to be an alien landed many in immigration custody. Once in the hands of



immigration, immigrants—sometimes already legal residents or citizens—were subject to inquisitorial-style deportation “hearings,” in which the detaining officer was often the interpreter, prosecutor, and presiding officer (*Op. cit.*). In these hearings, suspects were rarely informed of their right to an attorney and interrogation officers relied heavily on various forms of prosecutorial deceit (*Op. cit.*). Furthermore, because immigration hearings did not qualify as criminal proceedings, there was no right to judicial review save unlikely habeas corpus petitions (*Op. cit.*).

Although deportations of Mexicans continued to increase throughout the 1930s—some estimates suggest upwards of 400,000 Mexicans in all—the pace at which Mexicans were being deported could not keep up with increasing anti-Mexican sentiment (Schrag 2010:135). It was at this point the Mexican-drugs connection took hold. California multimillionaire Charles M. Goethe was one who led this charge. As Schrag describes, Goethe hoped to use the “marijuana-Mexican link both ways. Mexicans were evil because they were bringing marijuana in; meanwhile, the refer-madness prohibitionists were trying to show that marijuana was evil because Mexicans used it” (2010:134). Newspaperman William Randolph Hearst contributed by filling his paper with stories of drug-crazed Mexican rapists and murderers, although this was a common theme in the general media of the day (Schrag 2010:135). Marijuana was quickly banned in numerous states as the choice drug of “Mexicans, blacks, and other low types,” and a federal ban was enacted with the Marijuana Tax Act of 1937 (*Op. cit.*).

In 1942, despite decades of anti-Mexican discrimination and continual attempts to rid the southwest of Mexicans either through legislation or deportation, Congress created the *Bracero* Program. Intended to offset severe wartime labor shortages, the Bracer Program

was a guestworker program that granted between 4 and 5 million Mexicans permission to work on America's railroads and fields over a 22-year period. Many Mexicans came seasonally while some stayed for extended periods of time or simply relocated to the Border and commuted daily. When the program ended in 1964, both economic and social cross-border relations had already crystallized. Millions left without legal permission to work in the U.S. chose to continue. This added to the growing number of unauthorized daily crossing as well as the undocumented population permanently residing in the U.S. Border Patrol was thus tasked with deterring, capturing, and returning these individuals as anti-Mexican sentiment continued to grow.

#### *Adopting a Law Enforcement/Criminal Justice Model*

As unauthorized immigration reached an explosive level by the early 1980's, many wondered if there was anything that could stop, or at least slow, the influx. The combination of undocumented immigrants, the 1980s economic downturn, and Reagan's War on Drugs led the Reagan administration to focus its attention on the U.S.-Mexico Border. Media attention, too, was drawn to the border as it was believed that hundreds of thousands of undocumented Mexicans were not only invading the United States and taking American jobs, but were bringing the drug trade with them. Along these lines, Border Patrol's funding was greatly increased and "beefing up" border security became a top priority.

In essence, this equated to the militarization of the Border and its protective force, the U.S. Border Patrol. It appeared that the U.S. had lost control of its own borders, and border defenses were seen to be "under siege...by clandestine transnational actors" (Andreas 2009). It thus appeared rational, even natural, to increase border patrolling and security in response to the increase in illegal activity along the border. In addition, militarization fit the trend in

immigration enforcement since the 1970s, as it was just one of many attempts to increase immigration enforcement's power. For example, in 1975 the Supreme Court held that, under certain circumstances, Border Patrol officers could stop motorists in the Border zone and question them about their immigration status if there was a reasonable suspicion they were undocumented, and in 1976 the Court created an exception to the 4th Amendment's protection against unreasonable search and seizure by permitting Border Patrol to setup fixed checkpoints on major highways near the Mexican border (Hing 2004:99). While the '75 and '76 decisions were significant, the Court's 1984 decision to allow evidence obtained through illegal search and seizure to be admissible in deportation proceedings gave immigration officials the go-ahead to do just about whatever they wanted when it came to enforcement, sending a clear message that the undocumented would be dealt with by any and all means necessary.

Hence in the early 1990s, under the auspices of Operation Hold the Line in Texas, Operation Safeguard in Arizona, and Operation Gatekeeper in California, walls and fences began to spring up, clearly demarcating the boundary between the U.S. and Mexico, and Border Patrol implemented new securitization and control strategies along the Border. Operation Gatekeeper presents the epitome of the securitization mentality that slowly overtook immigration and border politics from the 1980s onward. Established in 1994 by a collection of government interests and implemented and overseen by the San Diego Sector of the U.S. Border Patrol, which is itself a part of the Department of Homeland Security,<sup>1</sup> Operation Gatekeeper aimed to deter would-be border-crossers through a "show of force,"

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<sup>1</sup>Before the creation of U.S. Customs and Border Protection and the Department of Homeland Security in 2003, border patrol operations were housed under the U.S. Immigration and Naturalization Service (Customs.gov 2010).

concentrating both agents and technology along the Tijuana-San Diego border (CBP.gov 2010). Originally covering just 14 linear miles of border, it was extended to 66 linear miles, or 7000 square miles, in just two years and acquired a second layer of fencing within 7 years (Andreas 2001). Large fences and walls, massive floodlights, ground sensors, infrared spy videos, night vision cameras, increased ground and sky presence of Border Patrol agents, and immigration checkpoints along all major freeways were all integral to the program's implementation (Urrea 2004; Andreas 2001). In addition, patrols became more regimented, with agents being placed at half-mile intervals all within eyesight of one another and in constant contact, along the U.S. side of the fence (Andreas 2001). Overall, the undertaking was made possible by a substantial increase in funding and staff.<sup>2</sup>

A special report on Operation Gatekeeper, issued by the Office of the Inspector General, alludes to difficulties in adequately assessing the operation, noting that evaluation “calls for a subjective determination, and depends on the definition of success, one's expectations versus actual achievements, and other often intangible factors” (1998). Although there is truth to the report's conclusion, Operation Gatekeeper—like similar enforcement projects—was implemented based on the assumption that a show of force along the Border would dissuade potential aliens from attempting to enter the U.S. illegally; however, this assumption was incorrect. Despite being credited with decreasing the flow of unauthorized immigration, disrupting smuggling operations, and increasing the number of unauthorized immigrants and smugglers prosecuted in U.S. courts in the San Diego Sector

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<sup>2</sup>Between 1993 and 1998, as Operation Gatekeeper and similar plans were implemented along the border, Border Patrol's annual budget rose from \$354 million to \$877 million (Andreas 2001). Furthermore, between October 1994 and June 1998, the number of Border Patrol agents at the San Diego Sector jumped from 998 to 2,264 (Op Cit.).

(CBP.gov 2010), many suggest that Operation Gatekeeper merely shifted unauthorized traffic, not prevented it.

This negative analysis of Border policies like Operation Gatekeeper is relatively common and has been applied to Border securitization in general. For example, in *The Devil's Highway*, Luis Alberto Urrea argues that Operation Gatekeeper and similar projects have not actually prevented illegal border crossings but merely shifted them away from urban areas to the mountainous desert regions of the Southwest, which are subjected to less border patrolling, as their harsh climates are viewed as natural barriers to crossings (2004). Peter Andreas expresses similar sentiments in *Border Games*, suggesting that increased border security is as much a gesture or a ritualized performance as it is a real deterrent to border crossings. What is more, in referencing Operation Gatekeeper directly, he cites the subsequent rise in crossings in remote parts of San Diego County as highlighting the *shift of*, not the *end to*, border crossings in response to the project (2001). CBP data support this conclusion: between 1994 and 1999, total CBP apprehensions rose 57% and continued to rise well into the first decade of the 21st century (Hing 2004:188).

Additionally, some scholars point out that “get tough” Border policies like Operation Gatekeeper actually benefit organized crime. For example, Hing notes that as border-crossing became more difficult, unauthorized immigrants increasingly relied upon the services of sophisticated smuggling rings with ties to organized crime and drug traffickers who had the expertise to outsmart Border Patrol (2004:189). What is more, as demand for these services rose, smugglers’ fees grew exponentially. For instance, smuggling costs from Douglas, AZ, to Phoenix rose from just \$150 in 1999 to upwards of \$800 just two years later (*Op. cit.*). Finally, it has been suggested that these policies also increase the use of fraudulent

documents to gain entry to the United States, as evidenced by the jump in port of entry apprehensions involving false documents after the institution of Operation Gatekeeper and similar operations (*Op. cit.*).

The push for securitization of U.S. borders has only increased since the terrorist attacks of September 11, 2001. As Edward Alden underscores in *The Closing of the American Border*, counterterrorism and immigration enforcement have been conflated since September 11th, a trend he believes is detrimental to successfully accomplishing either goal (2009:291). Alden notes that increased immigration enforcement has been the government's "quick and easy" way of increasing national security efforts in the face of terrorist attacks (*Op. cit.*). Yet the vast majority of undocumented immigrants are not terrorists; thus, funneling billions of Homeland Security dollars into increased border enforcement does little to prevent terrorism (Alden 2009:295).

Overall, the preeminence of Border securitization over the past several decades is irrefutable. What is more, the combination of technological advances, real or imagined terrorist threats, and a global trend towards securitization are likely to crystallize America's belief that it is absolutely necessary to physically secure its borders through militarization and surveillance. That being said, Border securitization is today only part of a much larger government attempt to control unwanted immigrants through policy.

#### *Criminalizing Undocumented Immigrants at the Federal Level*

At the same time that legislators embarked upon "closing" America's borders, they also amped up immigration enforcement policies in the nation's interior. While the trend over the last thirty years has been towards increased securitization and the criminalization of

undocumented immigrants, legislators and public opinion have bounced back and forth at various points in regard to how best to manage immigration.

The first major post-1965 reform came in 1986 with the passage of the Immigration Reform and Control Act (IRCA). Although it did drastically increase Border Patrol funding and create employer sanctions for the hiring of undocumented immigrants, it also granted amnesty to several million undocumented immigrants (Hagan & Phillips 2008).

Interestingly, IRCA also contained a less publicized provision to assist 35 countries that had been “adversely affected by the immigration changes of 1965. In short, the provision created a “diversity” program—also known as the NP-5 program—that allocated additional visas to countries that had experienced a net loss in visas after the passage of the 1965 Hart-Celler Act. As Hing notes, this served primarily to benefit western European nations:

The list included such countries as Great Britain, Germany, and France...So the so-called diversity program [x] was not about diversifying the country, which of course remained overwhelmingly white. It also was not about helping immigrants from countries that had little ability to voluntarily immigrate to the United States historically, for example, African nations. The ‘diversity’ program was actually an affirmative action program for natives of countries who already made up the vast ethnic background of the country, such as western European countries. The program was about helping Europeans immigrate to and already Eurocentric country. In many respects, the philosophy of the so-called diversity program was the same philosophy of the national origins quota laws of the 1920s...(2004:100)

It is rather easy to understand how such a provision could make its way through Congress. As America’s minority population continued to grow throughout the 1970s and ‘80s and

fears over undocumented Mexican immigration intensified, it is no surprise that many Americans were nostalgic for a pre-1965 America and hoped to restore previous immigration trends through such a provision. Furthermore, when couched in the language of “diversity,” who could argue against it?

All in all, the bill was rather contradictory. As Schrag points out, “IRCA was a complex and intensely negotiated compromise among business and agriculture (which wanted more workers), immigration rights groups (which sought amnesty to legalize those already here), and restrictionists (who were demanding tighter controls and opposing anything that seemed to reward the illegal behavior of those who were here without documents)” (2010:166). Furthermore, some have argued that by legalizing several hundred thousand immigrants—many of them Mexican—IRCA actually strengthened immigrant networks within the United States, thus encouraging the unauthorized immigration of hundreds of thousands more (Schrag 2010:167). On top of failing to prevent or decrease illegal immigration, because employer sanctions were rarely enforced—and when they were, it was typically to intimidate undocumented workers seeking union representation or complaining about unfair labor practices—they did little to discourage the hiring of undocumented workers (Hing 2004:182; Schrag 2010:166). Overall, IRCA is commonly regarded as a failure at best and a complete sham at worst.

Ten years later, there was much more consensus about how to deal with the “immigration problem.” This was made evident by the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, commonly referred to as IIRIRA (commonly pronounced “ira-ira”). IIRIRA drastically changed the climate of immigration, tightening immigration controls, supplying additional funding to Border Patrol, and generally



broadening enforcement powers (Phillips, Hagan & Rodriguez 2006; Schrag 2010). It also expanded the number of deportable felonies, reclassifying many minor offenses like drunk driving and simple assault as aggravated felonies. Moreover, it created legal “bars” to deny visas of any kind for up to 20 years to immigrants found unlawfully present in the U.S. for an extended period of time (IIRIRA Sections 212 and 301). Moreover, depending on case specifics, individuals found in the U.S. without authorization for more than a year were now eligible to be permanently barred from the U.S. (*Op. cit.*). IIRIRA even included a rule prohibiting illegal aliens from receiving in-state tuition breaks at state colleges and universities (Schrag 2010:174).

The same year, the Anti-Terrorism and Effective Death Penalty Act (AEDPA) also passed. AEDPA greatly enhanced enforcement power, as well as limited judicial review in immigration cases (Phillips, Hagan, & Rodriguez 2006). After September 11th, the 2001 USA Patriot Act further expanded immigration enforcement authority and, in the words of Rachel H. Adler, added a “thick veil of secrecy” to the already hidden realm of immigration control (2006). Among its many provisions, the act bars some foreign citizens from entering the U.S. on the basis of their language; expands categories of deportable immigrants; allows for secret searches without probable cause in criminal investigations; authorizes the attorney general to detain noncitizens without a hearing; and permits the indeterminate detention of immigrants (Adler 2006; Hing 2004). Along the same lines, Congress enacted a 2002 “special registration” law requiring all alien males over 16 years old from any of 24 countries, all but one predominantly Muslim, to be registered, photographed, and fingerprinted (Schrag 2010:175). Three years later the REAL ID Act was passed, which

prohibited states from issuing driver's licenses or other identification documents to people who could not prove legal permission to be in the country (*Op. cit.*).

Then came the attempted Sensenbrenner Bill in 2005, which passed in the House but never made it through the Senate. Pushed forward by many Republican legislators, the proposed law had sections detailing how to prevent the entry of terrorists; immigration and visa fraud; electronic verification of employees' legal status; a mandate for developing a training manual on catching illegal immigrants for local police; deportation procedures; and, among other things, a rule stating that anyone who "harbors, conceals, or shields" an undocumented alien within the U.S., whether knowingly or "in reckless disregard," be guilty of a crime (Schrag 2010:175). Several parts of the bill, including e-verify, or the electronic verification of Social Security Numbers for the purpose of lawful employment, were passed by Congress on separate occasions.

Overall, these policy changes have resulted in greater numbers of deportable immigrants by vastly expanding the criteria for deportation and have set the stage for immense increases in detention and deportation (Lawston & Escobar 2010:1). In addition, post-1986 policies have increasingly granted immigration control agencies even more power and discretion, along with finances, but have failed to ensure the protection of immigrant and citizen rights alike. While these policy changes are drastic, what makes them potentially so damaging is that they have all been primarily based upon a criminal justice/enforcement operation model (Lucas 2005). Within these policies, immigrants are treated as criminals not because they have committed what many of us would consider a "traditional" crime—such as burglary, rape, or homicide—but simply for being present in the United States. As such, immigration officials have become more akin to special operatives or military police than to

social workers, who are typically responsible for handling human matters. In other words, in the past, immigration was a social issue, a political issue, and at times an economic issue, but it has only recently become crystallized as a *criminal* issue in the minds of legislators, enforcers, and the public alike.

### *DHS and Changes to Immigration Enforcement*

Aside from new immigration legislation, another legacy of the 2001 terrorist attacks was the creation of the Department of Homeland Security (DHS) in 2003. Excluding the IIRIRA reforms of 1996, this was clearly one of the most dramatic changes to immigration enforcement in the past twenty years. To streamline operations, the Immigration and Naturalization Services (INS), responsible for immigration enforcement and management since the early 20th century, was restructured under the umbrella of the newly formed DHS. This impacted not only organizational hierarchies, but systems of operation and internal data management as well. A 2004 report from the DHS provides a simple overview of the change:

As part of the realignment, two new bureaus were formed within DHS to handle enforcement actions: the Bureau of Customs and Border Protection (CBP) and the Bureau of Immigration and Customs Enforcement (ICE). The Inspections and Border Patrol responsibilities shifted to CBP whereas the responsibility of enforcing immigration laws within the United States shifted to ICE.

Together, these two organizations are responsible for apprehending aliens in violation of the Immigration and Nationality Act (INA)—i.e. foreigners without legal permission to be in the United States—and moving them through the appropriate immigration channels (United States Immigration and Customs Enforcement 2004).

Since its inception, ICE has developed a wide variety of innovative strategies and programs to enhance immigration enforcement capabilities. ICE itself is split between two operating components: Homeland Security Investigations (HSI) and Enforcement and Removal Operations (ERO). HSI investigates immigration crimes; human rights violations and human smuggling; smuggling of narcotics, weapons, and other types of contraband; financial crimes; cybercrime; and export enforcement issues (ICE Homeland Security Investigations 2010). ERO primarily deals with undocumented immigrants and is composed of several easily distinguishable operations. Fugitive Operations (FUG), Criminal Alien Program (CAP), and Secure Communities are three of the most prominent ERO operations, and are all used to apprehend, process, detain, and deport undocumented migrants and immigrants. FUG is responsible for tracking down fugitive aliens—undocumented migrants or immigrants who have either failed to show up for a court date or deportation date—and taking them into ICE custody. The Criminal Alien Program (CAP) targets undocumented migrants and immigrants currently serving time in jail or prison. CAP agents make regular visits to detention centers and check inmate records, placing retainers on undocumented inmates so that they are handed over to ICE once they have served out their sentence.

Secure Communities is the newest operation within ICE and involves computer systems that link local law enforcement directly to ICE. In the past, if local law enforcement officers suspected that someone in their custody was undocumented, they had to call ICE and ask an ICE agent to interview the suspect over the phone to determine whether or not to transfer him or her to ICE; Secure Communities removes this step. Now, when local officers put someone's fingerprints into the computer system, a report is automatically sent to ICE, and the individual's immigration status is checked with no direct contact between local law

enforcement and ICE. Retainers are automatically lodged with the apprehending department for all undocumented individuals so that they can be transferred to ICE custody at the appropriate time. If the department releases the individual before ICE can place such a retainer, Secure Communities agents track down and apprehend the undocumented person on the street.

It is clear that, for the most part, ERO operations mimic the activities of standard law enforcement or special operatives enforcement groups. Furthermore, the primary functions of ERO subgroups—FUG, CAP, and Secure Communities—all appear to be modeled upon a criminal justice/enforcement paradigm, which indelibly conflates undocumented migrants and immigrants with criminals, criminalizing immigrants and perpetuating the criminal immigrant myth. While undocumented persons have committed a federal misdemeanor, or in some cases a felony, offense in accordance with federal immigration law and legislation such as IIRIRA, ERO mandates, procedures, and posturing can severely distort undocumented criminality.

For example, in an anonymous interview I conducted with an ICE agent in the fall of 2010, the *criminal alien* narrative was repeated again and again; however, the agent openly acknowledged that a huge portion of undocumented immigrants who end up in ICE custody do so as a result of committing arrestable traffic violations, not serious criminal offenses. Hence by simply being present in the United States, the undocumented become susceptible to increasingly harsh criminal penalties for nontraditionally criminal offenses and are likely to commit future immigration-related offenses—such as becoming a fugitive to avoid deportation, reentering the U.S. without authorization after being deported—once they have

been given a criminal status. Overall, changes to ICE under DHS reorganization have criminalized immigrants through enforcement procedures and organizational culture.

### *State-Level Policy Developments and Local Immigration Enforcement*

Although anti-immigrant policies at the community-level have existed since the 1800s, with some of the most memorable being various anti-Asian laws passed in the old West, such legislation experienced a rebirth beginning in the late 1970s. This is of little surprise as America's foreign-born population grew from 9.6 million in 1970—still lower than at any other point in time after 1900—to 14.1 million by 1980 (Schrag 2010:163). Included among this 14.1 million were a substantial number of undocumented folk, many whom were Latino and many whom were concentrated in the American west (*Op. cit.*). As in the past, as the population of immigrant “others” began to grow, so did the xenophobic and racist ideology used to push anti-immigrant legislation forward.

One of the first new-wave anti-immigrant bills popped up Texas in 1975 when the state legislature revised its education code not only to deny funding to local districts for any student not “legally admitted” to the United States, but to authorized districts to deny enrollment to such students (Schrag 2010:164). While the legislation was short-lived—knocked down in *Plyler v. Doe* by the Supreme Court with a 5-4 margin—it was quickly followed by similar bills in a number of western states, many of which were subsequently knocked down. For instance, Proposition 187, passed by 59% of California voters in 1994, was also struck down as unconstitutional by federal courts. If successful, the bill would have denied nearly all public services, including schooling, to illegal immigrants and their children (Schrag 2010:170). It also would have required all public employees to report all illegal aliens to their agency head, the attorney general, and immigration authorities (*Op. cit.*).

