

Also by Suzanne Oboler

Stigmatized Labels, Latino Lives: Identity and the Politics of (Re)Presentation in the United States, 1995.

Neither Enemies nor Friends: Latinos, Blacks, Afro-Latinos (with Anani Dzidzienyo), 2001.

Oxford Encyclopedia of Latinos and Latinas in the United States, 4 Volumes (with Deena J. González), 2005.

Latinos and Citizenship: The Dilemma of Belonging, 2006.

Oxford Encyclopedia of Latino/as, Politics and the Law, 2 Volumes (with Deena J. González), forthcoming, 2011.

Behind Bars

Latino/as and Prison in the United