This was not the first time immigrants, especially undocumented ones, had been equated with a heavy financial burden upon hardworking American citizens. Just a year before the passage of Prop 187, Representative Anthony Beilenson, whom Schrag describes as a “solidly liberal Democrat from Beverly Hills,” proposed a Constitutional amendment to deny citizenship to U.S.-born children of illegal immigrants (2010:169). To make his case, he warned about rising anger over illegal immigrants and the burden they and their families, both legal and illegal, placed on the American taxpayer, as well as the “growing number of pregnant women who come here for the precise purpose of having their ‘American’ babies” (*Op. cit.*). After a brief hiatus, proposals to deny citizenship to U.S.-born children without American citizen parents have resurfaced in Arizona, Georgia, Montana, Oklahoma, Pennsylvania, Texas, and South Carolina, as well as the US Congress. Currently, more than 38 states are working on similar proposals (*Billings Gazette* 2011).

While more extreme bills that explicitly target undocumented immigrants such as these have either failed to pass or later been knocked down in various court cases, many less severe bills and ordinances have made it through state or local legislative committees. Among these were successful bills in California, Arizona, and Massachusetts to ban most bilingual public education (Schrag 2010:174). A number of laws restricting “normal” activities of undocumented immigrants have also been successful, including Oklahoma’s Taxpayer and Citizen Protection Act of 2007, which makes the harboring, transportation, concealment, or shelter of undocumented immigrants a felony, and South Carolina’s statute prohibiting illegal aliens from attending public colleges and universities. In fact, over the last half-decade the number of state and local immigration-related proposals have exploded. As Schrag points out, 2007 witnessed the proposal of 1,560 immigration laws and the passage of

240 new immigration laws in 46 legislatures; 2008 brought another 1,267 proposals and 175 new laws and ordinances in 39 legislatures (2010:180). Despite the prevalence of immigration proposals at the state and local level, comprehensive federal immigration reform has yet to materialize, and some states claim this is exactly why they must now take immigration matters into their own hands.

One such state is Arizona, now infamous for the passage of its SB 1070 bill in the spring of 2010. Put simply, the bill grants state and local police increased power to enforce federal immigration law, making immigration checks a mandatory aspect of police interrogation and requiring that all immigrants carry immigration paperwork proving their authorization to be present in the United States at all times. Furthermore, the law's wording implies the use of racial profiling in determining whom to question about their immigration status, and reads as follows:

For any lawful contact made by a law enforcement official or agency of this state or a county, city, town or other political subdivision of this state where reasonable suspicion exists that the person is an alien who is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person (Senate Bill 1070).

While the law does not explicitly extol racial profiling as a usable tool for law enforcement officers, the presence of the term "reasonable suspicion" in regards to one's immigration status begs the question: aside from racial or ethnic characteristics—like skin tone or speaking a foreign language—what about an individual might cast doubt on their immigration status?



Law enforcement agencies throughout Arizona have voiced their opposition to the new law, claiming it not only distracts from traditional law enforcement duties but will also make law enforcement more difficult as immigrant populations will be less likely to work with the police when crimes have occurred for fear of immigration consequences (Change.org 2010). Furthermore, the U.S. Attorney General has filed a lawsuit claiming that the law is unconstitutional. While the matter has yet to be resolved, in April of 2011 a three-judge panel of the 9th U.S. Circuit Court of Appeals refused to reverse a lower court's order that blocked several aspects of SB 1070 from going into effect and noted that federal officials would likely prove that the Arizona law is unconstitutional as Congress has given the federal government sole authority to enforce immigration laws (*The Republic* 2011). Proponents of the bill, including Arizona Governor Jan Brewer, refuse to back down and have asked to bypass the next level of appeals and head directly to the Supreme Court for a final ruling (*Op. cit.*).

Then in March of 2011, Utah's Governor Gary Herbert signed a package of immigration bills greatly resembling Arizona's SB 1070. Among these, HB 497 requires police officers to "verify the immigration status" of persons detained, booked, or arrested for most felonies and misdemeanors "upon reasonable suspicion the person is an illegal alien," (UTAH HB 497). Another creates a state-level guestworker program for undocumented immigrants. Overall, Utah's recent immigration reform attempts have been met with mixed reviews. Some have praised the reforms as successfully bipartisan, attempting to enhance enforcement while at the same time offering amnesty to undocumented workers (NPR 2011). Others have pointed out that states do not have the power to create guestworker programs, nor to grant legal status to undocumented individuals, meaning that even if Utah hands out

work permits to undocumented folks, they could still be detained, deported, and even imprisoned by federal immigration authorities. As Steve Camarota, research director for the pro-enforcement Center for Immigration Studies, points out, “The guestworker stuff is entirely meaningless” (*Huffington Post* 2011).

To no one’s surprise, in May of 2011 both the American Civil Liberties Union and the National Immigration Law Center brought a class-action suit against the state of Utah claiming that requiring police to “verify” people’s immigration status violates federal civil rights and immigration law (*The New York Times* 2011). On May 10, 2011, the day HB 497 was set to take effect, it was suspended by U.S. District Judge Clark Waddoups. In explaining his decision, Judge Waddoups stated that it was likely that at least some portions of the law would be found unconstitutional, thus beginning what will likely be yet another lengthy appeals process regarding immigration reform (ABC News 2011).

The same day that Utah’s legislation was blocked from taking affect as it was likely unconstitutional, the Texas state legislature passed HB12, popularly referred to as the “sanctuary cities” bill. In short, the bill prohibits local governments from adopting rules that stop law enforcement officers from inquiring about immigration status of people they stop, detain, or arrest, but does not require them to do so (Reuters 2011). Localities that do not comply risk losing state funds. Similar to SB1070, HB12 has met with much opposition from law enforcement as the new law will overburden already strained departments and will likely make Hispanics fearful about calling the police (*Star-Telegram* 2011).

In Georgia, another “get tough” immigration bill passed in the spring of 2011, HB87, just awaits Governor Nathan Deal’s signature. This bill creates penalties of up to 15 years in prison and a fine up to \$250,000 for undocumented immigrants who use false identification

to get a job, includes provisions to specifically exclude undocumented immigrants from being employed on government projects, and requires all employers with more than 10 employees to use the federal E-Verify system, among other items. Several organizations, including political, social, and human rights activist groups have called for a boycott of the state and its major industries, which includes Coca-Cola, Delta Airlines, AFLAC, and Home Depot (AJC 2011; MyCuentame.org 2011). A similar bill was passed in Alabama on May 5, 2011 (Fox News Latino 2011).

Anti-immigrant policies have also taken off at the county and municipal level, yet like their state-level counterparts, they have had mixed results. Many such laws have eventually been blocked by federal courts, such as the attempts of Hazleton, PA, Escondido, CA, and Farmers Branch, TX, to prevent landlords from renting to undocumented immigrants (Schrag 2010:181). In other cases, cities have attempted to prevent day laborers from congregating outside to solicit work. For example, in 2007 New York's Suffolk County passed an ordinance that made loitering along roadways to solicit work a criminal misdemeanor with \$500 fine; the ordinance was eventually blocked by the New York Civil Liberties Union (NYCLU 2011). Despite the mixed success of such policies, by 2007 more than 100 similar ordinances had been proposed, and upwards of 35 passed (*Op. cit.*).

Cooperation agreements between local police departments and Immigration and Customs Enforcement (ICE) appear to have been more successful than local ordinances and have been quite common. Prince William County, VA, went a step further than most locals and created its own Criminal Alien Unit (Schrag 2010:181). In 2009, the county released general guidelines for the "Local Enforcement Response to Illegal Immigration," noting that "any [local] law-enforcement officer [x] may, in the course of acting upon reasonable

suspicion that an individual has committed or is committing a crime, arrest the individual without a warrant upon receiving confirmation from [ICE] that the individual (i) is an alien illegally present in the United States, and (ii) has previously been convicted of a felony in the United States and deported or left the United States after such conviction” (Prince William County Police Department General Order: 45.01 2009). In what appears to have been a preemptive attempt to ward off legal action, the guidelines emphasize that police may not make an arrest “solely because a person is an illegal alien...because the Police Department has no legal authority to independently enforce Federal Immigration Law” (*Op. cit.*). Many such policies, however, are often overkill as ICE’s previously mentioned Secure Communities program is already widely used across the US, and officers from ICE’s Criminal Alien Program frequent jails and prison across the country daily.

Add to such legislation a number of formal and “informal” policies, including the practices of state DMV’s, landlords, banks, hospitals, energy and cable companies, video rental stores, and even public libraries as just a handful of actors that require valid state identification, Social Security Numbers, or proof of legal residency to acquire goods and services. As things stand, illegal aliens are ineligible for U.S. identification documents, making it extremely difficult—and in some instances impossible—for them to obtain a wide variety of goods and services or participate in daily activities such as renting an apartment, opening a bank account, getting health insurance, setting up a satellite dish, registering a vehicle, or even buying a beer. Adding these everyday restrictions to the long list of immigrant-specific policies, one quickly realizes the trickle-down effects of immigration politics into immigrants’ everyday lives. In effect, such restrictive immigrant-specific

policies are another form of criminalization in regard to criminalizing immigrants in the public eye and pushing immigrants to use extralegal means for accomplishing goals.

## CONCLUSION

The history of US immigration policy and discourse has been characterized by nativism, xenophobia, racism, and discrimination since the original 13 colonies. When these fell out of favor—at least openly—Americans turned to securitization and later to criminalization in order to distinguish and exclude the “other” who by then had become and remain Latin American immigrants. Thus, while early regulation of immigrants emphasized characteristics such as the skin color, language, and religion as reasons for exclusion, more recent waves of regulation have underscored the need to protect America’s borders from both terrorist and criminal threats—especially undocumented immigrants. Yet despite vehemently excluding various immigrant groups from full participation in American life, the U.S. has never attempted to truly prevent immigrants from coming to the United States. Instead, America has created an immigration system that relegates immigrants to a second-class, and in the case of undocumented immigrants an underclass, a position from which to be taken advantage of and exploited.

Current immigration and immigrant-targeted policies at the federal, state, and local level continue the United States’ legacy of biased immigration policy and enforcement, as well as support for the proliferation of anti-immigrant sentiment, especially towards undocumented immigrants. Existing policies further criminalize the undocumented and limit their ability to lead a “normal” life without violating some additional policy or law. As such, it can only be assumed that the average undocumented immigrant violates numerous laws throughout the course of his or her life in the US in addition to violating immigration law, not

out of malice but simply out of necessity. Furthermore, in violation of immigration law and potentially a whole host of additional regulations, undocumented immigrants are likely to fear legal consequences, including deportation, and are thus highly unlikely to report being victimized, making them increasingly vulnerable. In sum, by crystallizing social and legal discrimination, past and present immigration and immigrant-specific policies have effectively created an underclass of immigrants comprised predominantly of the undocumented, but with the potential to include anyone perceived as foreign, “illegal,” or simply unwanted regardless of citizenship or birthplace, as all poised to offend or be violated.

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## CHAPTER 4: ESTABLISHING IMMIGRANT FEAR AND RESTRICTIONS

“I have lived 8 years in the shadows. Many people have lived fifty...the [United States] travels to other countries to liberate people...[while] here, inside this country, [the U.S.] has its own prisoners” (Mexican M 30’s, referring to undocumented immigrants).

As discussed in previous chapters, it is apparent that current U.S. immigration policy shapes Latino immigrants’ lives. Furthermore, it has been established that these policies and others targeting immigrants restrict immigrants’ opportunities to legally participate in American society, increasing the likelihood that they may utilize extralegal means of participation, and also increases the likelihood of immigrant victimization due to their real or perceived vulnerability. In short, these policies encourage and facilitate crime. For this to be true, however, requires two conditions. First, immigrants themselves must be self-aware of their immigrant status and the ways it impacts their lives; if not, immigrants will not alter their behavior in accordance with their immigration status. In other words, if immigrants do not feel that their immigration status impresses upon them a need to turn to extralegal activities to live in the United States, than their status as immigrants will likely have a null affect on their participation in crime when other demographic characteristics are controlled for. As we know, this was the case with Latino immigrants’ participation in violent and property crimes as explored in the introduction. Second, Latino immigrants must feel disempowered or vulnerable to a certain extent by their immigration status. If immigrants believe they have the power to denounce victimizers and display said power, potential victimizers may not perceive them as any more vulnerable than non-immigrants, which makes Latino immigrants’ status unlikely to affect their rates of victimization apart from hate crimes targeting foreigners or minorities.

It should be noted, however, that the majority of research on the history of American immigration policy and the story of Latino immigrants in the United States has focused almost entirely on immigration in the context of the U.S.-Mexico border. In effect, it has only been over the last thirty years that immigration enforcement has actually traveled to the nation's interior. Hence the purpose of basing this study, in part, around the following discussion of 12 interviews with Latino immigrants living in Southeast Michigan, is to examine how federal immigration policy, local immigrant-specific policies, and the current anti-immigrant climate play a part in shaping undocumented Latino immigrant offending and victimization in the Midwest.

Overall, if immigration and immigrant-specific policies actually do encourage crimes by, with, and against Latino immigrants, they must be conscious, active participants in this relationship; this is what interview conversations revealed. All 12 participants agreed that undocumented Latino immigrants are aware that their presence in the United States is unauthorized and that as such, they are prohibited from participating in numerous activities. Furthermore, participants agreed that the majority of undocumented Latinos live in constant fear of potential arrest, detention, and deportation due to their immigration status, making them more vulnerable to predatory offenses. Taken together, restrictions undocumented Latinos face, as well as their fear and vulnerability, make them both more likely to offend and be victimized. Thus in essence, the following provides a detailed look at the affects of the overarching status offense every singly undocumented Latino immigrant commits: unlawful presences in the United States.

## RESTRICTED ACTIVITIES

“Life here is very difficult. Super difficult. Why? Because we don’t have, we don’t have a paper, yes for the simple, the simple fact that we don’t have a piece of paper” (Mexican 30’s Male).

Participants offered a detailed assessment of the numerous activities undocumented immigrants are prohibited from participating in, as well as the many ways immigrants get around such prohibitions, which will be discussed later. Of all the restrictions impacting their lives, the inability to acquire a social security number, state ID, or driver’s license appears to have the single greatest impact of undocumented Latinos ability to participate in American society and—aside from being present without authorization—appears to be the driving force behind both immigrants’ participation in crime and victimization. Today, leasing an apartment, being employed, registering for school, driving, visiting a hospital, traveling, gaining access to specific locations, signing up for services such as electricity or cable, checking out a library book, and even making some purchases and returns are predicated on holding a valid ID. Basically, without an official government ID, it is almost impossible to do anything today’s world of technology, security, and control.

When discussing prohibited or restricted activities, participants almost always began with the most basic aspects of everyday life from which immigrants are excluded. This often included obtaining valid IDs, driving, having and using bank accounts, and signing up for household services like electricity, gas, cable, and phones. For example, when asked what activities are specifically prohibited for undocumented immigrants, this Costa Rican woman’s response was quite standard:

...just very basic things like, um, I mean it's hard to have a bank account. It's hard to cash your checks. It is, it is a, a major obstacle that there are no licenses for driving...yeah there are a lot of things that we're not allowed to do. Like even travel...even inside the country it's hard. Just to take a flight or to take a train or even the bus is something that if you're smart enough you won't do...It's very hard to, like to rent a car. Yeah a lot of things like to get like, you know like the electricity or cable stuff, sometimes to start the process they ask for a social security number and all the documents *and* [smiles] they have come up with other solutions for you know *that kind of people* [makes quotations with fingers, still smiling] supposedly. Sometimes they charge you um, like a deposit, like \$400, \$500 deposit [to] skip that social security thing.

From her perspective, as an undocumented immigrant, one is pretty much restricted from all sorts of "everyday" activities. When asked the same question, two other participants offered a similar perspective, but their responses centered around not having a valid social security number:

Female Participant: For everything they ask [to check your] credit. Obviously we know that in every country there are laws...[but] how can one avoid [doing illegally] what most of the time the *same* government prohibits one from doing [legally]?...Like what happened to me last week. I went to setup the satellite dish and they simply said, 'Do you have a social security [number]?' I don't have a social security number. I have a tax ID number. 'We're going to check your record. Oh, you can't setup an [account] because your record is empty.' *Obviously* [laughs].

Male Participant: And how are we going to build credit if no one will let us start?

Female Participant: *Exactly!* And to be able to start building credit [with the company], you have to pay \$1500 cash first!...In this way or, many times, under the table, the same government that wants to eliminate violence, scams, or what do they say when things aren't done appropriately?

Male Participant: Frauds?

Female Participant: Frauds. Yes the same government, it doesn't allow us to do things the proper way as we would like to. Look, you can't drive without a license, but if you go to apply for a license and explain, 'Look I have a car. I am working. I don't have another form of transportation.' *No! Denied!* You want to get insurance. You offer to pay [x]. No, because you are an *illegal*...You want to continue studying. No because you are an *illegal*. You want to go to a dance. [You use] your passport as identification and they look at you as if you were an assassin. As if you were a thief. Simply because your [ID] doesn't say 'United States.' (Costa Rican 30 Female & Mexican 30's Male)

Other participants linked the difficulties of being an undocumented Latino to the inability to get a driver's license:

[I go to] the store to buy, I don't know, one beer. And they see that my license is expired and say 'No.' It doesn't work. I feel like this is a type of discrimination because I know the law only requires that one is of age in order to buy alcohol...This is just one example of what happens with an expired license. It closes many doors.

(Mexican 23 Male)

As was the case with this young man, losing the ability to participate in or perform certain activities or, as we might say, to have certain privileges, due to an expired license was very

frustrating for nearly all participants. This is likely exacerbated by the fact that until a few years ago, undocumented immigrants could obtain driver's licenses and thus had access to much of what society has to offer. For example, one 26-year-old participant spoke of the expiration of his license with a tangible air of sadness:

Personally, I don't have an ID because, about 5 years ago, they changed the laws in the state of Michigan referring to driver's licenses. And I had my license and I had my ID, which are now both expired. About a year ago in February the police stopped me and I had to go to court for driving without a license. I also don't know if I can return to school because my license is expired. Sometimes I have problems at the bank when I want to make a big deposit or withdrawal. I still have my bank account, it's just that not having a license has complicated things for me a bit.

This participant was not the only one to discuss the expiration of driver's licenses as something worth fearing when upcoming and worth mourning when gone. Multiple participants noted that most undocumented Latinos' licenses have already expired and those that are still valid will soon expire. In fact, one young Mexican participant mentioned that he knows many people who now dread their birthdays because their licenses are set to expire. Put simply, for the average undocumented Latino, the expiration of a driver's license brings a life sentence of exclusion from American society.

#### FEAR AND VULNERABILITY

"I, um, I'm basically trying to be invisible. I mean everybody knows the risks. I think everybody would agree with that. How we live? Well, we live with fear" (Costa Rican Female 32).

Fear and vulnerability—although not always explicitly expressed—were recurring themes in every interview conducted. Not a single participant negated the notion that undocumented Latino immigrants know that their mere presence in the U.S. violates the law. At the same time, many did not feel that being present illegally was the same as committing a “traditional” crime and wanted to emphasize this point. Throughout the interviews participants often noted that Latino immigrants are “treated like criminals” despite only coming to the U.S to work and give their families the chance at a better life. As one woman noted when asked about the treatment of immigrants while in detention, “...it is a crime to be illegal I know but, [immigrants] get mixed with other people that did like, *real* crimes [laughs]. I don’t see it like we do a *real* crime. Well supposedly it is real.” Yet regardless of the rationalizations or justifications participants used when discussing immigrants’ illegal presence, interviews consistently revealed that undocumented Latino immigrants are aware that they are breaking the law.

Participants also stressed that acknowledging and worrying about the risks associated with being undocumented are simply a part of undocumented Latino immigrants’ daily lives. As one couple expressed:

Male Participant: So, immigrant life is, is very tough. It is very tough, very, intimidating. I am referring to, that we always live with-

Female Participant: With fear.

Male Participant: With intimidation, intimidation. What I mean to say by intimidation is to be frightened. Do you understand? *Frightened*. Because even though I go to and from work with the thought that at any moment immigration is going to find me is always on my mind. (Mexican Male 30’s & Costa Rican Female 30)



All participants agreed that this potential for discovery and subsequent deportation is a threat that weighs heavily on undocumented Latino immigrants, and furthermore, it is the principle fear immigrants have. As one young Mexican man put it, "...for us as immigrants here, you never know when you are going to be arrested or you don't know when they are going to catch you. I think this is the biggest risk."

Immigrants' fear is logical because police arrests, ICE detentions, and even neighborhood raids can happen at any moment without warning. Briefly outlining the realities of immigration enforcement in Southeast Michigan helps contextualize participants' comments. As a federal law enforcement agency, Michigan ICE offices follow the same protocol and regulations as do ICE offices around the country. Being that Michigan shares a border with Canada, and specifically, that the Ambassador Bridge connecting Detroit to Windsor, Ontario, is one of the most high-volume crossing points between the U.S. and Canada, Southeast Michigan tends to have a fair amount of ICE and CBP activity. Both ICE and CBP have main offices in Detroit, just about 45 minutes away from the location of this study. While several local police departments have made public statements claiming not to work directly with ICE, eyewitness accounts have placed them at the local raids and the Detroit ICE office does participate in Secure Communities, a police-ICE cooperation program discussed briefly in Chapter 3.

To further contextualize participants' fear of ICE, local police, and deportation, it should be mentioned that ICE activity has greatly increased in Washtenaw County over the last several years. Perhaps not coincidentally, this rise has coincided with a dramatic increase in the county's Hispanic population, which the Census placed at 8,839 in 2000 and

11,597 in 2009 (Census.gov).<sup>3</sup> There have been numerous instances of raids of family homes, as well as several large-scale raids on businesses including a chain restaurant in nearby Canton, Michigan, and a local roofing company. Most recently several ICE vehicles stationed themselves outside an elementary school in Southwest Detroit, home to a large Mexican population, around the time that school lets out, frightening parents to the point that they did not want to pick up their children and deeply startling children. Furthermore, there have been numerous traffic pullovers leading to deportation. In fact, the situation has become so precarious that local immigrant rights groups (also a growing force in response to ICE activity) and concerned community members felt the need to push the Ann Arbor City Council to pass a resolution stating the city's opposition to SB1070-type legislation, as well as police-ICE cooperation. While the resolution passed in June of 2010, local ICE activity continues.

In fact, many Latino immigrants have witnessed immigration arrests firsthand or at least have known others who have been deported, making fear of the police and ICE extremely tangible. One woman stressed that even when ICE does not come knocking on your door, you feel the impact. In discussing a specific incident in Ypsilanti, Michigan, during which ICE detained five people from one home, she pointed out that "the police kept on driving by in that neighborhood a lot. So it's always like um, it is a little bit of intimidating, but they're not as bad as other states. That's for sure." When discussing ICE, another woman directly associated ICE intimidation tactics with instilling constant fear in

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<sup>3</sup> Census data on the Washtenaw County Hispanic population likely underestimates the actual number of Hispanic-identified individuals actually living in the county due to Latino immigrants' fear of government agents, like Census takers, who are presumed to be potentially connected to ICE. This is not only a problem locally, but nationally, and is one of the reasons the 2010 Census made a special effort to count Latinos residing in the U.S.

undocumented Latinos, “How do I explain it? ICE is always frightening...When ICE is outside, everyone is in their apartments. Nobody leaves to go to work. Everyone is trapped until [ICE] leaves...I don’t think it’s right...living with fear.”

Living in fear or at least aware of the threat of deportation, undocumented Latinos are never quite sure whom they can trust. One can never tell if an unfamiliar car driving slowly down the street or a lone stranger meandering through an apartment complex is really just a regular person or is actually a police officer or an ICE agent. In fact, one Costa Rican participant emphasized that she considers anyone she does not know to be a potential law enforcement agent: “Before we leave the house, we have to check the windows to see if there is a suspicious car or person outside...it’s the same if we go to the supermarket...even a person that does not have the slightest chance of being a police officer, [you] always associate with, with immigration. Or you think, ‘this person could deport me.’”

Participants with children seemed to be the most affected by their status, and those without children acknowledged that life as an undocumented immigrant is much more difficult for those with children. This appears to be especially true for undocumented Latinos with U.S. citizen children because, as citizens, children can be taken into the custody of Child Protective Services in the event one or more parent’s deportation. For example, when discussing daily fears and potential deportation, one mother of three stated that having children adds to the stress of being undocumented as you are not only concerned with yourself, but with maintaining the ability to care and provide for your children:

“If you have kids that is the worst...On the news they always show cases of people that, they get deported and their children, um, they put them in adoption and it, it is really stressful.”

A single male participant put it somewhat differently:

...and I don't have children, but if I had children? To leave them here and you are there [in your native country]? About myself I don't worry. They can grab me when they want. I can go.

Despite stating that he would not mind if he were deported, it is clear that this participant believes that if he had children in the United States, the situation would be much more troublesome.

Hence, whether expressed explicitly or merely implied, participants seemed to agree that having children makes the threat of deportation much more serious. Further evidencing this were conversations with several mothers who participated in interviews and went into much detail about the lengths to which people go to protect their children in the case of their deportation. Such protections range from informal agreements with friends and family to notarized documents granting someone power of attorney over their children. Despite several options, two participants emphasized the difficulties one faces in securing a caregiver in the event of their deportation. Both noted that only a legal permanent resident or U.S. citizen has the power to travel in and out of the U.S. and help reunite children with parents. As one woman said, whether good or bad, many undocumented Latinos associate with other undocumented Latinos, and this makes it difficult to find an in-case-of-emergency caregiver for their children.

Overall, most participants suggested that undocumented Latinos handle the risks of their immigration status by staying "under the radar." One participant put it rather bluntly: "I, um, I'm basically trying to be invisible." It follows then, that undocumented immigrants are unlikely to report incidences of victimization to the police because talking with police or other criminal justice actors has the potential to lead to the discovery of one's immigration

status. For instance, when asked about interactions with criminal justice employees including prison guards, detention officers, and court employees, one participant simply said, “I think the dream of any Latino would be to *never* come in contact with any of these people.” Numerous other participants agreed with this, pointing out undocumented Latinos’ aversion to law enforcement even if they have been victimized. One 28-year-old Mexican man explained this aversion as a combination of lacking English skills, ignorance, and fear:

Participant: What it is, [immigrants], many of them out of ignorance or fear, we consider it daring to report anything to the police.

Interviewer: So because of that you believe that there are immigrants who are not willing to go to the police for assistance out of fear of what could happen?

Participant: Yes. Many because they don’t speak English, because they are afraid that they could be deported or something like that. You get me? Yes, the Latino population stays quiet for fear of being deported.

This fear, of course, has a huge impact on undocumented Latinos. By fearing the police and fearing reporting abuses to the police, immigrants become a target for victimization. Put simply, many undocumented Latinos can become disempowered by their immigration status and the fear associated with it. Of course, this is not always the case as evidenced both by examples of individuals standing up for their rights from interview conversations and by social justice movements involving vast numbers of undocumented Latinos, especially on the East and West Coasts over the past several years. Yet for the most part, participants agreed that undocumented Latinos often feel vulnerable because of their immigration status. Interestingly, while some participants did not say outright that they saw undocumented Latinos or themselves as vulnerable, perhaps choosing consciously or

subconsciously not to take on a “victim” identity, others did. For instance, when asked if she thought undocumented immigrants were afraid to call the police for help, one Mexican woman simply said, “It’s certain that more often than not they will take you [instead]... You can’t do anything... We have no way to defend ourselves.”

As this and other participants’ comments make clear, whether it is actually certain that undocumented immigrants will wind up in custody if they reach out to the police for assistance, many undocumented Latino immigrants believe that such contact with the police could lead to arrest, detention, and subsequent deportation. Hence, as this participant expressed, many undocumented immigrants believe that they really do have no way to defend themselves from abuse, exploitation, and other forms of violence. One undocumented Costa Rican woman summed up this sentiment rather eloquently, stating:

I always say the U.S. is a, is a prison of gold for us. Because we have everything ...but in the end, we are always conscious of the fact that we are hidden...because we don’t have that little paper to ensure the tranquility and liberty that we have in our own countries. For that reason I say, the United States: a prison of gold.

Thus without “that little paper” to afford them peace of mind, undocumented Latinos remain in the shadows, fearful of what may come from speaking out.

## CONCLUSION

Overall, several crucial points about undocumented Latinos can be taken away from project interviews. It is not only clear that immigrants are both aware of and feel somewhat disempowered by their immigration status; it is also apparent that undocumented immigrants face numerous restrictions that inhibit their ability to perform “normal” activities without being dishonest or breaking the law in one way or another. First, most commonly cited

restricted activities included obtaining valid IDs; driving; registering a car; having and using bank accounts; signing up for household services like electricity, gas, cable, and phones; getting insurance; registering for college courses; taking out loans; opening a credit card account; building credit; renting cars; domestic and international traveling; purchasing certain items; and entering certain spaces, such as bars and other locations that require ID. Second, participants agreed that not having valid government identification has an extremely detrimental impact on undocumented immigrants' ability to participate in society. Moreover, not having the ability to obtain a valid driver's license may be the single most detrimental restriction undocumented immigrants face. As one participant said, "That's it, that's the key: licenses. The way I see it, for most people, if they could have a license the rest wouldn't matter." In essence, not having an ID is a primary restriction that makes one ineligible for other activities. Third, there was consensus among all participants that undocumented Latinos are aware that their mere presence in the United States violates at least some sort of law or laws. Fourth, there was also general agreement that immigrants' status was associated with several risks, the greatest being the threat of deportation. Finally, although discussed in multiple ways and seen as existing to different extents by different participants, participants agreed that most, if not all, undocumented Latinos fear the police and refuse to interact with them even if they have been the victim of a crime, something many participants linked to increased immigrant vulnerability.

Now that these facts have been established, we can move on to the specifics of the immigrant-crime relationship in the case of undocumented Latino immigrants in Southeast Michigan. Grounded by my status-driven offense typology, the next two chapters explore immigration and crime from two lenses: immigrants as perpetrators and collaborators (status,

circumstantial, and opportunity offenses), and immigrants as victims (predatory and due process offenses).

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## CHAPTER 5: IMMIGRANTS AS PERPETRATORS AND COLLABORATORS: STATUS, CIRCUMSTANTIAL, AND OPPORTUNITY OFFENSES

Despite not being allowed to do certain things, undocumented Latinos still live in the United States and participate in nearly every sphere of society. They merely do so through extralegal means. While undocumented Latinos may be able to get around restrictions on their own, as discussed in the previous chapter, there are many activities one cannot do alone even with fake papers. Offenses occurring under these circumstances are those that I refer to as, status offenses, circumstantial offenses, and opportunity offenses. To refresh, status offenses are activities that immigrants—due to their status—are forbidden from or unable to perform without violating one or more laws. For example, using a fake SSN to get a job is a status offense because it is directly related to undocumented immigrants' lack of permission to work. Circumstantial offenses are those acts that are a crime because of one or more participants' immigration status, or an act that is done as a favor for an undocumented immigrant because his or her status restricts the person from achieving a desired outcome through legal means. For example, the provision of a ride by a licensed permanent resident or citizen to an unlicensed undocumented immigrant can be construed as transporting or trafficking an undocumented immigrant, which is actually a federal offense. Opportunity offenses are acts in which a person, who could be present in the United States with or without permission, profits by providing a good or service to an undocumented consumer because his or her immigration status restricts one from acquiring the good or service. For example, a citizen registering an undocumented immigrant's car for a fee is a common example of an opportunity offense.

All three offense types provide numerous alternative, often illegal—although at times merely dishonest—ways to achieve desired outcomes. Hence despite not being allowed to do certain things, undocumented Latinos still live in the United States and participate in nearly every sphere of society. They merely do so through extralegal means. As discussed in previous chapters, however, since undocumented Latinos operate in the shadows and most academic researchers have neglected to frame their activities within a criminological perspective, there is no equivalent research with which to compare the following analysis of status, circumstantial, and opportunity offenses. Instead, we must rely on this studies’ participants to shed light on such activities, something they were more than willing to discuss.

Overall this chapter embarks upon “virgin” territory. First, the prevalence of fraudulent documents is explored, with special attention paid to the rules or norms that govern when, where, and how to use such documents. Then immigrants’ alternatives to restricted legal participation are discussed. These include a wide range of extralegal activities that often involve the assistance of friends, family members, or acquaintances with some sort of legal status in the United States. Finally, the provision of restricted goods and services to undocumented Latinos for a profit is discussed.

#### THE PREVALENCE OF FRAUDULENT DOCUMENTS

“Well yes [we don’t have papers]. But the fact is we have our own papers [laughs].

Legalization, we have it in, half an hour” (Mexican 28 Male).

As previously discussed, one of largest obstacles undocumented Latinos face is their lack of valid government identification. As such, they are unable to participate in some of the most basic activities without turning to extralegal means that range from mere dishonesty

to blatant criminal activity. One of the most frequently cited solutions participants mentioned when discussing how undocumented Latinos get around restrictions was the use of fraudulent or false documents. Though not a fail-safe by any means, all 12 participants agreed that the vast majority of undocumented Latinos own fake identification documents for one reason or another, suggesting that fraud and/or identity theft and the production and sale of fraudulent documents—status and opportunity offenses, respectively—some of the most prevalent types of crime associated with immigrants’ undocumented status.

The basic preface to seeking out fake papers is, of course, employment. As employers are required to verify employee eligibility by law, we can assume that many—if not most—employers ask new hires to at least provide an SSN, although whether they actually check its validity is another story. Furthermore, although some participants did mention that some employers are more than willing to pay wages in cash, which does not require an SSN, there was a general consensus that undocumented immigrants needed fake SSNs or green cards to be gainfully employed. As one woman stressed when asked why undocumented Latinos opt to falsify papers, “To falsify papers, first because we are realists. Here you want to go to a restaurant and wash plates, you need a social security number, and if you don’t have one you’re going to fake one.” A young Mexican who had been in the United States for 8 years offered a similar answer, but also pointed out that many people would prefer not to employ false documents if they did not feel they had to, “They get a fake [to work] and that is what moves everything here...and many people don’t want to get one, but you have to get one because without [fake papers] there is no other way to get work.” In fact, one participant discussed her past use of false documents, noting that it worried her so

much she actually quit her formal cleaning job and began working for herself cleaning homes:

I worked for a cleaning company for 3, 4 years. And every year when I had to change papers [they'd say], '[name] it's time to change papers.'...The secretary would change the name and my checks would come with my new name...until I decided to work for myself. No more fake papers...to fix my case. I know that I'm in the wrong. *I know!*

It's always on one's mind...[fake papers] I know it's double, triple culpability.

She did acknowledge, however, that her decision was not typical and that most undocumented Latino immigrants use fakes.

In addition to agreeing that most undocumented folks use fake documents of some sort, participants also shared similar accounts of what types of documents people buy, how they are acquired, and how much they cost. First, when one talks about fake documents, one is usually referring to fake SSN cards, fake green cards, or fake government ID's of some kind; most undocumented immigrants do not seek out fake drivers licenses for several reasons that will be discussed later. Most fakes run between \$50 and a couple hundred dollars, depending on the quality, and have only gotten more affordable in the last ten years as technology has advanced. Moreover, some producers offer package deals that include a fake SSN, fake green card, and fake government ID for just a couple hundred dollars.

Sometimes, people actually purchase real SSNs or other identity documents. These are either stolen or actually sold by the SSN holder; however, real documents can be more expensive than fakes. For example, one participant went into great detail about the purchase of Puerto Rican identities, which he claimed to a rather common occurrence:

Sometimes people also buy Puerto Rican papers...They buy the social and birth certificate of a Puerto Rican person and they buy them for around \$2,000. And you have your social and your birth certificate from Puerto Rico and you go to the Secretary of State and say you have just arrived from Puerto Rico and you want your ID and your license and you are automatically a Puerto Rican citizen...but you run the risk that, for whatever reason, the police discover that you have committed identity theft or even the person who sold you their identity turns you in and they put you in jail. (Mexican 23 M)

In many ways, purchasing a Puerto Rican identity seems like a rather creative fix to not having one's own documents. Most Americans are unlikely to doubt that the undocumented Latino is not necessarily of Puerto Rican descent if he or she is carrying valid Puerto Rican identification documents. Yet, as this Mexican participant emphasized, even if someone willingly sells their identity to an undocumented immigrant, if the undocumented immigrant uses someone else's identification documents, they are committing identity theft—a very serious offense. Furthermore, there is no guarantee that the seller will not turn the purchaser in after receiving his or her money.

Not surprisingly, interviews revealed that the purchase of fake documents is much more common than the purchase of theft of real documents. Two typical ways of obtaining fakes emerged from interview conversations. In one scenario an undocumented immigrant asks around until they find someone with a connection; because nearly all undocumented Latinos have fake documents themselves, it does not take long until one is put in touch with someone who produces fakes. In the second scenario, one merely drives to Detroit's

Mexican Town and hangs out for a few minutes. Undoubtedly he or she will be approached by someone offering SSNs, green cards, or other IDs.

One Costa Rican participant admitted having used fakes in the past, however, she, too, had decided to work for herself cleaning homes several years ago and thus had not attempted to purchase fake documents in nearly a decade:

Participant: Well, long ago, [laughs] ten years ago...you could go, let's say to Detroit. You went to Mexican town and for some reason there was always like people in the street, like hanging in the street all day long, and they could tell, you know [laughs] who was there for getting papers. Nowadays it's not like that..I think now here in our city, there's one person or two people that do it and it's just like a phone call and you know you give like your name and blah blah blah and you meet up and pay and they give it up to you...you gotta give them like a picture. Gotta go take your passport photo... I think it's like \$50, \$100.... In fact, I think that, some [SSNs] they're fake and some I think they're real.

Interviewer: From?

Participant: God knows who.

One young Mexican participant emphasized that you no longer have to look for people who can provide you with fakes, noting that instead they now find you, "There are many people in the street that, when they see you're Latino, they simply give you their card, they offer you a social and a green card or ID. And if you need one of those things you call them. Someone will come to your house and take your photo. They'll charge you \$220 for all three things, the social, the ID, and a green card." Another participant pointed out that due to enhances in modern technology, one need never meet whoever is responsible for producing

the fakes. “People need ‘immediate legalization’ [laughs], it seems, for work,” he pointed out and continued, “There is no longer a need to go with the [document producer]. Now technology has advanced. A photo, an email, and in a few days your papers are at your front door.” In fact, there was a general consensus among participants that home computers have made falsifying papers so simple that just about anyone can do it:

Interviewer: So there’s people making them at their house?

Participant: Yeah.

Interviewer: Are these people immigrants too?

Participant: Yeah [laughs]. The one I know, he’s, he cooks in a restaurant and he’s illegal and so is his wife, and I mean he has the most boring life. I mean just, lousy car, just like everybody in our community. So it’s not like it’s a stand up person that is getting all the money there. I think out of necessity someone would have to just, come up with that and improvise that. I mean it’s just a regular person. (Costa Rican 32 Female)

Although participants agreed that anyone can make fakes, one participant emphasized that government employees as well as organized crime entities are also involved in producing and selling fakes. When asked whether immigrants, native-born Americans, or both were involved in making fakes, he commented that, “within Latinos we have our, our own...connections that are in charge of making papers. And Americans who work in government offices in charge of licenses [and with] software can falsify papers...Corruption runs from the top to the bottom. And it leaves sufficient means of acquiring papers.” Later, when pressed by his girlfriend who was present for the interview, he also conceded that fakes can be connected to other, more serious types of crime:

Participant's Girlfriend: I'm saying like aren't fake papers connected to drugs and drugs connected to weapons trafficking and weapons trafficking connected to fake papers?

Participant: It's like a circle, a circle. Everything runs from fake papers to weapons to drugs. They can get you whatever you need, a weapon, drugs, or papers. Get it?

Everything is a circle, and, and they have different things. The police know. I believe everyone knows. It's very well known. (Mexican 28 Male & American 22 Female)

Interestingly, although this participant believed that the connection between the sale of fraudulent documents, weapons, and drugs is well known, he was the only participant to make this connection.

Overall, it appears then that in just ten years the production of false documents has transformed from a specialized skill requiring special tools to a type of fraud that just about anyone can accomplish with a laptop and printer. It follows that while the production and sale of fake documents may have previously been linked to more serious criminal activity and may well still be the fact that anyone can produce fakes suggests that these activities are likely moving further and further away from organized crime. In addition, this also means that it is much easier and cheaper to acquire false identification documents than ever before.

Despite the ease with which false documents can be acquired and how common they are, interview participants stressed that they are only appropriate in certain situations. For example, participants agreed that showing a false document to a police officer was a recipe for disaster and could even lead to prison time or deportation. As one 26-year-old Mexican participant explained, "Fake papers are only used for getting a job...because, no, no you can't



create an identity with the police or the hospital...you can't show [fake documents] to the police because it is a federal crime.” Another participant offered a similar take:

Interviewer: And so if I'm driving and the police stop me, am I going to show or not show the papers?

Participant: Oh, of course not! [laughs] Not to the police. [laughs]

Interviewer: Why not?

Participant: Why? Because they have their database...They know how to tell the difference between a real document and a fake. (Mexican 28 Male)

Following this logic, it is not surprising that when asked if undocumented Latinos get fake driver's licenses, participants agreed that not only do most undocumented Latinos avoid fake driver's licenses, but that it is a horrible idea. For instance, one young man stressed that fake driver's licenses are useless for the undocumented:

Shit! I've heard of fake licenses, but not for Hispanics, more for European students who are underage...fake licenses for immigrants doesn't work...if they're driving and get stopped by the police, they are not going to pull out a fake. That doesn't work at all. (Mexican 26 Male)

As another participant pointed out, most undocumented immigrants do have real drivers licenses and although it is illegal to drive without a license, it is better to carry an expired license than a fake:

Participant: I heard, my friend that works with me, I heard that they're making [fake drivers licenses] now, but I, I don't know if that's true.

Interviewer: Do you think that's because before, immigrants could get a driver's license and then they changed it, a couple years ago?

Participant: Yeah... But you know the funny thing I think is that, a lot of the people don't want to get them. Because they would rather have the expired one and keep on driving like that than have a fake one. Because I think that if you get pulled over by the police and you're showing a fake one it will be a hundred times worse than if you're showing your own but expired. (Costa Rican 32 Female)

Finally, another participant explained the difference in the level of risk associated with using a fake green card with a potential employer versus showing a police officer a fake driver's license:

One only uses [a fake] when there are not any real risks, like for work...Using a fake green card is not the same as carrying a fake license. They are very different things because one simply identifies us in order to say 'I'm going to work here.' Driving [with a fake] is similar, but there is a huge difference in the risk that you run.

(Mexican 30 Male)

Thus although many Americans may view the act of using a fraudulent document to identify oneself as the same under all circumstances and perhaps without justification in any of them, undocumented Latinos have created an elaborate system that both distinguishes when it is appropriate to use such documents from when it is not and also justifies the use of such documents as necessary.

#### OTHER STATUS, CIRCUMSTANTIAL, AND OPPORTUNITY OFFENSES

As just discussed, fraudulent documents offer one solution to a number of issues raised by undocumented immigrants' statuses. Yet, as also noted, such documents cannot be used in a number of circumstances, leading undocumented Latinos to seek out other often extralegal means of getting by day to day. As such, all participants agreed that

undocumented immigrants deceive, utilize loopholes, and break the law daily in addition to using fraudulent documents. For example, when asked how undocumented Latinos cope with the restrictions imposed upon them by their status, one woman commented on the necessity of lying and breaking the law in everyday life:

[laughs] We have to lie. Um, we have to drive no matter what, I mean you've gotta drive yourself to work and you've gotta drive your kids to school. You've gotta, you gotta do your stuff. You gotta go to the doctor and, illegal things. If [you have] a relative, and it's really common, if there's no way for them to come, I mean, I guess you support something illegal because you're bringing someone here that is not supposed to come here. You cooperate by sending money to your relatives...Um, but I guess a lot of, we do things illegally everyday just because you have to. Things are not, properly done. I mean you gotta do them. For a while at least, when you live here... I mean its just hard. It's kind of embarrassing [laughs] you know, you gotta come up and say that I don't have this or I don't have that. (Costa Rican 32 Female)

When asked for more specific examples, the same woman mentioned that sometimes, depending on the business, individuals can substitute a foreign passport for a government ID, but not all undocumented Latinos have valid passports or even have passports at all. She also noted that one can use the name of a legal relative to acquire services or co-sign on an apartment when possible, pointing out that “the tough part is like the first apartment that you rent, and usually it comes up with a relative that already rented somewhere. And you're like living there and they put you like sharing the contract. [Laughs] How they did in the first place, I don't know. But that's how it usually starts,” but noting that not everyone has a legal relative to call upon.

She was not alone in suggesting that using the names of resident or citizen family members is quite common among undocumented Latinos. For example, one participant retold the story of attempting to renew his cell phone contract in which he ended up getting his sister, legally present in the U.S., to take out a contract in her name for him:

When I signed my cell phone contract I still had my ID, so there was no problem starting the contract. But now that I had to renew my contract, they saw that my license was expired and they didn't want to renew it...I asked if I could use my [Mexican] passport or something and they said 'No. You have to use your Michigan ID.' So I couldn't. It was my sister, again, that helped me. (Mexican 23 Male)

In cases where one does not have a relative or friend who will help them acquire a service, some undocumented Latinos actually pay someone to provide them with the desired service just as they would pay someone in any normal business transaction. For example, one participant noted that you can find someone who will let you use their name for just about any service, including registering cars, for the right price:

When I had my license, a friend of mine said, 'You know what? Register my car as a favor and I will give you some money.' And yes I did register his car, but of course, logically, I didn't charge him anything because he was my friend. But there are people that charge you. You know they say 'sure I'll register your car but give me-.' Really the truth is I don't know how much they charge, but there are people who pay to have someone else register their car, or who pay for someone else to take out a cell phone contract for them, or television service or internet. They pay a person to do them the favor. Sometimes the person says, 'well I will do this for you, but you have to pay for my service too.' And you do it because for you there is no other option.

As alluded to here, these sorts of business relationships have the tendency to cross into the exploitative. In fact, there is often a fine line between business transaction and victimization as many “consumers” believe they have no other option but to do what the goods or service provider asks of them in return. While worth noting now, we shall return to this discussion in Chapter 6.

Many other participants also noted the normalcy of driving a car registered in someone else’s name, whether that person registers the car as a favor or for a fee. As one Mexican woman summed up, driving a car registered in someone else’s name is just another way to get over:

...[immigrants] are breaking the rules...because look, they drive cars in other people’s names...Everyone, almost everyone has their cars in someone else’s name. One person will have 6 or 7 cars in his name, but won’t drive them himself. Because however you look it at, they are playing dirty [giggles]...they don’t stop driving, they’re just looking for their own ways to do it. (Mexican 36 Female)

This same participant pointed out that she and her husband chose not to register their cars in someone else’s name because they did not think it was without risk, as she said, it is just another way to break the rules. She went on to explain that in California, where she had lived previously, even undocumented immigrants could register their cars, so at least if one drove without a license, the car was still in his or her name. That way, if one is pulled over, at least the police know the car is not stolen.

Like this woman, several other participants noted that not being able to register your car as an undocumented immigrant is a state-by-state prohibition. One participant mentioned

that in Illinois, just about a 4-hour drive away, undocumented immigrants can still register their own cars and receive Illinois plates:

It's that there are a lot of ways...incredibly, it would seem impossible but, there exist many forms of having a car in your name and having a license without papers, without being here legally. I have many friends that go to Chicago—I don't know how they do it, truthfully...They give you your Illinois plate, and you register your car in your name...it's something legal...you put your name there and you leave with your title...really you're driving as if you were visiting from Illinois. (Mexican 26 Male)

Thus for those who do not want to risk driving a car in someone else's name, a trip to Illinois may look like the best option.

Regardless of whether one has a friend or relative register his or her car as a favor or a fee, travels out of state to register his or her car, or simply drives without proper registration (which was also mentioned by participants), the inability to obtain or renew a driver's license driving still poses a risk for undocumented Latinos. For many, however, it is a necessary risk. When asked what Latino immigrants do when they cannot obtain a valid driver's license, participants agreed that the majority simply drive anyways. In fact, many participants felt that one really has no other viable option but to drive despite the risks associated with unlicensed driving, the biggest being that one is pulled over by the police and then handed over to ICE.

For example, one 30-year-old Mexican put it this way, "Well if you have to drive, you have to drive. It doesn't matter that one doesn't have a license. We are aware of the risk that we run and we have thought about what could happen." As another young Mexican participant stated, "I think that it is about surviving, because, I don't know. Personally, I have

to drive a car to work because I have to leave very early for work and then return. So I don't drive because I like to, I drive because it is a necessity and I imagine that there are many people like me." Finally, as one woman said, "What do we do? Well yes, we don't have a license but we just get in the car and drive with 'God's' license. That's what we call it."

It is important to note, however, that while participants agreed that most undocumented Latinos drive without a license, they alter their driving behavior in an attempt to lower the risks associated with driving. For example, several participants mentioned avoiding certain streets that are known to be frequented by police or even avoiding driving at certain times of the day for the same reason. In fact, a couple participants noted going out of their way to avoid running into police. Furthermore, participants agreed that most undocumented Latinos try to respect traffic laws at all times to avoid being pulled over. Participants agreed, however, that even when you try your hardest to follow traffic laws, you always run the risk of being pulled over.

For those who want to avoid the risk of unlicensed driving, however, there are some alternatives. Of course, walking and biking were mentioned as substitutes for driving, but participants pointed out that while undocumented Latinos sometimes make this substitution, it is only viable for short distances in good weather. Many participants also said that some undocumented Latinos take the bus instead of drive, but this was always followed by a statement denouncing the poor quality of the local buses, which do not come very frequently and stop running rather early. In lieu of perceivably decent options, many participants noted that getting rides as a favor or for a fee is quite common, although it is more common for long-distance drives.

Several participants noted that undocumented immigrants face great risks by traveling on planes, trains, or buses within the U.S. and thus ask licensed friends or family for rides, sometimes only paying for gas and other times paying a fee for the ride. For example, one Costa Rican participant pointed out that driving in unknown territory only increases the risks for the undocumented:

It would be suicide to do a long trip, out of the state, like out of your comfort area if you don't have a license. What happens, what happens if you get pulled over in, I dunno? Ohio. What happens? You're so far away. So it's always good to have someone with a license that's up-to-date just in case.

Another participant set the point at which one finds a ride at 3 hours, noting that “when people go to Chicago, practically whenever the trip is more than 3 hours [x] I believe that generally one asks someone with a license to drive [such] long distances.”

In the case that they cannot get a ride from a friend or family member, they may be forced to pay relatively high “taxi” fees. As one man pointed out, “Usually there are friends, people one knows with papers and they can help you [get around] if you give them some money, or sometimes out of friendship, but usually you pay some amount of money. It's a service. And many people do it. They can take you from here to any part of the United States or take your things to Mexico. It's a business,” and of course every service has its price. For example, one participant said that since she and her husband have chosen not to drive without proper license and registration, they are forced to pay upwards of \$15 for rides around town even from friends, as said somewhat disappointedly, “Here if you don't give more than \$15 no one will give you a ride.”



She also mentioned that the ride service she and her husband use is actually run by another undocumented Latino:

...the man that gives rides, he gives rides, but he doesn't have a license nor is his car in his own name...And he doesn't just take one person. He takes 6 or 7 people in his car...and he always charges \$30 a person to go from [Ypsilanti] to Detroit [one way].

(Mexican 36 Female)

Despite the man's status, which is uncommon for someone who provides such a service according to other participants, this woman and her husband believed it less risky than driving themselves. While it is interesting that this many would risk giving rides as his profession, knowing that not only is he driving a car registered in someone else's name without a license himself, especially considering the risks other participants mentioned in relation to driving as an undocumented immigrant, it is clear that transporting undocumented immigrants is a very lucrative business. As this participant pointed out, the man she uses for rides can make up to \$105 to drive passengers one-way from Ypsilanti to Ann Arbor, a distance of about 20 miles from one downtown to the other, and up to \$210 to drive approximately 30 minutes on the highway from Ypsilanti to Detroit tax-free. At the same time, a ride from a normal taxi service across town or to Detroit would likely cost more than what this man charges, although one would not be sharing the ride with other passengers.

When asked about the existence of ride services for undocumented Latinos, one documented participant said he was not aware of any in the area, but had considered starting something up himself because he thought there was a good deal of money to be made, but had second thoughts:

Shit I've thought a lot about this! [laughs]...opening a business like that and I can give people rides [laughs]. For me I won't do it though because that can get you in trouble...because they are going to say that you are helping, with how the laws are now, they can misinterpret that you are helping [undocumented immigrants] or trafficking people...(Mexican 26 Male)

Thus even for this documented, licensed man, the risks associated with merely having undocumented immigrants in his car are simply not worth the money he could make if he opened an immigrant taxi service of sorts. As fewer and fewer undocumented Latinos have valid driver's licenses, however, it is likely that this sort of immigration-related service will only grow despite the fact that it can be construed as a federal offense.

Overall, when it comes to undocumented Latinos' solutions to the challenges they face in daily life, ultimately, most feel forced to violate the law. Moreover, in many cases immigrants are not alone in their lawbreaking, instead relying on the illegal services or assistance of residents, citizens, and native-born Americans. As one Mexican participant in his late twenties summed up when asked how undocumented Latinos overcome restrictions, it all comes down to crime and money:

It's completely the opposite. Everything you all can do freely, we can only do illegally. Finding a job, obtaining a license, a place to live, a car, it's always driven by money under the table. Money is money and everyone has their price. (Mexican 28 Male)

While this man's words are perhaps more blunt and explicit than some other participants' responses, all other participants acknowledge that undocumented Latinos break the law daily.

Interestingly, each time undocumented Latinos' participation in illegal activities came

up, participants framed lawbreaking as a necessity and in some cases, as with the Costa Rican participant quoted previously, attributed undocumented lawbreaking in part to the actions and policies of the U.S. government:

Yes one knows that it's against the law...But they don't leave you with any other option [laughs softly]. It would be better if they made other options. One wouldn't, one wouldn't break so many of [America's] laws. If they would give one the opportunity, one wouldn't do these things. It is like they, Americans, force some to do things that they don't want to do...but there are times that even though we don't like it, we can't walk the straight and narrow. (Mexican 36 Female)

Like many other participants, this woman neutralized the criminality of undocumented activities which violate the law, pointing out that breaking the law is not something one enjoys or prefers to do, arguing that the U.S. government leaves immigrants with no other viable options and thus forces immigrants to break the law, and emphasizing that lawbreaking is simply a necessary part of everyday life.

## CONCLUSION

Again, several key points can be discerned from participant analyses of the ways in which undocumented Latinos overcome the prohibitions or restrictions they face in everyday life. First, it appears that the use of fraudulent documents is both extremely common and very well known within the Latino immigrant community. The most common fraudulent documents appear to be fake SSN cards; however, participants frequently noted the existence of fake birth certificates, fake US IDs, and fake international IDs, as well as the purchase of real IDs and even entire identities. Interestingly, participants agreed that fake driver's licenses are not common because they are perceived to carry more risk than they are worth.

Moreover, it is apparent that there exists a set of well-known norms and rules to determine when and how to use such fraudulent documents. Following such guidelines and weighing the risks against the necessity of using fake papers suggests that undocumented Latinos are aware that using fakes is against the law and make risk assessments accordingly. Finally, participants all agreed that using fake papers for employment purposes is the least risky scenario in which an undocumented immigrant uses fakes.

Furthermore, more often than not, undocumented immigrants behave dishonestly or violate the law in one way or another in order to carry out “normal” activities and achieve desired goals. Interestingly, the level of criminality involved in accomplishing specific tasks depends upon one’s access to relatives, friends, coworkers, or even acquaintances who are willing to assist an undocumented person as a favor or for a fee. Of course, whoever assists them must have some sort of authorization to be in the United States—be it a work permit, a green card, or actual citizenship—or some other form of identification like a valid passport or even a driver’s license that has yet to expire. Accomplishing restricted tasks with the assistance of others as a favor or for a fee is especially common in the case of signing up for some sort of service (electricity, cable/satellite, phone) or registering one’s car. It is also common for undocumented Latinos to get rides from others if they do not have a license. In all cases, there is much money to be made in assisting an immigrant gain a desired service or providing an immigrant with a good or service they cannot get on their own. Finally, while undocumented Latinos acknowledge that they do break the law, they insist that it is only because, in many circumstances, there is no way for them to live in the United States without doing so.

On the other side of the equation, it appears that there is a substantial amount of money to be made from the provision of goods and services as well as the production of fraudulent documents and the sale of real identity documents. As more and more states pass immigrant-specific legislation further restricting immigrants' ability to participate in society and more and more employers adopt the E-verify system to check SSN validity—a requirement that many states are themselves beginning to adopt in lack of the passage of a federal requirement—the provision of goods and services and the sale and use of real identity documents will likely increase. For the time being, however, it seems that advances in technology have created a relatively lucrative business opportunity for those with computers and connections to the Latino community.

Overall, based on interview conversations, it is apparent that undocumented Latinos frequently break the law when their status restricts them from participating in an activity or achieving a desired end in a legitimate way. Moreover, it seems that in cases of criminal activity involving at least one undocumented immigrant and one other person—who may or may not be an immigrant—there are two motivating factors: 1) assisting a friend or family member (circumstantial offense) or 2) the potential for monetary profit (opportunity offense). The rewards of such favors and business transactions, however, are not always guaranteed. In fact, such collaborative crimes have the ability to turn sour rather quickly, leaving unsuspecting immigrants the victims of theft, extortion, or worse. Yet as shall be presented, such is the life of an undocumented immigrant, susceptible to vast array of predatory offenses whether one engages in deception and crime or not.

## CHAPTER 6: IMMIGRANTS AS VICTIMS: PREDATORY AND DUE PROCESS OFFENSES

### INTRODUCTION

As alluded to previously, a large portion of crime related to undocumented immigration is actually carried out against undocumented Latinos, not by them. I have referred to such crimes as predatory and due process offenses. As will be seen in this chapter, such victimization comprises a rather large proportion of all status-driven offenses.

To clarify, *predatory offenses* encompass all offenses perpetrated against immigrants because offenders believe they are somewhat immune to apprehension and punishment due to immigrants' perceived and actual vulnerability. These offenses are carried out by people who know or presume to know an immigrant's immigration status and purposefully exploit, extort, assault, or violate the immigrant under the pretense that the immigrant will not report them for fear of immigration consequences like deportation. Wage theft is one example of a predatory offense, as is domestic abuse predicated on threats of deportation. Furthermore, while all five offense types (status, circumstantial, opportunity, predatory, and due process) can occur on their own, in many cases predatory offenses grow out of other, non-predatory offenses. For instance, someone may provide an undocumented immigrant with a service he or she cannot obtain on his or her own for an agreed upon fee, but then later threaten to withdraw said service unless the immigrant pay a monthly fee. In this case, what began as a collaborative opportunity offense has transformed into a predatory offense with a clear perpetrator and victim.

*Due process offenses* include all offenses committed by government actors who operate within the criminal justice realm that violate the rights immigrants are legally entitled

to regardless of their status. The case of a police officer pulling over an immigrant not for committing any form of traffic violation but instead for being presumably undocumented is one example of a due process offense. The excessive use of force in immigration detention would be another. The major difference that distinguishes due process offenses from predatory offenses—other than the perpetrator’s identity as a criminal justice employee—is that due process perpetrators are acting in accordance with institutional procedures, objectives, and norms and not for personal gain. Were a police officer to blackmail an undocumented immigrant for money in exchange for not delivering him or her to ICE, this would be considered a predatory offense.

Overall, participants agreed that undocumented Latinos fall victim to predatory and due process offenses daily. Three common themes emerged from interview discussions about predatory offenses. The first was common discrimination and interpersonal crimes. This includes various forms of harassment, differential treatment, and psychological and physical abuse, including domestic violence. The second was the case of business agreements (opportunity offenses) gone sour. This consists primarily of blackmail and/or extortion, as well as theft. The third was employment abuse, which includes harassment, differential treatment, lack of benefits, lack of breaks, wage theft, unsafe working conditions that violate labor and health and safety laws, and even slavery. Again, it should be pointed out that some of these offenses are actually illegal, such as domestic violence, while others may or may not be illegal depending on the context. For example the “theft” of a car by the person who agreed to register it as a favor or for a fee is not technically a theft; however, in all practical terms it clearly constitutes a theft as the car rightfully belongs to the person who purchased it and drives it as his or her own. Furthermore, some of these offenses, such as

failing to provide employees with a break or pushing them to work harder than others is not technically illegal as adult employees are not guaranteed breaks under Michigan labor law, nor does there exist a set of regulations dictating at what pace employees can be forced to work. Finally, of all predatory offenses discussed, employment offenses were by far the most common. Hence, they are discussed separately and in the most detail.

For reasons that will be discussed later on in this chapter, this study's participants were unable to discuss due process offenses to the same extent to which they were able to analyze and provide examples of status, circumstantial, opportunity, and predatory offenses. That being said, participants did mention several due process offenses in common. These included racial profiling on the part of local police as well as ICE agents, verbal harassment, and unreasonable searches, seizures, and arrests. Fortunately, due process offenses have received by far the most attention from researchers and human rights groups of all the offenses in the typology used here, thus participant contributions in this area are both contextualized and supported by a thorough literature review and analysis.

#### DISCRIMINATION, THREATS, AND VIOLENCE

As previously discussed, Latino immigrants face a wide variety of abuses, many occurring at an interpersonal level. Participants tended to agree with this idea, although the extent to which Latinos are abused varied from participant to participant. For example, when asked if people, other than employers or government actors, ever purposefully take advantage or abuse Latino immigrants simply for being immigrants, all but one participant agreed that a wide variety of such maltreatments occur with frequency. In these conversations, many participants expressed a general belief that many Americans do not like Latino immigrants



simply for being Latino immigrants. For example, one woman pointed out that one feels discriminated against even when merely running errands around town:

I have seen many people here who are racist towards you...they get angry at you...like this one [store employee] who doesn't like us. Every time we go she gets mad...and at Walmart...they say bad things to you. (Mexican 36 Female)

As another participant noted, sometimes it is a case of feeling unwanted for being an immigrant. In explaining his position, he shared this story from a trip to Meijers:

It's not bad people, but people that don't accept you...they think that we are on a bad path...I had an experience with a friend that was walking through Meijers, through the aisles, and a little girl maybe 5 years old fell in front of him and she was like, she got frightened when she saw him walking behind her and she called her dad like, 'Daddy! Daddy! Mexicans here.' It's like [frowns angrily], my friend told me that and I know he has never felt so discriminated against. (Mexican 26 Male)

Yet the same participant stressed that the situation in some places is much better than in others:

Look, here it's that, here in Ann Arbor things are very different. There are people from all over the world. So here they don't make a face at a Chinese person or an Arab or a Latino. They don't judge because they don't know, it could be that one is just a student. But if you go outside of...Ann Arbor, perhaps to Detroit...sometimes people give you dirty looks. (Mexican 26 Male)

While definitely worth noting, discrimination without concrete action is, in many ways, subjective and difficult to pin down. Put more simply, further examination of how

undocumented Latinos perceive and experience discrimination as an abstract concept is beyond the scope of this project.

More than discrimination, some participants mentioned the possibility that someone, out of jealousy or maliciousness, might threaten an undocumented immigrant with the police or ICE, but this type of predatory offense did not appear to be as common as others. For instance, one female participant explained the existence of threats as such:

Well, um, you might always get the case of a jealous coworker, that don't agree, and I guess they could report you...Um, you know revenge, like someone might, it might even come the case where people make like an anonymous phone call or an anonymous letter, you know like tipping off over some family or some restaurant or, um. [But] I haven't heard of cases where people are actually saying if you don't do this I'm gonna call immigration. (Costa Rican 32 Female)

Thus while this participant and a couple others thought threats were a real risk of the undocumented, they were not aware of any actual cases where immigrants were threatened with law enforcement.

Still, other participants were aware of instances where undocumented Latinos had explicitly been threatened with calls to the police or immigration. Such threats did not originate from Americans, however, but were actually made by other Latinos. In fact, a number of participants agreed that much discrimination and actual threatening or abuse against undocumented Latinos is perpetrated by documented Latinos, whether native-born, naturalized, or just residents. One Mexican participant explained the dynamic between undocumented and documented Latinos as such:

“Many with papers, they think that they can intimidate other [undocumented] immigrants with deportation, calls to immigration, or similar things. And they think because they have papers that they have more power than you or something like that or that they are better than you.”

Another participant provided a similar analysis:

I don't know if they have [more power], but they feel like it. They feel that they are able to say, 'I have papers. I can do whatever I want,' including [running stop signs or speeding], 'In my case the worst I will get is a ticket.' Or they say, 'Oh well they are illegals. When I want to I will tell immigration to come for them.' There are tons of people who are afraid of this. Because [those with papers] always threaten those without that they can call immigration whenever they want and tell them someone is undocumented...[So] I don't know if they have more power, but they assert that they do. They feel powerful enough to humiliate you. (Mexican 36 Female)

While the last two participants quoted were referring to the power dynamics between immigrants in a general, one participant directly connected this dynamic to problems between coworkers:

At work too. People that have papers create a lot of problems for those without. Because people that work without papers are hard workers, eh? Because at the most they know their station isn't the best and they have to work hard...Well then comes a Mexican with papers and says, 'Shit! He works hard and I have to get rid of him because they are going to want me to work that hard.' Us Mexicans say this person has become “gringoized.” [laughs] (Mexican 26 Male)

Thus although participants were somewhat mixed in their analyses of the types and frequencies of threats immigrants receive that are directly related to their immigration status, there was overall agreement that such threats do exist.

The case of fake marriages in exchange for money, as well as marriages and cohabitation with the promise of papers, offer another type predatory offense predicated on threats of deportation. Most participants agreed that many undocumented immigrants enter into relationships and marriages with documented folks—some also Latino immigrants and others native-born Americans—for benefits and vice versa. From interview conversations, there appear to exist several types of such arrangements ranging from non-abusive to very abusive. To begin with, several participants mentioned that it is very common for undocumented Latinos to pay American citizens in exchange for getting married and going through the motions of gaining the undocumented Latino permanent residency (opportunity offense); it should be noted that this process takes a minimum of three years in the best case scenario, and even real marriages can be difficult to prove. While not mentioned in interview conversations, it is also possible that two people enter into such an agreement as a favor from one to the other (circumstantial offense).

Throughout interview conversations, however, most participants painted these relationships or agreements as manipulative at best and abusive at worst, whether the relationship was solely business or rested upon at least a facade of true love. For example, one participant shared the story of an undocumented acquaintance who had lived with an American man for over 20 years, the whole time with him promising to file immigration paperwork for her as only the resident or citizen spouse can file immigration paperwork for his or her undocumented partner. She noted the relationship dynamic as somewhat

exploitative, pointing out that, “[the woman] always says that she runs around doing everything for him, well as if she was working for him.”

When the subject of relationships between documented and undocumented folks came up, one participant recounted a joke his coworker had made in reference to the two marrying so he could get papers and so that in her words, he could take care of her because she did not want to work anymore. In retelling the story, he shared that the joke had annoyed him greatly, but that such arrangements were quite common and that, “there are American women that marry Mexican men so they take care of them and there are Latin men that get together with American women for the benefits, [license] plates, something like that.” In other words, there are American woman that hook up with undocumented Latinos so they do not have to worry about providing for themselves, and there are undocumented Latino men that hook up with American women so that they can receive all the benefits other undocumented folks often pay for, such as signing up for services, leasing apartments, and registering their cars.

Participants also emphasized that such arrangements can become rather manipulative or abusive. In these cases, the documented partner threatens the undocumented partner with the police or ICE if he or she does not do what the documented partner wants. One male participant said he knew of many relationships with such dynamics, but offered an interesting twist:

Generally it’s a Mexican guy with an American woman...because truly I know many Mexican guys married to American women. I haven’t seen another situation...the guy pays for everything, the man is, well he is whipped, or, it’s that, the woman wears the pants and makes the decisions...And the American women will say, even better in

Spanish, ‘Listen *ese*, blablabla. ICE police *ahorrita*.’<sup>4</sup> They call 911 and explain the situation to the police and the guy ends up in court. They check you out and ask for a social and they realize what you’re up to here...and if you don’t have a soc you’re deported. So [you think] better to say, ‘Okay. I will get you a new car and everything else.’ ...I know more than four cases...Many are looking for papers...They marry for papers and wind up without papers and paying, paying the consequences. (Mexican 26 Male)

It is no shock that abusive individuals might use their partner’s immigration status as another way to exert power and control by threatening their partners with deportation. It was surprising that the only cases of abusive relationships involved undocumented Latino men in relationships with American women; it can be assumed that this was due to my small sample size, as well as the sensitive nature of domestic violence, for as one participant emphasized, “Here there is a lot of domestic violence within Latinos, but the women, they don’t denounce it because they are afraid of being deported as well, or that the police come but don’t give them a protection order.”

Although participants in this study are unable to definitely say whether or not intimate partner violence is commonly experienced by undocumented Latino immigrants, and despite the small amount of existing research on this topic, Roberta Villalon’s recent ethnographic study *Violence Against Latina Immigrants: Citizenship, Inequality, and Community*, offers a detailed analysis of such offenses (2010). As Villalon points out, while domestic violence occurs across ethnic, racial, class, and gender lines, undocumented immigrants are particularly susceptible to sustained abuse due to their status. She

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<sup>4</sup> This sentence translates as, “listen *man*, blablabla. ICE police *now*.”

emphasizes that in addition to “the typical abusive tactics,” perpetrators of partner violence against the undocumented use specific tactics to “attack the survivor’s foreign background (her legal and economic vulnerability, culture, language, distance from [x] family and community of origin, and lack of knowledge of [American] laws)” (Villalon 2010:22).

To illustrate this point, Villalon offers the case of Angela and Richie, an undocumented Mexican woman and her American-born husband. Richie and Angela met at work. Their relationship started out well, with Richie frequently bringing Angela flowers and leaving her love notes. After several years, however, Richie began abusing Angela both psychologically and physically. He frequently used her immigration status as a point of attack, telling her he was “very pleased that she was never going to be an American,” and manipulating her employers into firing her because she was “illegal” (Villalon 2010:31). Even when Angela and Richie were no longer together, he would call her and her undocumented brother to threaten them both with deportation (*Op. cit.*).

Furthermore, she points out that undocumented immigrants who have been repeatedly threatened by their batterer often live in fear of deportation and are hesitant to trust teachers, doctors, police, and even nonprofit workers, leaving them with few to no resources to turn to for support (*Op. cit.*); this severe anxiety, however, is likely experienced by the majority of undocumented migrants and immigrants. Villalon references the case of Claudia to support this claim:

...[the lawyer] told Claudia that if her partner ever threatened to take her children away, she should call 911. ‘The police?’ Claudia asked. Maggie nodded and explained that it was perfectly fine to call the police: ‘The police are not supposed to or allowed to ask immigration questions. They are here to help you, so if you are

having trouble, you should call them.’ Claudia’s face revealed uncertainty; she claimed that she feared deportation and did not trust the police (2010:43).

As previously stated, Claudia’s feelings are not unique: most undocumented immigrants, especially those who have had personal encounters with CBP or ICE or been threatened with deportation, fear the police. What is more, there is nothing to prevent local law enforcement from taking someone who is suspected to be undocumented into custody and calling CBP or ICE when responding to a call for assistance. In fact, during my time as a community organizer for the Washtenaw County Workers’ Center, a nonprofit organization that supports immigrant and low-wage workers, one immigrant woman recalled calling the police after being abused by her partner and not only being questioned about her immigration status, but threatened that in the future “immigration” would be called. In a similar case documented by the National Network for Immigrant and Refugee Rights, Texas police arrested an undocumented woman after she called to report her ex-husband’s abuse (NNIRR 2008). The police then called ICE, who put a detainer on the woman and took her into custody.

Thus overall, it appears that Claudia’s fears, as well as the fears of other undocumented women like her, are not completely unfounded. What is more, laws like Arizona’s SB 1070 require police officers to question individuals about their immigration status, increasing both the perceived and real chances that officers will question individuals who call the police to report domestic abuse. Finally, while numerous cases of law enforcement disregard for domestic abuse have been documented—including cases where victims of abuse have either been arrested or abused even more severely for reaching out to law enforcement for assistance—in seeking ways out of abusive relationships, undocumented immigrants risk deportation and even permanent separation from family members and



children by reaching out to law enforcement for support. Hence it is clear that although domestic abuse is based in power relations regardless of the victim's immigration status, immigration status adds yet another extremely potent framework from which abusers can wield their power.

In addition to threats and domestic abusive, participants also mentioned the frequency of extortion and/or theft within the context of business agreements gone sour. Such offenses were usually explained as such. An undocumented immigrant enters into some sort arrangement with a documented person who agrees to provide the undocumented immigrant with a service of sorts as a favor or for a fee. Then, at some later point after the documented person has provided the good or service, this provider tells the undocumented Latino that he or she is going to cancel the service or take back the good because it is in his or her name unless the undocumented immigrant gives the documented provider something in return. While this was always discussed as requiring more money in either a lump sum or regular payments, it is easy to see that this could translate to just about anything from free labor to sexual favors. In other cases, the provider may simply take back whatever was provided, even though it was paid for by the undocumented immigrant. As one 23-year-old participant pointed out, a provider can change his or her mind in an instant:

What can happen is that there is a fight and one person says, 'Ok well I'm taking your car. It's in my name.' Yes this can happen and it has happened. I've known of cases where it has happened. The same with a phone. Your phone is in my name and if you don't pay me I'll keep it. Or if you don't give me more I will take it or cancel it. That's how it is...For example there are people who report [something stolen] or sell it. I've known of many cases of that.

Another participant offered a similar opinion:

I know that people here put their cars in other people's names, but this is no good as we say because it is as if you have gifted your car to someone else and the day that they get mad or the day that you all have problems she could call the police [and say], "you know what this person stole my car"...and even though you have bought it you cannot say anything. (Mexican 36 Female)

When asked if any other sorts of people ever take advantage of undocumented immigrants, the most common response was that lawyers are notorious within the Latino community for manipulating and abusing immigrants' trust and stealing their money. As one participant said:

I know cases where lawyers...they get close to you or you call them because you want to assess your immigration case or something, and they abuse you. They say they can get you papers or fix your immigration status, and they only stretch things and stretch things and stretch things for months up to years. They don't give you anything.

(Mexican 26 Male)

Like this Mexican participant, one Costa Rican participant agreed that lawyers victimize Latinos all the time, and that furthermore, people tend to trust lawyers as they are perceived to be upstanding professionals:

Interviewer: And what about lawyers? Do you think that lawyers ever take advantage?

Participant: [Big sigh] *For god sakes! Of course!* [laughs] Like my mom, when she was trying to get her paperwork done. There was this lawyer that my mom kept on paying and paying and the worst part was that he kept the documents that could prove

that she entered certain dates and all that and those kind of documents comes like once...eventually after talking to him and pressuring him, he, he did it. But basically he stole the money. It was just very bad.

Interviewer: And so how did he do that? He just kept sort of putting things off and not giving her documents?

Participant: Yeah. He said, 'Oh I'm gonna send them I'm gonna send them I'm gonna send them,' and he never did...So [my mom], um, basically what the guy did was he kept the documents ready with the stamps and the address and everything and he just didn't send it. But he kept on asking for money more and more. And my mom kept on paying. And at the end she went there, I think she went there like crying up, and, you know, to say like look, you already did this fine but give me back my papers. If you are not gonna do this somebody else will but I do need, you know, these papers...

Interviewer: And so do you think that's common? That lawyers do this like, a lot of the time?

Participant: Yeah. I have heard of people that the lawyers would ask like for, I don't know [they'll] just take your entire case for \$10,000 and people are like paying in advance. Yeah, I think it's just ridiculous. But there are always people falling for that. I think most people know by now that you're not supposed to do that, but then we are not too familiar with the prices. And we think our impression is that a lawyer might, might ask for thousands. That that's what it goes for. I mean you don't question it that much because you think that's what it is. Those are the prices and you just do it.

(Costa Rican 32 Female)

Fortunately, this participant's mother was eventually able to gain legal permanent residency; however, some are not so lucky. For example, another participant shared the story of her husband's deportation, which was, in part, due to hiring a sham lawyer:

Like when the police got my husband...and they sent him to immigration...and I looked for a lawyer and the lawyer that I had was required to present himself at court. He only showed up once and after that when I paid him the principal cost, he didn't show up again...and later they gave my husband an order of deportation and they deported him...Because the lawyer didn't show up he [automatically] lost the case...We have never found [the lawyer] again. He changed offices from downtown Ann Arbor...still haven't found him, and we keep looking. (Mexican 30's Female)

While the first case of lawyer manipulation in which the lawyer delayed sending the necessary immigration paperwork while refusing to return the client's own documents could potentially be argued to be in line with the law, this second case is clearly fraud. Not only did the aforementioned lawyer charge his clients for services never rendered, he stopped all contact with the clients after receiving payment upfront and then moved his office, suggesting that he was actually guilty of widespread fraud within the community.

#### THE CRIMINAL WORKPLACE

As noted in the previous chapter, the primary reason for having false identification documents is to get a job, yet this is just one of many status-driven offenses that occurs in connection with employment. Despite only comprising about a quarter of interview questions and prompts, most interviews focused almost entirely on undocumented life in relation to work. Offenses mentioned by participants included harassment, differential treatment, lack of benefits, lack of breaks, wage theft, unsafe working conditions that violate labor and

health and safety laws, and even slavery. In fact, interviews revealed that employment-related victimization is one of the most common forms of victimization undocumented Latinos experience, and one of the most frequent crimes of all those that occur by, with, or against undocumented Latinos.

This is logical for two reasons. First, the majority of undocumented Latinos come to the United States specifically because they are seeking U.S. employment—a point that was reiterated time and time again by each and every participant. Thus there exists a large population of people without permission to work, who may not be familiar with U.S. labor laws, and who are willing to work in substandard conditions for substandard pay because they are still better off than they were in their native homes—which, again, is something that was stressed by nearly all participants. Combine this with a low-level of labor-law enforcement and it is no surprise that the employment of undocumented immigrants is rife with illegal and unsavory activities.

Furthermore, although labor abuse is obviously nothing new, undocumented workers remove some of the barriers for employers contemplating whether or not to disregard labor laws from minimum wage requirements to health and safety regulations. This is true for several reasons. First, because they do not have permission to be in the United States, they also lack permission to work (Bacon 2008). In fact, both working without permission and hiring someone who is not authorized to work is illegal (status offense and circumstantial offense respectively); conveniently, very few employers guilty of this are ever sanctioned (*Op. cit.*). In addition, as mentioned, unauthorized immigrants often earn more money working in the U.S. than they would working in their native countries and are thus willing to accept bad conditions and pay. Knowing this, it is typically accepted that many employers

capitalize on undocumented immigrants' vulnerability, frequently paying undocumented workers less than minimum wage.

For example, a 1994 Urban Institute study of unauthorized immigrant workers in California estimated that each undocumented worker made a gross economic contribution of \$45,000, but earned only \$8,840 annually (Bacon 2008:81). Furthermore, as Bacon explicitly notes, “[undocumented immigrants] received a much smaller percentage of the value they produced than that received by workers who were either citizens or legal residents” (*Op. cit.*). Unauthorized workers are also beneficial to employers who want to violate labor laws, including health and safety requirements, because they are less likely to file any formal complaints for fear of discovery and deportation; this enables employers to save even more money and make even greater profits.

Numerous cases of undocumented worker exploitation have been documented by various researchers, non-profits, and social action organizations. For example, day labor jobs are famous for the abusive and exploitative conditions they typically entail. A 2005 study of 264 day labor sites across the United States noted that close to half of day laborers surveyed had been victims of wage theft, and 44 percent were denied food, water, or breaks at work (Valenzuela 2006). Another study by the Southern Poverty Law Center revealed similar statistics: 41 percent of Latino immigrants surveyed had experienced wage theft (2010).

While day labor conditions can be near unbearable, some of the most notorious cases of undocumented worker abuse come from the meatpacking industry. One of these cases comes from an Iowa meatpacking plant that was raided by ICE in August of 2008. After detaining 389 workers, the truth about working conditions in the plant were soon discovered—perhaps because undocumented workers were no longer afraid of what

consequences of reporting their employer might be as they were already in ICE custody. Of the workers detained, 20 were underage (Jimenez 2008); one was just 13 years old (New York Times 2008). What is more, these underage workers claimed that they were regularly mistreated, beaten, and abused, as well as made to work 17-hour shifts 6 days a week without overtime (Jimenez 2008).

It is important to note here, however, that neither exploitation nor manipulation are necessary components of employing undocumented Latinos. It is also worth noting that it is very possible that some employers never know their employees' true immigration statuses, and thus may treat them as they would any other employee. As will be discussed, however, all but one participant believed that the majority of employers that hire undocumented immigrants know or assume they are undocumented. It is also possible that employers with undocumented workers treat them as they would any other workers in spite of being aware of their immigration status, something numerous participants pointed out. In fact, many participants emphasized that some employers treat undocumented Latinos very well or, in the least, treat them just as well as any other employee. For example, one participant mentioned several of her previously undocumented friends gained residency with the help of their employers, who in some cases struggled with them for years and covered their legal fees so they could become "legal." The point most participants ended on when asked to discuss whether or not some employers take advantage of or abuse undocumented workers was that while most employers find some benefit from hiring undocumented workers, there are cases of fantastic employers who go out of their way to support their undocumented staff. In both such cases, a circumstantial offense, not a predatory offense, has occurred; it is likely that many such circumstantial offenses occur. Employment has been placed in this chapter on

victimization, however, because all but one participant agreed that more often than not, undocumented immigrants are manipulated, exploited, or abused in one way or another at work and offered numerous real-life examples to back up their positions.

To take advantage of undocumented labor due to their immigration status, however, whether out of actual malice or simply a profit incentive at the expense of the employee, employers must be aware that they have undocumented employees; based on interview data, this appeared to be the case. Overall, participants believed that most employers know when they hire undocumented employees, although they may never say anything and might even pretend to be clueless. For example, one 32-year-old female participant pointed out that the offering of a fake SSN to a potential employer is really just one big charade in which the Latino pretends to be documented and the employer pretends to believe him or her:

Interviewer: And what if you don't have a social security number, or a green card, or a driver's license, how do you get a job?

Participant: Well, you know, you always have one because you get it anyways [laughs]. You will buy it somewhere and you will show it up. I mean that's what they wanna see. Just to, like I said, keep up the show. Um, they know it's not real, of course. I think anybody can tell the difference between a fake one and a real one.

(Costa Rican 32 Female)

Another participant offered a similar take:

Participant: Many of them, they know. They know.

Interviewer: They know that their employees do not have permission to work?

Participant: Yes...they know but they act as if they don't know.

Interviewer: Do you think some employers prefer Latino immigrants?



Participant: Well yes because, because [Americans] get bonuses, they get vacations, they get so much more. One like, well an immigrant, you can't, you don't even think about what we shall call benefits, medical benefits or any of it...the company makes more money. They say they don't know—yes they do. (Mexican 25 Male)

This participant directly linked the hiring of undocumented Latinos to an employer choice, suggesting that employers are aware of their employees immigration statuses.

Then, of course, there are the employers who do not ask for any form of government ID and simply pay employees in cash. It can only be assumed that these employers believe their employees are undocumented, although this study does not control for employers who pay employees in cash regardless of national origin. Yet in some cases, as with the one shared by a young Mexican man offered payment in cash if he did not have an SSN, it is clear that some employers knowingly hire undocumented workers:

Many Arabs employ Latinos—many illegals. Why? Because they pay cash. They don't use checks. This happened to me. I went to look for a job and when I was about to be hired the manager said, 'Do you have an SSN? Do you have papers? Because if not I can pay you in cash. Here it's permitted.' Perhaps they make a gain this way. They pay you a little bit less or they don't get charged something [by the government]. But they know [it's illegal] and they are Americans...[In the end] I told them, 'Well yes I want my pay in a check. I do my income taxes. I'm in [immigration] processes.' And he said, 'Okay. Sure.' But I was still very like, "Wow!" They didn't ask for anything. They just pay you in cash...the truth is, how they focus on you, they look at you—it's very difficult to determine who has papers and who doesn't. (Mexican 26 Male)

As this participant noted, it is often difficult to tell documented Latino immigrants from undocumented ones. This might lead one to presume employers would “play it safe” and assume employees to be documented and thus decide not to openly violate labor laws. In this case, however, the opposite occurred. Based on the participant’s appearance, the employer assumed that he was undocumented and thus offered payment in cash. Several others also believed that many employers, and others, assume Latino immigrants are undocumented based solely on their appearance.

Although participants assured the relative ease with which undocumented immigrants find work—in other words, their immigrant status does not entirely prevent them from finding a job—some participants pointed out that certain employers are more likely to hire undocumented folks than others. In general, participants agreed that it is much easier to receive a job through word of mouth than by merely applying for jobs. One participant specifically mentioned seeking out the help of friends and family when looking for a job and pointed out that knowing an employer hires undocumented immigrants ahead of time makes a big difference:

You have to know the places before you go...I think that, if you know some people, everything is okay. They say, ‘oh well I worked here and they didn’t ask me for anything. You can apply for a job and they won’t ask you for anything.’ So I believe it is through people you are close to that you can find [work]. (Mexican 30 Male)

Another participant gave a near-identical analysis:

It’s very difficult when, someone doesn’t have...is here illegally. Apart from being afraid to go out and look for work alone, it’s much easier to ask a friend, ‘Do you know of some work? Is there work?’ (Mexican 26 Male)

Furthermore, participants agreed that undocumented immigrants are aware that certain types of jobs are merely off limits to them, but that undocumented immigrants can usually get many types low-paying, service sector jobs:

There are places that you can't go because ultimately you know that they are government jobs or hospital jobs and you know that they are going to check your immigration status. And then there are places like restaurants, hotels...landscaping [where you know they won't]. Um, I think it's the jobs that no American or African American is going to want to do that they are giving us. (Mexican 26 Male)

Yet as one Mexican woman noted, you can never be sure what will happen when you apply for a job as an undocumented Latino, fake papers or not, and you always run some sort of risk:

[Usually] you have to work with false documents because if not, they aren't going to give you a job. But here many people work without documents...but you know what they do? [Employers] say, 'I'll give you a job without papers, but I'm going to pay you almost half of what those with papers earn.' And even working with fakes they might say, 'You know what, this isn't real. This isn't yours.' Or others say, 'Get out of here now because these documents are fake and I'm going to call immigration.'" So aside from not giving you work, they scare you. (Mexican 36 Female)

As such, undocumented Latinos remain on alert when looking for work as well as when working, yet the risks are not only well-known, in many ways they have become normalized to the extent that all participants agreed that the majority of undocumented Latinos accept poor working conditions or wages because they just see it as the norm.

When asked if employers prefer to hire undocumented Latinos or if they stand to gain anything by doing so, most participants agreed that employers like hiring Latinos because they are hard workers who work for cheap. As one Mexican participant pointed out, in hiring undocumented Latinos “[employers] receive a class of workers that are going to work much harder, for much longer, and for less money.” As another 28-year-old Mexican explained when asked if employers purposefully hire undocumented Latinos for a financial gain, “I believe that there are people who hire Mexicans or any type of Latino because they are good people, because they know people have to earn a living, but at the same time they know that they can pay a little less than they would to someone who is legal here.” In other words, some employers see the situation as a win-win. The undocumented employee gets a job, which might be viewed as the employer doing him or her a favor since it is against the law, and the employer saves a little bit of money by paying the employee less or simply in cash, saving on the money the he or she is required to pay the government for each employee.

The majority of participants also believed that many employers purposefully take advantage of or exploit undocumented Latinos. The most common form of exploitation participants noted by far was wage theft, including below minimum wages, no overtime, and non-payment for hours worked. As one 26-year-old Mexican noted:

Yes, yes, yes. I see [exploitation] daily at work. Latinos that earn \$6.50 working all night without overtime. That is, for me, unjust...Yes there exists a lot [of exploitation]...there exist people here that are working practically for free. Get me? They are people that, are *indiginas*, people that don't know much and are afraid. And they subject these people to fear and say, ‘if you report me I'm going to send you to Mexico,’ and you will lose your way of providing for your family. Incredibly there

are people earning \$200, \$300 every two-week pay period. But working a ton, get me? This is theft.

He was not alone. A 36-year-old Mexican woman who had recently applied for some local hotel jobs only to discover they were offering \$6.50 an hour gave similar observations:

They take advantage of immigrants...You work perhaps from 10 in the morning until 11 at night. For that sometimes they pay you \$300 every two-week pay period or sometimes...Let's suppose that you're scheduled to leave at 10 at night but something's still dirty so they force you to clean and they don't say they will pay you more. Instead they say you have to leave everything clean...It happens almost everywhere...I say that they don't pay [my husband] well because he enters at 9 in the morning and leaves at 10, 10:30 at night [and works 6, 7 days a week]...And now they are paying him I believe \$550 a week [part in cash and part in check]...but this is not what they rightly have to pay.

One participant highlighted the differential treatment Latinos experience at work and how this can impact wages and payment:

Participant: I worked at a restaurant long ago and the guy, the owner, didn't allow the Latino employees to punch in or punch out. Everybody had their card to punch in or out except the Latino employees. Like I am different so I saw the situation and I said aren't you gonna give me a card? And I think he was embarrassed because I asked it in front of everybody and he gave me one. But none of the other people had one. So he, he paid like the dishwasher for example, that was like the worst part, even worse than the cooks. The dishwasher he paid only from 4PM to 10PM and he arrived at 4PM but then he left like 11:30 PM so after 10PM all his work was for free. So he got

like an hour, hour and half every day for free work. And I have heard of cases where restaurants say like after 2AM whatever they work they don't get paid. So, yeah. It could go like 40 minutes, an hour of free work. (Costa Rican 32 Female)

Thus in this case, the employer was able to manipulate Latino employee wages by preventing the creation of a formal record of employees' hours, blatantly refusing to pay Latino employees for all of their hours worked. Yet the same participant attempted to frame some exploitation in a positive light:

I will mention it like just to not be negative all along, that if you are a Latino employee you might even get offered to work extra time for cash if it goes beyond the hours because they know if you make more than the 40 hours they have to pay you like more, overtime. So they don't want to pay you overtime.

Like the employer who sees hiring an undocumented worker as a win-win, in this case the employee gets some cash wages they do not have to pay taxes on and, again, the employer is able to claim fewer employee hours worked, finding a way around paying the government money rightly owed.

In other cases, employers may not actually violate any labor laws but may simply overwork employees and fail to give them breaks or other benefits. For example, one woman offered a scenario in which an employer purposefully contracts a small number of Latino employees to replace a larger number of Americans:

If someone has a restaurant, instead of having 5 employees they might have 3 employees and [they make the 3 employees work harder] to compensate for the two. And they push and push until- [laughs] They want to see how far you can go. (Costa Rican 32 Female)

One Mexican participant offered a similar example, but it came from his current work situation:

Where I work, I am the only Mexican. There's usually like 4 or 5 Americans on the line and I'm the only Latino working in the morning. When I started to work there, the line was all Americans with 3 cooks in the morning. When I entered they let go of two, and another Mexican came and us two cooks had to do the work of three because they thought we could work faster and more efficiently. The other Mexican left and now I am the only one on the line and I do the work of three people. (Mexican 28 Male)

This type of employer-employee relationship, while not illegal, is still abusive as Latinos are made to provide more work in less time for the same pay-rate, in effect decreasing the monetary value of their labor in comparison to that assigned to American workers and placing additional pressure on Latino employees to perform.

While participants acknowledged that exploitation happens in all sorts of workplaces with all sorts of employers, several participants noted that Chinese restaurants can be especially exploitative. These participants noted that Chinese restaurants offer some of the lowest pay, often paying employees a set weekly, biweekly, or monthly salary that equates to far less than minimum wage if calculated by hours worked. They also pointed out that in extreme cases, employers may keep workers in the basement of restaurants or in apartments the employers own and deduct a housing fee from employees' pay. One participant went into extreme detail about the Chinese exploitation of undocumented Latinos, even linking Chinese employers here to networks that bring undocumented immigrants to the United States from Mexico:

With Chinese...I know friends...they live 12, 14 in one apartment...as Chinese they operate like this, perhaps they don't see it as such, but to me it seems like pure slavery...When the person arrives from Mexico, living in Mexico without money to come here, they say, 'Okay I can take you across [into the United States] and you don't have to pay, but over there I have a job [for you].' It's like a little mafia. I have a contact here that's Chinese that brought three Mexicans to work. They put you in an apartment—the Chinese rent apartments to the workers. But they put like 10 [in one apartment]. The Mexicans don't pay rent, they don't pay anything. The Chinese pay everything. And the Chinese charge a monthly fee...So there lives 13, 14, 15—beds in the living room like, 'tatatata.' They work for the Chinese and they don't pay them until they have paid off their debt with the people who [helped them cross into the United States]. If they charge you, I don't know, \$1200 to cross here...it's going to cost you \$4000 in total because they are lending you money, financing you, finding you work. It's, it's, a circular business. And that is not just talks, but real people that have lived it...it surprises me a lot of the things I see...you think that it can't exist...you close your eyes to it. Like you make yourself blind as you don't want to see the truth. But these things are here. (Mexican 26 Male)

These were some of the gravest details shared by any participant. In essence the aforementioned tale includes international human trafficking, unauthorized employment, a violation of a number of labor laws, the likely violation of rental agreements, indebted servitude, and slavery. Furthermore, this example suggests that some of the worst abuses experienced by undocumented Latinos occur under the shadows of organized crime. While



not necessarily the case, this may make this sort of victimization more difficult to uncover and prevent.

Equally as fascinating as the ways undocumented Latinos are victimized in the workplace was participants' take on why such abuse occurs. All in all, participants offered one or more of the same four possible explanations. First, some participants felt that undocumented Latinos feel pressured to work even if their wages are low and their working conditions bad. For instance, one Costa Rican woman offered this analysis of victimization:

Participant: You know, how you feel all the pressure to work.

Interviewer: And so when you're talking about pressure at work, is this something that people just *feel* or is it because of the way people [treat, talk, or interact] with them? Or do you think it's just because you sort of feel, as an immigrant, like 'I need to make sure that I keep this job and don't have any problems?'

Participant: I think it's a combination of all. I think it's because you know that you're here illegally and like you said you have the pressure of, 'Oh if I don't do this, if I don't act like this—I might lose this job.' Like 90% of times your employer would know that you are not legal here and they would take advantage of that...It's a combination. It's because people make you feel bad and also because you feel bad on your own because you are what you are here. (Costa Rican 32 Female)

A second explanation provided by participants is that undocumented Latinos are not certain of their rights in the United States and do not have a thorough understanding of American labor laws. In this case, undocumented Latinos were perceived as being easier to manipulate than Americans:

One doesn't know the laws nor their rights and because of that they scare us...yes sometimes they take advantage of the people that do not know...I believe that most people don't know their rights...their bosses don't pay them in check, they pay them in cash...[and] sometimes they pay them in cash and people don't realize they are paying them less. They say, 'you know, you worked many hours but I have to subtract a lot [from your pay] for this or that,' and the person is losing money.

(Mexican 23 Male)

One participant suggested that even if undocumented workers are aware of their rights, they might not have the cultural understanding or linguistic capabilities necessary to navigate the situation:

Sometimes we as immigrants don't know our rights or like, more than that I believe that it's because of language. Yeah, sometimes you cannot express how you feel...generally more than [for employers] to have a benefit, I believe that it's not so much abuse as that we don't know how to navigate the situation. (Mexican 30 Male)

A fourth and rather common suggestion as to why undocumented immigrants are exploited at work was that immigrants are afraid to speak up about unfair pay and unjust working conditions. As one participant stated, 'Well you know if you speak up there's always someone else coming behind you, you know? What, what can they say? The door is open. You're free to go anytime you want.'" Another participant explicitly discussed a fear of losing one's job if one fights for one's rights, "No, no they won't speak up. They are afraid to say anything because of what might happen. They think they can lose their job or something else.'" As these quotes and several other interview conversations made apparent, the majority of undocumented immigrants feel especially vulnerable to losing their jobs for speaking up

about unfair work conditions because they are undocumented and cannot work legally in the United States. Knowing that their employment is against the law, participants emphasized that most undocumented Latinos believe they must simply accept bad working conditions as the normal terms of their employment.

Intriguingly, one Mexican participant made a similar argument, but stressed that undocumented immigrants have the power to change their working conditions if they unite and stand up for themselves. Instead, she felt that most undocumented Latinos have acquiesced to such working conditions and thus are to blame, in part, for their victimization:

...nobody defends themselves. Nobody says, 'You know you are paying me little and you need to pay me more.' When my husband entered, they were going to pay him *less*. But he said he wouldn't work for that and so they raised his wage...So even though they're immigrants, if they would defend themselves a little bit everything would be different. But they stay silent. They don't say anything. I say they're afraid. I imagine that if one says, 'You're not paying me well,' they will say, 'Then get out of here and look for another job.' So as you feel you need the work, you take it. But if everyone decided to defend themselves, this would not be happening here. (Mexican 36 Female)

This woman's opinion was rather bold in comparison with most responses, although other participants did agree that it is unusual for undocumented immigrants to stand up to their employers. It is hard to disagree, in some ways, with the notion that if undocumented workers could only stand up for themselves that this would stop most labor exploitation. At the same time, this is obviously easier said than done, and would require a massive immigrant rights-labor movement at least at the state-level. Furthermore, as another

participant noted, the government appears to be on the side of employers, not workers nor immigrants, making any large-scale movement inevitably difficult:

So who protects who? The boss does not protect the workers. But the government does protect the boss...and the government knows where the lettuce, the tomatoes come from and who picked them. And this same government is responsible for deportation raids. (Mexican 30's Male)

#### DUE PROCESS OFFENSES

Due process offenses were the final status-driven offense type participants were questioned about. Again, due process offenses are those perpetrated by criminal justice actors—in accordance with institutional norms, procedures and goals—against Latino immigrants they perceive or know to be undocumented that violate immigrants' rights. While participants were able to discuss some interactions between undocumented Latinos and the criminal justice system, most participants felt unable to speak to interactions beyond those involving local law enforcement or ICE officers as they had no references—either personal or familiar—to draw upon. In fact, several participants pointed out that what happens between undocumented Latinos and the criminal justice system is often unknown as even the slightest interaction is likely to lead to detention and deportation. In retrospect, asking undocumented Latinos currently living in the United States to discuss due process offenses is akin to doing a phone survey of the homeless—it is just not the correct sample. In other words, if undocumented Latinos are not in detention, they have probably been fortunate enough to never come face to face with most criminal justice actors. Furthermore, although many undocumented Latinos have known individuals who have been detained and deported,

it is often extremely difficult to locate such people and thus their experiences may never be shared with others in the community.

Fortunately, although project participants had little to say about what I have labeled due process offenses, there exists a relatively large body of research on the treatment of immigrants by police, Customs and Border Patrol, Immigration and Customs Enforcement, and Detention and Removal Operations employees; however, most of this comes from human rights and social justice groups as opposed to academics. Overall, this literature focuses on racial profiling, harassment, use of force, and due process rights both in and out of immigration custody, as well as detainee well-being. While these issues are commonplace in our criminal justice on the whole, in the context of immigration enforcement they are frequently magnified.

For example, a recent report by The Human Rights Immigrant Community Action Network entitled “Guilty By Immigration Status” argues that recent immigration enforcement policies threaten undocumented immigrants and increase the likelihood of abuse (2009). Specifically, the report notes that the Secure Communities initiative permits law enforcement to dodge due process rights and interrogate individuals about their immigration status at traffic stops or while in police custody (2009:13). Moreover, Secure Communities, like Arizona’s SB 1070, encourages law enforcement to use racial, ethnic/nationality, and religious profiling to target anyone who appears “foreign,” which undermines community safety and fuels mistrust toward law enforcement (*Op. cit.*).

Although local county and municipal police have made public statements that they do not go out of their way to cooperate with ICE or involve themselves in immigration matters, several participants believed that some police do discriminate against Latinos in the line of

duty. For example, one participant retold the story of his documented sister's recent encounter with local police, during which she was pulled over and directly questioned about her immigration status:

I've seen many police that are pretty cool, really great, [but] there are a few that are really bad...they look at you and for whatever tiny thing or whatever detail and then they are checking you. And the first, the very first thing is they ask you your immigration status. The very, very first thing. The police harassed my sister. She was really angry that time because she was about to cross a street in her car and she told me the light didn't change or something so she could turn...and the police saw her. They stopped her and said pretty angrily, 'if you don't know how to drive, if you aren't following the rules here in the United States I assume you are here illegally. I imagine you're an illegal right?' And my sister said she was really mad and that she gave her license to the police, along with her registration and insurance and everything. The police saw her Mexican license and said, 'So you are illegal here right?' ...My sister, very angry with the police, said, 'Here's everything. And I am legal here and I don't know why you are speaking to me like you are. And you do not have to ask me for my papers. And if I'm not breaking a law then let me go.'

(Mexican 23 Male)

The police did let this participant's sister go without a ticket, but not without humiliating and harassing her first simply because she appeared to be a Latino immigrant. Similarly, another participant offered the experience of his American coworker, who was pulled over not for a traffic violation, but simply because his license plate was registered with a Spanish-sounding last name:

The police said, 'you're Latino?' and he said, 'why do you think I'm Latino?' And he said, 'Because your last name is Guzman. You're an immigrant. Show me your license.' And [the man] responded, 'I'm going to give you my license, but I'm going to correct you. This is my country and I am American,' and he showed the license.

The police just said, 'I'm sorry.' (Mexican 30's Male)

In both these cases, the police officer's decision not to ticket or arrest either driver suggests that no laws had been violated in either case. Instead, the police officers in question chose to racially profile drivers and inquire about their immigration statuses.

Overall, participants did agree that some police do treat Latinos quite differently from non-Latinos. As one 36-year-old participant who moved to Michigan from California just over a year ago exclaimed:

I say that it is pure discrimination because there are, like those [Americans] here that run stop signs, they run lights, they speed, and they don't stop them, and they'll stop [an immigrant] just for biting his or her nails at a stop sign...and they are checking *every little thing* that an immigrant does, *every little error*, to stop someone, [at least in California].

Similarly, one participant recounted her experiences living as an undocumented Latino in Alabama, where she felt police were especially prone to meddle in immigration matters and often trolled neighborhoods and stores frequented by Latinos:

Well [chuckles] I don't know, um, if they're doing that now here in Michigan. I used to live in Alabama and I know for a fact that they do that. They just, chose a specific cross where you know a few streets meet and you know they're there, and you know,

it's pretty obvious that they're stopping every single Latina driver that goes by. Um, over here I haven't noticed that too much. (Costa Rican 32 Female)

In other instances, cases of excessive use of force by police against undocumented Latinos have been documented. Only one participant was aware of any such abuses locally, noting:

I haven't had any problems with police abuse myself, but I have heard of other people they arrested violently...or that don't have the patience to understand, because maybe the police ask for your ID or license and registration and if the Latino doesn't understand they treat him a bit violently, but me personally, no.

At the same time, several participants, including the participant who shared his sister's story, noted that some police are great and simply want to help those in need and do their job. In fact, many participants made it a point to stress that police can be both good and bad. For example, one Mexican participant brought up his experience with local police after he was in a car accident, noting that they let his expired license slide:

Well about a year ago I had a car accident...I got out and the police came. Really cool guy...he offered me his cell and said to call anyone I wanted...and he said, 'show me your license.' And I said, 'my license is expired.'...he told me, '[look] I should really arrest you right now since you don't have a license and you've been stopped by the police twice before, but I'm not going to do it.'...Then he let me go. (Mexican 23 Male)

Participants had a much more negative take on the experience of undocumented Latinos with immigration officers, yet this is not surprising when one examines the literature on Immigration and Custom's Enforcement and Customs and Border Patrol. Sadly,



numerous highly documented cases of ICE or CBP abuse of immigrants exist in news media and scholarly research. Matters are complicated, however, by the amount of discretion afforded to such enforcement agencies and agents. Couple this with increased migrant deaths along the border and it is no surprise, then, that accusations of Border Patrol misconduct are relatively common. While many of these cases involve sexual harassment or assault (Urrea 2004), others center on excessive use of force as agent discretion blurs the line between necessary use of force and abuse of power.

The case of Tomas Sanchez-Orzuna, which has been documented by the National Network for Immigrant and Refugee Rights in a report entitled *Guilty By Immigration Status: A Report on U.S. Violations of the Rights of Immigrant Families, Workers, and Communities*, provides one such example. In August of 2008, Sanchez-Orzuna died in federal custody at a California Border Patrol station after being picked up for “suspicious behavior” in a public park. While the official cause of death is still under investigation, it may be linked to the pepper-spray Border Patrol agents used on Sanchez-Orzuna in response to his alleged “combativeness” during the arrest (National Network for Immigrant and Refugee Rights 2008). In this case, it is difficult to determine whether Border Patrol agents’ use of pepper-spray was justified or whether Border Patrol treatment of Sanchez-Orzuna directly caused his death; the mere fact that Border Patrol agents’ actions can be questioned, however, is cause enough to view such activities as morally ambiguous and thus “dirty.”

Excessive use of force is not limited to Border Patrol agents. In 2008, the National Network for Immigrant and Refugee Rights found that ICE officers exhibited excessive use of force in more than half the cases they documented (NNIRR 2008). Furthermore, the group noted that ICE enforcement operations frequently included detention of undocumented

immigrants and citizens alike without proper warrants (*Op. cit.*). In one specific incident, ICE agents entered a home without a warrant and held a 9-year-old boy at gunpoint (*Op. cit.*). ICE abuses ranging from lack of required care to death within detention centers have also been documented. In fact, several lawsuits have been filed against ICE backed by evidence that ICE prison guards commonly use psychologically and physically abusive tactics against detainees. In one specific lawsuit, eight teenage detainees claimed that they were beaten by prison guards so severely while in a Texan detention center that they required medical attention; one boy was even beaten unconscious (*Op. cit.*).

In a more extreme case, ICE agents in a Georgia detention center beat an Egyptian man who had entered the country legally and was seeking asylum because he would not sign away his rights to a trial before an immigration judge (*Op. cit.*). They next drove him to an ICE flight to be deported, but the pilot refused to leave because he saw that the man was in dire need of medical attention. Instead of taking the detainee to a hospital, ICE agents then drove him to a detention center in Alabama. Despite experiencing a severe beating, this detainee was treated better than some: between 2003 and 2008 more than 104 immigrants died while in federal custody (*Op. cit.*). While these stories are rather shocking, it is likely that the most shocking abuse is never reported.

In addition to excessive force and maltreatment while in law enforcement's custody, numerous cases of sexual assault against undocumented immigrants have also been reported. Again, while it is unlikely that the majority of sexual abuse cases are reported, some law enforcement officers have been convicted of their offenses. For example, in 2008 former ICE agent Wilfredo Vazquez was sentenced to 87 months in prison for sexually assaulting a Jamaican detainee in his custody (NNIRR 2008).

As a handful of scholars point out, abuse during arrest and detention is extremely common. For example, in the first study to specifically examine immigrant treatment during arrest and detention, Scott Phillips, Jacqueline Maria Hagan, and Nestor Rodriguez found that not only were deportees subject to verbal harassment, procedural failings, and excessive use of force, but that force is more commonly used against deportees than citizens (2006). Overall, 25% of those interviewed reported experiencing racial slurs during arrest and 26% reported racial slurs during detention (*Op cit.*). In addition, 20% of deportees reported experiencing force during arrest—13% of those arrested by immigration officers and 26% of those arrested by police—and 11% of deportees experienced force while in detention; in both cases, the majority of force incidents—between 80 and 95%—were excessive (*Op. cit.*).

For the most part, participants offered accounts and opinions in line with such literature; however, many did not have firsthand experience with such abuse. Despite this, many participants shared stories of immigration raids in the local community and some witnessed these raids from within their own apartments. For example, one woman pointed out the frequency of raids in her apartment complex and how aggressive immigration officers tend to be:

Since arriving here I have heard of like in these apartments [immigration] has taken like 6 people...and when they came for some that lived here by [name]...I have known that they treated them very badly...well they were saying bad things in English. Well the truth is one doesn't understand much but they were speaking harshly, knocking on the door. When they came out they were still saying bad words...like racists [things]. (Mexican 36 Female).

Out of all 12 participants, one participant retold the story of when immigration officers came to her home and took a number of her family members, without a warrant or deportation order. She emphasized how frightening the experience was and how rude and unsympathetic the agents were:

Yes because, here, um, about a year ago, immigration came. But they didn't knock on the door. They were waiting at the stop [sign] to see who was leaving and one man that lived here in my house left; he was the first to leave for work....they stopped him at the stop [sign] and then they returned so that he would open the door and they entered. And they came in here, they took my husband, my brother, and a cousin and others that were living here...they didn't say that they were immigration nor did they say they were police...They entered very wild, they were running every which way searching...they went through the rooms, they searched everything...they carried themselves very badly. They are very rude. They don't want one to speak. That's how they are. Like that violating laws. They are bad because they don't have to be that way. Well I think that if they are going to come they should come with more respect...They treat you as if you were a criminal... They just entered and took people, not saying anything, nothing about looking for someone nor that they had an order of deportation or arrest warrant...That man they grabbed first said that what really happened was that they took his keys...[ICE] said that he opened the door but he said he couldn't because they had handcuffed him. (Mexican 30's Female)

This account is quite startling, because not only did immigration officers lack a search warrant and an order of deportation, they used racial profiling to make their initial detention, and then took the keys of a handcuffed individual to unlawfully enter his home without

permission, simply to look for other undocumented immigrants. Furthermore, they did not identify themselves as police or as immigration officers, resulting in an extremely startling experience for this woman and her family, including her several children.

Nearly all participants denounced such behavior by immigration officers as unjust and uncalled for. As one participant suggested, “Sometimes [immigration officers] probably aren’t the most just, but if they said they were going to follow the law, for example...that they are acting within the power of the law, everything by the rules, if they got me I wouldn’t say anything because they were respecting my rights [throughout the process], but you know they don’t act like this.”

Interestingly, one Mexican participant noted that immigration officers of Latino or Hispanic descent tend to be the roughest with undocumented immigrants:

“...you know who are the worst? Latino [immigration officers]...They’re people who speak Spanish. People who were nationalized here or they grandparents were...but now they have the power to be American...I don’t know if they feel a hatred, or they feel superior because they are from the same race. But they’re the ones that say, ‘Stop it!’...the ones with Mexican last names are the worst. (Mexican 26 Male)

While he was the only participant to make this connection explicitly, it does coincide with numerous participants’ statements regarding general discrimination and maltreatment of undocumented Latinos by documented Latinos. Unfortunately, an analysis of the identity dynamics involved in undocumented-documented Latino relations within the context of immigration enforcement is far beyond the scope of this project, although definitely worth further investigation.

One final unique comment worth mentioning came from the one documented participant in the study, who, when asked about immigration abuses, agreed that abuses do take place, but noted several cases where immigration officers surprisingly let undocumented immigrants go:

...because immigration has grabbed some of my friends and asked for their [information], checked them and if nothing came up they let them go...and I'm like wow! Wow I'm surprised! Get me? And I say that from this perspective they are targeting people that really should, that have to return, that are delinquents, that sell drugs. But there are many times that they get them and *boom* [they're gone]!

(Mexican 26 Male)

#### *Detention and Removal Operations*

While participants did not offer any information regarding immigrant abuse within detention, this hole can easily be filled in by existing research, which, for the most part, finds detainee mistreatment to be widespread. For example, in “Huddled Masses: Immigrants in Detention,” she emphasizes the prevalence of detainee physical and sexual assault, as well as racial bias in case processing, and credits this to the application of a criminal justice paradigm to immigration enforcement and control (Lucas 2005:325). In a study of the Krome Processing Center—a federal immigration detention center located in Miami, Florida, that operates within a CJ paradigm—Cheryl Little explored such detainee abuse using firsthand research and media analysis (1999). Her report highlights a 1999 Miami Herald expose that identified severe psychological abuse of detainees—including racially offensive language and threats—as one of Krome’s greatest problems (*Op. cit.*).

The abuse experienced by Krome detainees is not uncommon and could even be considered “mild” when compared with other detainee abuse incidents. For example, in the retelling of a 1995 incident, Dow highlights how detainee abuse often mimics torture:

“plucking detainees” body hairs with pliers, forcing detainees to place their heads in toilet bowls. . . ordering detainees to perform sexual acts upon one another, forcing detainees to assume. . . degrading positions while naked, and. . . forc[ing] prisoners to chant “America is number one!”” (Dow 143–4)

Little notes a specific case quite like this at Florida’s Jackson County Jail, where a group of detainees filed official complaints over racial and ethnic slurs, as well as being “shackled naked to concrete slabs in spread-eagle positions where they were left for hours, beaten with batons, and shocked with electric riot shields” (1999:572). Later that same year, detainees in another Florida jail filed a civil rights complaint with a Tampa federal court after being beaten, stripped naked, dragged through dog and human waste and left for twenty hours in flooded cells; unsurprisingly, the abuse came after detainees had filed written complaints against their jailers (*Op. cit.*). Employee actions presented here are in clear violation of the Detention Standard, as well as civil rights guaranteed by American law and international human rights agreements, yet a relatively small effort has been made by the government to curb such abuse.

Blatant disregard for detainee rights is even more common than physical and psychological abuse. Numerous scholars have highlighted general detainee mistreatment, which ranges from vermin in cells, contaminated food, and inadequate ventilation to lack of access to counsel, arbitrary and retaliatory transfers, and loss of mail, documents, and personal property, among many other problems (Little 1999; Lucas 2005; Phillips, Hagan, &

Rodriguez 2006). For example, Phillips et al, found that of the 300 deportees interviewed, more than one third did not have adequate access to food and water and nearly half did not have access to a telephone while in detention (Phillips, Hagan, & Rodriguez 2006).

Conditions are so bad in some detention centers that even employees have even filed formal complaints. For example, Detention Officers at the Krome facility sent a formal memo to their supervisor highlighting some of the extreme conditions at Krome, including general restroom facilities for criminal, noncriminal, and children detainees; a lack of tables and chairs so substantial that detainees are forced to eat their meals on the floor; a total of 6 beds for 39 female detainees; overcrowding and poor ventilation; no recreation for women and children; and an extremely high noise level that interferes with detention center operations (Little 1999:562). Unfortunately, while Krome officials claimed to be in the process of bringing the center up to regulation standards, at the time of Little's research, they had thus far failed to do so.

Potentially more damaging than inadequate food or medical care, or even physical or psychological abuse, is blocked access to legal aid as it can be the determining factor in a detainee's deportation as well as his or her only means of reporting mistreatment. In her study of the Krome detention center, Little points out that detention employees failed to provide detainees with an accurate list of free and low-cost legal aid, directly in violation of requirements outlined by the Executive Office for Immigration Review (EOIR) (1999:556). Furthermore, she found that detainee telephone access failed to meet the ICE/DRO Detention Standard (*Op. cit.*). In addition, Krome detainees often had no access to pens/pencils, paper, or immigration forms, were refused the opportunity to send certified mail including pleadings to the Board of Immigration Appeals or the federal courts, and had inadequate facilities for



legal consultations (*Op. cit.*). Moreover, Krome employees' frequently failed to 1) ensure that detainees were brought to legal appointments; 2) notify lawyers that detainees had been brought to the attorney-client visitation area, often leaving lawyers in the waiting room for hours on end; and 3) file crucial immigration documents with the Immigration Court in a timely fashion or, in the worst cases, at all (*Op cit.*).

Finally, Little exposed the danger of detainee transfers. First, detainees are often transferred after their lawyers have already filed an appearance with the Immigration Court, making it exceedingly difficult for attorneys to continue representing their client, as 1) detainees are often transferred extremely far distances; 2) detainees are not permitted to notify their attorney of their transfer and DOs rarely do so; and 3) ICE/DRO frequently loses track of detainees once they have been transferred (Little 1999:567). Further complicating matters, detainees can fall victim to multiple transfers between federal detention centers and state facilities, making it even more difficult to locate them. Finally, detainee transfers mask the length of time individuals spend in detention as detention length is tracked on a per-stay basis. This is evidenced in several rather disturbing depositions presented in *Kattolo v. Reno*, where INS officials openly admitted being unable to state the average length of detention or the number of detainees held long-term (*Op. cit.*). This is extremely problematic—and somewhat shameful—as it impedes an accurate accounting of America's immigration detention system.

Despite being primarily responsible for detainee abuse, even the federal government has acknowledged several flaws of the immigration detention system. For example, in a 2006 audit of ICE/DRO by the DHS' Office of the Inspector General, investigators acknowledged several instances of detainee mistreatment and neglect—including inadequate

healthcare, lack of timely access to medical facilities, environmental health and safety concerns, and noncompliance with detention confinement guidelines—and noted that the ICE/DRO Detention Standard does not provide a process for detainees to report abuse or civil rights violations (Hagan & Phillips 2008:90). Yet despite being documented by academics, lawyers, journalists, and the federal government, detainee mistreatment continues unabated.

Furthermore, some scholars have argued that the recent rise in private immigration detention centers has exacerbated detainee mistreatment. For instance, Lucas notes that the use of private detention allows the government to deny responsibility for detainee abuse, instead scapegoating individual employees or private corporations (Lucas 2005). She specifically comments on what she dubs “Motel Kafkas,” or motels with private security guards—many supplied by G4S Secure Solutions, formerly known as Wakenhut—that hold detainees without fresh air or telephones (Lucas 2005:325). Welch, borrowing from Goffman (1961), characterizes these private immigration detention facilities as “total institutions,” depriving detainees of contact with the outside world and often exceeding the restrictions placed on “traditional” criminals in US jails or prisons (*Op. cit.*).

While such extremes do exist, one of the most commonly cited issues associated with housing immigration detainees outside federal immigration centers is that private and state correctional employees are unfamiliar with immigration law and procedure. In addition to a sheer absence of knowledge about the US immigration enforcement system, many non-federal facilities, especially jails, are considered short-term facilities and do not provide detainees with sufficient medical care, recreational facilities, or appropriate legal resources (Little 1999). Moreover, state facilities are rarely prepared for non-English-speaking

detainees (*Op. cit.*). Furthermore, ICE/DRO has failed to hold non-federal centers to the Detention Standard. Overall, housing detainees outside the federal immigration system significantly inhibits detainees' ability to contact ICE/DRO for general information, as well as contact their specific deportation officers for case information (Lucas 2005).

Today contract facilities house more than 60% of detained immigrants (Lucas 2005:327). Why house detainees outside the federal system when it is clearly a recipe for disaster? Aside from the need for increased detention space, several scholars have linked the rise in private and state contract detention to cost savings and profits (Little 1999; Lucas 2005). Building upon this argument, Lucas insists that the transition to contract detention has led to the commodification of immigrants, noting that some officials have even referred to detainees as a "product" that will never run out (2005:327). The argument is quite catching, considering that detention facilities operate within a system where filling beds and cutting costs often outweigh detainee wellbeing. In this scenario, the federal government supposedly saves money and county jails get to fill beds that would otherwise be empty with detainees that bring in an average of twice the actual cost to house and feed them (Little 1999; Lucas 2005:328).

Rising detention costs have led US immigration officials to embark upon various additional cost-cutting measures including "preventative detention," or "detention outsourcing." In essence, new efforts aim to block unauthorized entry to the United States before migrants reach the US. This is achieved via partnerships with Latin American countries such as Mexico, Guatemala, and Honduras that have adjusted national immigration policies to suit US interests and enhanced local enforcement operations with US funding (Flynn 2002). For example, the US has paid to bus unauthorized Central Americans

apprehended at the Mexico-Guatemala border back to their native countries (*Op. cit.*). Moreover, the US has covered the building costs of immigration detention centers in Central America and often pays for the costs associated with detaining undocumented immigrants. As Joe Banda, an INS/ICE representative in Honduras, stated when questioned about these partnerships, “the cost savings [from detaining and deporting migrants in Honduras as opposed to in the United States] are enormous” (*Op cit.*). It is hard to argue with Banda’s logic: the average daily cost of detention in Honduras is \$8.50 per day per migrant, as opposed to upwards of \$60 a day to detain an immigrant in the US (*Op. cit.*). Unfortunately, detention conditions in Central America are often even worse than those in the US. Thus decreasing US detention numbers and costs by paying other countries to house detainees in substandard conditions does not improve America’s immigration track record.

The aforementioned cases provide a mere sampling of documented abuses perpetrated by against immigrants while in detention. Furthermore, it is also apparent that many law enforcement officers in particular and institutions overall have little or no regard for adhering to the law when interacting with, processing, and overseeing undocumented immigrants within agency custody. Clearly, research incorporating the voices of undocumented Latinos who have been processed through the various points of our immigration system from arrest to detention could add a wealth of knowledge to this already substantial body of literature.

## CONCLUSION

All in all, several key points are highlighted in participant conversations on predatory and due process offenses. First, predatory offenses appear to be a normal aspect of undocumented Latinos’ everyday lives. Furthermore, there does not appear to be a specific offender type prone to victimizing undocumented Latinos. Participants noted that both

foreigners and native-born Americans can victimize undocumented Latinos. Participants also noted that documented Latinos are also guilty of victimizing the undocumented. Although not explicitly expressed as such, it also appears that in the case of status-driven victimization, perpetrators and victims are usually familiar with one another whether through intimate relationships, friendships, work, or business transactions. This reinforces the idea that in these instances, immigrants are being targeted because of their undocumented status as only those who are somewhat familiar with them are likely to know or assume their unauthorized presence in the U.S.

In general, participants agreed that undocumented immigrants are frequently discriminated against, threatened, manipulated, and abused by a number of actors. Participants noted that intimate partnerships—especially those involving one documented partner and one undocumented partner—create a power dynamic that facilitates manipulation, if not abuse. This was in line with Villalon’s research on intimate partner violence between documented and undocumented partners. Moreover, participants noted that undocumented Latinos often fall victim to various frauds at the hands of manipulative and/or deceptive lawyers who overcharge them and/or fail to provide legal services after payment.

Participants also agreed that undocumented immigrants frequently fall victim to extortion and even theft after entering into arrangements for service provision, such as when an item or service such as a car or cell phone contract is taken out in a documented person’s name on behalf an undocumented Latino. In these cases, undocumented immigrants are at the whim of the provider, who may threaten to cancel the provision of service or take the item involved, such as a car, for him or herself at any moment unless something more is offered in exchange. This can become extremely serious in the case of car registrations, as

the person in whose name the car is registered may threaten to call the police and claim that the undocumented person he or she initially had an arrangement with (and the rightful owner of the car) has stolen the car, which could lead to deportation.

Finally, participants agreed that predatory offenses are extremely common in the workplace. The worksite is likely the location where the majority of predatory offenses occur and employment relationships are likely the most rife with criminal abuse as defined by the law. Overall, participants cited wage theft as the most common offense. This includes underpayment (wages that do not meet the federal minimum), non-payment of overtime, and non-payment of wages, all of which violate the federal Fair Labor Standards Act (FLSA). Other abuses in the workplace range from manipulation and discriminatory treatment to indebted slavery. Furthermore, participants agreed that the majority of undocumented Latinos do not speak up about labor violations because they either do not know their rights, they know their rights but they lack language skills sufficient enough to say anything, or they know their rights and have the language skills but are simply afraid of being fired or worse.

In the case of due process offenses, participants had less to say. Most participants felt unable to discuss such offending as they had little to no personal experiences to draw upon. In addition, they noted that undocumented Latinos' interactions with law enforcement often lead to deportation, making it difficult to communicate with or even locate those who have been picked up. In essence, the sample in this study came from a population of Latino immigrants currently living in the United States, and if one truly wants to focus on due process offenses, one must have a sample of people who have gone through the criminal justice/immigration system.

That aside, participants did still make valuable contributions to the analyses of due process offenses at the local level. First, most participants agreed that police can be very helpful or very discriminatory, and this simply depends on the actual officer. At the same time, a number of participants stated that police often scrutinize Latino drivers and harass them about their immigration status even when they have not committed any traffic violations or crimes. Furthermore, most participants agreed that ICE officers harass Latinos unnecessarily, questioning them without cause and performing searches and detaining individuals without warrants or orders of deportation. In addition, several participants noted that ICE officers are often very rude and even violent when interrogating individuals or raiding homes.

While participant discussions of due process offenses were limited, they are in line with existing research on criminal justice abuses against undocumented immigrants. As can be seen here, law enforcement and other criminal justice actors are not only in a position of power over the undocumented due to their occupation status and because many undocumented immigrants are not sure of their rights in the United States. Furthermore, the sheer number of documented abuses against the undocumented in the context of immigration enforcement alone is a testament to the normalization of rights abuses and disregard for the law on behalf of individual criminal justice and immigration actors and the criminal justice/immigration enforcement apparatus as a whole. This is extremely unfortunate as this only perpetuates the undocumented Latinos' victimization by transforming those who are intended to protect against violence and abuse into some of the most dangerous abusers of all.

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## CHAPTER 7: CONCLUSION

This project was aimed at disentangling the complicated relationship between immigration status and crime in the case of Latino immigrants, casting aside unwarranted stereotypes and highlighting actual status-driven offending and victimization. To accomplish this, a thorough review of the literature on immigrant and Latino offending, which negates the criminal Latino stereotype, was necessary. This review revealed that, despite a few exceptions like MS-13, a century of research on immigration and crime has found that while immigrant offending has varied slightly across time and place, immigrants almost always exhibit lower crime rates than native groups and, in some cases, are more able to withstand crime-facilitating conditions. A detailed analysis of the history of immigration and immigrant-specific policies in the United States was also necessary. As seen in Chapter 3, such an examination reveals the racialized nature of immigration policy, the increasing criminalization of immigrants, especially undocumented Latinos, and the adoption of a criminal justice/enforcement model at the core of current immigration policy. Taken together, this literature review and policy analysis suggest the likelihood that immigration and immigrant-specific policies actually facilitate and encourage crime by, with, and against Latino immigrants for two inter-related reasons. First, within the current framework of immigration policy, immigrants are clearly constrained by their second-class status. Second, these status-driven interactions with other immigrants as well as nonimmigrants are both influenced by the criminalization policies towards illegal immigrants.

In order for this hypothesis to be correct, just one of four possible tenets needs to hold true: 1) immigration and immigrant-specific policies *actually* deny Latino immigrants the ability to perform or participate in certain “daily” activities through legal means, leading

them to adapt *vis a vis* illegal means; 2) Latino immigrants *perceive* that immigration and immigrant-specific policies deny them the ability to perform or participate in certain “daily” activities through legal means, leading them to adapt *vis a vis* illegal means; 3) Latino immigrants are vulnerable to victimization because immigration and immigrant-specific policies *actually* deny them equal protection from victimization; or 4) Latino immigrants are vulnerable to victimization because immigration and immigrant-specific policies are *perceived* to deny them equal protection from victimization by victimizers and/or victims.

As policy analysis and interviews revealed, not only does one tenet hold true, but all four tenets hold true. Numerous policies actually restrict Latino immigrants’ ability to perform or participate in “daily” activities through legal means, and the solution for this expressed by all participants was an adoption of illegal or extralegal means of performance and participation. Furthermore, not only do immigration and immigrant-specific policies and the way they are carried out actually deny Latino immigrants equal protection from victimization, all participants agreed that this was the case. Hence not only does policy shape immigrants’ lives, immigrants also perceive it to do so. More to the point, this policy shapes status-driven crime and victimization. In other words, immigration and immigrant-specific policies do drive offending by, with, and against Latino immigrants.

To examine such offending, a status-driven offense typology was created. This typology divides offenses into five types: status offenses, circumstantial offenses, opportunity offenses, predatory offenses, and due process offenses. Recall that *status offenses* are activities that immigrants—due to their status—are forbidden from or unable to perform without violating one or more laws. *Circumstantial offenses* are similar to *status offenses* in that they include “normal acts,” like hiring an employee or giving someone a ride

to the grocery store, that become illegal due to one or more of the participants' immigration statuses. *Opportunity offenses* include all service-related offenses and comprise the "black-market of immigration." *Predatory offenses* encompass all offenses perpetrated against immigrants because offenders believe they are somewhat immune to apprehension and punishment due to immigrants' perceived and actual vulnerability. Finally, *due process offenses* include offenses committed by government actors—such as Customs and Border Patrol (CBP), Immigration and Customs Enforcement (ICE), police, judges, and so on—that violate immigrants' rights. Again, this offense typology uses a working definition of "crime" that includes acts prohibited under criminal regulatory law *and* analogous forms of social injury because not all crimes, whether harmful or merely deceptive, which are connected to immigration status are labeled or defined as offenses by the state.

In Chapter 4, several key points on restrictions undocumented Latinos face as well as their vulnerability were established. From this it was not only clear that immigrants are both aware of and feel somewhat disempowered by their immigration status; it is also apparent that undocumented immigrants face numerous restrictions that inhibit their ability to perform "normal" activities without being dishonest or breaking the law in one way or another. Of these restrictions, the inability to obtain a valid driver's license appears to have the most detrimental impact on undocumented Latinos. Furthermore, there was consensus among all participants that undocumented Latinos are aware that their presence in the United States violates at least some sort of law or laws and that this is associated with several risks, the greatest being the threat of deportation. Finally, although discussed in multiple ways and seen as existing to different extents by different participants, participants agreed that most, if not all, undocumented Latinos fear the police and refuse to interact with them even if they

have been the victim of a crime, something many participants linked to increased immigrant vulnerability.

In Chapter 5, immigrants' alternatives to restricted legal participation were discussed. It was established that most undocumented Latinos behave dishonestly or violate the law in one way or another (status offenses) in order to carry out "normal" activities and achieve desired goals. Furthermore, this often involves collaborating with another person who is typically documented and can provide as a favor or for a fee a desired service or good (circumstantial and opportunity offense). Moreover, it seems that in cases of criminal activity involving at least one undocumented immigrant and one other person—who may or may not be an immigrant—there are two motivating factors: 1) assisting a friend or family member (circumstantial offense) or 2) the potential for monetary profit (opportunity offense). At the same time, it was also pointed out that there is much profit to be made by providing undocumented Latinos with goods and services they cannot themselves acquire. Additionally, the prevalence of fraudulent identity documents was also evidenced, as was a system of rules or norms dictating when, where, and how to use such documents. Finally, while undocumented Latinos acknowledge that they do break the law, they insist that it is only because, in many circumstances, there is no way for them to live in the United States without doing so.

Chapter 6 explored predatory and due process offenses, laying out the various ways undocumented Latinos are victimized and highlighting the prevalence of such victimization. It was established that undocumented immigrants are frequently discriminated against, threatened, manipulated, and abused by a number of actors. Furthermore, both foreigners and native-born Americans victimize undocumented Latinos, as do documented Latinos.

Although not explicitly expressed, it also appeared that in the case of status-driven victimization, perpetrators and victims are usually familiar with one another whether through intimate relationships, friendships, work, or business transactions. Intimate partner violence, extortion or theft linked to service provision and legal council, and labor abuses were discussed as the most common predatory offenses. Labor law violations were above all the most common predatory offenses. Moreover, this finding was consistent with existing literature, however limited it may be. Finally, although participants were unable to discuss due process offenses with much depth, they did discuss the prevalence of racial profiling by law enforcement and a general disregard for the law and immigrants' rights on the part of police and Immigration and Customs Enforcement, all of which is supported by existing literature.

In sum, interviews confirmed that undocumented Latinos are involved in a wide variety of status-driven offenses as perpetrators, collaborators, and victims, supporting the notion that immigration and immigrant-specific policies actually facilitate and encourage crime. Despite establishing this, however, there are still two questions left unanswered. First, what does it matter if immigration and immigrant-specific policies facilitate and encourage crime? Second, what should be done about this, if anything?

The first question can be explored from a variety of perspectives. For instance, some may argue that a substantial chunk of status-driven crimes explored here victimize undocumented Latinos, and that as they are here without legal permission and engaged in law-breaking on a daily basis, they bring such victimization onto themselves. Others may even argue that they deserve to be victimized in some circumstances for the same reason. Still others may see the prevalence of status-driven crime as another reason to support

tougher immigration enforcement policies to keep unwanted immigrants out of the country and get rid of those already here illegally. The problem with all these perspectives is that they fail to recognize that both undocumented Latino immigrants and status-driven crime are well-integrated into American society. In other words, such offending and victimization is much more than the sum of its parts and goes far beyond illegal immigration as a social problem. Status-driven crimes are the product of a long history of biased immigration policy, capitalist labor relations, and the failure of the United States to uphold the just application of existing laws.

For those who argue that undocumented Latinos, as offenders themselves, deserve to be victimized, it must be emphasized that this victimization is also harmful to Americans. In the case of interpersonal victimization, such offending encourages the proliferation of a culture of offending among those with a legal right to be here, including residents, naturalized citizens, and native-born alike. Furthermore, it spurs violence by suggesting that there is a benefit to be gained when those with power exert themselves over those they view as disempowered. Finally, a substantial amount of immigrant offending and victimization happens in connection with organized crime and even human trafficking, thus likely supporting or facilitating a number of more violent crimes.

In the case of employment-related offenses, the cost to the average American is even easier to identify. Employers hire undocumented immigrants in order to avoid labor, health, and safety regulations. This not only lowers wages but reduces benefits and worsens working conditions. Overall, the hiring of undocumented workers normalizes substandard wages and working conditions in many industries, which leaves American workers with fewer desirable job opportunities. In effect, employers undercut the power of American

labor by hiring undocumented Latinos just as large industrial factories in the early 20th century tried to undercut the power of labor unions by hiring scabs and strikebreakers who were willing to work in subpar conditions. This is not only detrimental to workers' rights on the whole, but also scapegoats undocumented Latinos as the cause of decreasing labor conditions. Were employers stopped from exploiting undocumented labor, they would be forced to improve working conditions in order to find employees willing to work for them.

For those who believe the evidence of such status-driven offending only makes the case for tougher immigration policies stronger, it should be emphasized that the tougher the policy, the more likely it is to increase overall offending. This is something one can see simply by examining the trajectory of immigration policy over the last thirty years. For example, it is well-established that as the United States has increased securitization of the U.S.-Mexico border, more and more undocumented migrants have chosen to remain in the U.S. permanently as the risks associated with crossing the border have increased. This caused the population of undocumented immigrants in the U.S. to expand greatly, which in turn means there are now more people here to offend and be victimized. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 offers another example of a law aimed at decreasing illegal immigration that has actually created conditions favorable to increased crime. In this case, by increasing criminal punishments for illegal entry into the United States, undocumented Latinos have had more to fear if caught, but instead of returning to their native countries, they have just tried harder to hide themselves and rely on extralegal means of survival. Furthermore, recent policies like ICE's Secure Communities and laws like Arizona's SB1070 that strengthen law enforcement-ICE collaboration only make undocumented Latinos more afraid of the police, which in turn



makes them less likely to collaborate with police or turn to police for assistance and more susceptible to victimization. Overall, each intensification of immigration enforcement has forced undocumented immigrants evermore “underground” and made them more vulnerable to victimization.

Excluding undocumented immigrants from legal participation in society, as explored here, is also problematic as the more restrictions the undocumented face the more they must rely upon extralegal means to compensate for what they cannot do. Regulations that prohibit undocumented immigrants from obtaining driver’s licenses and registering their cars provides a simple yet poignant illustration of this. As explored in this study, these two prohibitions have led to a variety of illegal and extralegal practices including unlicensed driving, driving without registration, the practice of registering cars in other peoples’ names, and the emergence of underground undocumented transportation services. Creating additional immigrant-specific policies to restrict undocumented immigrants’ participation in society even further, such as proposals to deny undocumented children access to public education or to deny citizenship to children born of undocumented parents, is only likely to cause even more offending, not less.

All in all, at the crux of this project lies the belief that current immigration and immigrant-specific policies are criminogenic. These policies do more harm than good. They have clearly done little to prevent unauthorized immigration, as evidenced by the nearly 13 million undocumented immigrants currently living in the United States, despite setting out to do so. What is more, they have led to the creation of a wide variety of status-driven crimes that would not exist were it not for such policies. In essence, current policy creates millions of offenders and victims that would not otherwise exist. Thus beyond being about the

promise of law, human rights, or the immigration debate as a whole, this argument speaks to the reduction of crime, violence, and harm in the United States for the good of everyone regardless of one's position on immigration or undocumented immigrants.

In order to reduce status-driven offending and victimization, America must undertake serious immigration reform that moves past political divides. We must accept that undocumented immigrants are here, for good or bad, and move forward with an understanding that they are deeply integrated into society. Furthermore, we must understand that until this second-class population can live in the open with the same opportunities to participate in society and the same protections from victimization, status-driven crime will only continue. Hence any reform that attempts to decrease status-driven offenses must be threefold. First, we must decriminalize immigrants. Immigration is a human phenomenon, not a criminal one, and most undocumented immigrants have never committed what we would consider dangerous criminal offenses. Ultimately, we must reduce undocumented immigrants' fear of criminal punishment for being present without authorization as well as their fear of deportation because these two factors allow offenders to victimize immigrants.

Second, some level of amnesty must be provided to the nearly 13 million undocumented immigrants currently residing in the United States. Amnesty may come as an offer of permanent residency status without any penalties for being previous unauthorized residence, or it may be some new form of work-residency for those who intend to work in the United States for several years without ever applying for citizenship. The point here is that until current undocumented immigrants can come out from the shadows, status-driven crimes will continue.

Third, the United States must create more immigration opportunities for those who desire to come here. This means increasing the number of people allowed to immigrate here each year. Cutting out some of the red-tape involved in applying for visas and processing immigration applications more quickly to reduce entrance wait-times -as mentioned previously, even direct family members of American citizens often wait years for a visa. Furthermore, immigration policy must take into account the United States special relationship with the rest of the North American continent. The United States has shared geographic, historical, political and economic relationships—including the North American Free Trade Agreement and the Central American Free Trade—with the majority of North American countries, thus North American immigration is somewhat distinct. As such, immigration reform may include something similar to the European Union’s allowance of intern-Union work permission for EU citizens. In this scenario, citizens of North America would be able to travel and work freely throughout North America, eliminating a need for illegal immigration within these nations and greatly reducing illegal immigration to the United States.

In sum, by exploring the immigration-crime relationship from criminological and socio-historical frameworks that incorporate the voices of Latino immigrants, it is clear that the only way to reduce status-driven crime is to target immigration and immigrant-specific policies, i.e. the criminogenic forces from which it springs. By decriminalizing immigrants, providing amnesty, and allowing more open access to the United States, status-driven offending and victimization would all but disappear. Furthermore, organized criminal networks connected to illegal immigration would weaken. Together this would make

America a safer and less violent place. Overall, putting an end to status-drive crime benefits us all, not just Latino immigrants.

## APPENDIXES

## APPENDIX A – INTERVIEW QUESTIONS

1) Where are you from? How long have you lived in the United States? Do you have a lot of family here [spouse, children, parents, siblings, etc.], or is most of you family in \_\_\_\_\_? What kind of work do you do? Is this what you did in \_\_\_\_\_?

Age: \_\_\_\_\_ Gender: \_\_\_\_\_ Race/Ethnicity: \_\_\_\_\_

2) Are Latino immigrants prohibited from some “normal” activities that American citizens do as part of their everyday life? Could you provide some examples of these? What kinds of risks do you think many Latino immigrants take as part of their daily life? How do people adjust to or avoid these risks? Do any of these risks involve American citizens, and if so, are the American citizens involved aware of the risks? Can you provide some examples?

b. For example, let’s say a Latino immigrant wants to drive, but does not have a driver’s license. What would most Latino immigrants do in this situation? What if this person decides to drive without a license and is stopped by the police. What would most Latino immigrants do in this situation? Might an immigrant without a driver’s license ask someone with a driver’s license for a ride, and if so, who would they likely ask? Do you think these scenarios are common?

c. For example, let’s say a Latino immigrant wants to get a job, but does not have legal permission to work. What would most Latino immigrants do in this situation? Would someone who wants to work but does not have permission look for employers that do not care whether or not their employees have permission to work? And what if this person was offered a job, but the paperwork for the job asked for a Social Security Number? Do you think this happens frequently? Do you think that most Latino immigrants without legal permission to work find work easily?

d. For example, what would most Latino immigrants do if they needed some form of identification, but did not have a legally issued identification card or certificate? Let’s say a Latino immigrant wanted to get false identification documents. How would he or she acquire these? Do you think this happens often?

3. I’m curious to see if you think there are people who make money off of immigration or immigrants, or if there are people who make money providing certain goods or services to immigrants. If you do think people make money off of immigration, do you think the goods or services they provide are worth the cost? Are there some cases where people make money off of immigration without providing anything to those they charge money? Let’s start with the Border region. Do you think there are people along the Border who make money providing goods or services to immigrants? What are your thoughts on this? Could you give me some examples? How about once Latino immigrants are living in the United States?

- a. For example, if someone wants to enter the U.S. from Mexico, what kinds of people might they deal with? How might one find a way enter the U.S. and who would they need to talk to or pay? What goods or services would a Latino immigrant who wants to cross enter the U.S. need before entering? Do you think this is common?
- b. For example, let's say a Latino immigrant wants to enter the U.S. without permission. Could this person bribe police, Border Patrol agents, or American citizens to help them enter the U.S.? Do you think this is common?
4. I'm interested to know if you think the police or government employees, employers, service-providers (like lawyers), or average Americans treat Latino immigrants differently than American citizens? In what way? Why do you think this is?
5. Do you feel that some people take advantage of Latino immigrants because they are immigrants? Can you think of some examples? Do you think that some people purposefully harm or abuse Latino immigrants because they are immigrants? Can you explain your thoughts?
6. In general, do you think Latino immigrants are taken advantage of by people they do not know, people they live near or work with, or people they know (family, friends, significant others, etc.)?
  - a. For example, do you think it is common for employers to treat Latino immigrant workers differently than non-immigrant workers? How so? Might Latino immigrants be paid less than American citizens? Might Latino immigrants work in jobs with unsafe or unfair working conditions? What might Latino immigrants do if faced with this situation?
  - b. For example, do you think it is common for lawyers, notaries, or translators/interpreters to give Latino immigrants incorrect information, have them fill out unnecessary applications, or charge them unfair fees? Is it common for these service providers to charge for services and then not provide any services? What might Latino immigrants do if faced with this situation?
  - c. For example, do you think it is common for police or other law enforcement agents (like Border Patrol or ICE), to: (1) fail to provide services to Latino immigrants, (2) to discriminate against Latino immigrants (e.g. racial profiling), or (3) to deny them their rights? Do you think it is common for law enforcement agents to threaten, physically or sexually abuse, or extort money from Latino immigrants?
  - d. What about people who work in corrections - including prisons, jails, and detention centers -or who work for the court -like judges and lawyers? Do you think that any of these people treat Latino immigrants differently than American citizens? How so? Why do you think this is?
  - e. For example, do you think that being a Latino immigrant can negatively affect someone's personal relationships? How so? I'd like to use a scenario here. Let's say a Latina immigrant is in a relationship with an American citizen who threatens her about her immigration status. How might she react? Where might she go for support? Do you think

it is common for partners to harm their significant other and make threats about their immigration status?



## APPENDIX B – GLOSSARY OF TERMS

*Agringar* -to become “gringoized” or like a *gringo* (see *gringo*)

The Border –the region expanding several hundred miles into the United States and Mexico along both sides of the politically-defined U.S.-Mexico country border

Bracero Program -a guest-worker agreement between the U.S. and Mexico from 1943 to

1964 -facilitated legal access for hundreds of thousands of Mexican migrant laborers

Circumstantial Offense -offense linked to the undocumented immigrant’s immigration status, such as hiring an undocumented worker or giving a ride to an undocumented immigrant

Community Organizer -someone who works with the community to support the community, typically as part of a social organization, community group, or workers’ center

Criminalization -the process of making or treating 1) a person or group of persons, 2) an item or object, or 3) an act criminal, either in legal or social discourse

Customs and Border Patrol (CBP) -branch of the U.S. Department of Homeland Security that is responsible for monitoring and controlling the flow of goods and people into and out of the United States

Decriminalization -the process of ceasing to treat 1) a person or group of persons, 2) an item or object, or 3) an act as criminal, either in legal or social discourse

Department of Homeland Security (DHS)

Due Process Offense -illegal activity that violates the rights of undocumented individuals, such as racial profiling, illegal search and seizure, failure to inform individuals of their rights, denying one the right to legal council, etc.

*Gringo* -slang Spanish word for an American or white person; may be mildly offensive or derogatory depending on the context

Guestworker -a non-native migrant worker with legal authorization to work in United States

as recognized by the granting of a temporary work visa; among these are H-2A visas

(agricultural), H-2B visas (nonagricultural), and H-1B visas (skilled), which require

guestworkers to return to their country of origin if they: quit their job, are laid off, or are fired

Immigration Reform and Control Act (IRCA) -the 1986 act created a distinction between

agricultural (H-2A visa) and nonagricultural (H-2B visa) guestworkers, as well as granted

legal status to approximately 2 million undocumented immigrants present in the United

States at that time

Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) -1996 Act that

drastically changed the climate of immigration, reclassifying many minor offenses like drunk

driving and simple assault as aggravated felonies and created legal bars that deny visas of

any kind to immigrants who have been caught in the U.S. without authorization

Secure Communities Initiative -Immigration and Custom Enforcement’s (ICE) initiative that

facilitates immigration-police collaboration, permits law enforcement to dodge due process

rights and interrogate individuals about their immigration status at traffic stops or while in

police custody

Immigration and Naturalization Services (INS) -prior to the creation of the U.S. Department

of Homeland Security, the government organization responsible for all immigration-related

matters

*Indigena* -Spanish for indigenous, referring to people of indigenous or native descent who

may or may not speak an indigenous language or uphold indigenous cultural traditions

Key Community Informant -someone who serves as the gatekeeper to a community,

granting access to people of said community to outsiders; someone who is very

knowledgeable about a specific community and is usually considered a member of said community by the community

Minutemen -vigilante group along the U.S.-Mexico border that claims to enforce immigration and border policies and support Customs and Border Patrol agents

North American Free Trade Agreement (NAFTA) -1994 agreement between Canada, the United States, and Mexico that liberalized trade policy between the three nations and included both environmental and labor rights side agreements

Non-Citizen -in the United States, a person without citizenship who may have one of many immigration statuses and be present lawfully -with a Visa or Permanent Resident status -or unlawfully -including having once been granted lawful entry to the U.S. or having never been granted lawful entry to the U.S.

Opportunity Offenses -service-related illegal activities that are economically motivated and stem from market opportunities linked to unauthorized immigration

Participatory Research -studies in which those being studied play a major role in developing and carrying out said study

Permanent Resident -a person who has been granted lawful permission to reside for an indefinite amount of time in the United States, and who could qualify for U.S. citizenship by meeting various criteria

Predatory Offense - illegal action, like fraud or assault, that specifically targets undocumented immigrants due to their perceived and actual vulnerability, as well as the idea that they are less likely to report crimes to the police

Proposition 187 -1994 California proposition that included denying public education and other social services to undocumented immigrants

Snowball Sampling -technique for acquiring participants in which the researcher asks each participant to recommend potential participants they are aware of, creating a participant pool that resembles a web

Status Offense -behaviors that are not viewed as inherently wrong or illegal, but are merely unacceptable or restricted for specified groups; examples include prohibitions on underage smoking or drinking

Unauthorized Immigration -commonly referred to as illegal immigration

Undocumented Immigrant -commonly referred to as an illegal immigrant, although the technical term is “illegal alien”

Visa Waiver Program (VWP) -grants residents of 36 countries (all but Singapore and South Korea being European) exemption from obtaining a visa before travel to the U.S. as long as their stay is less than 90 days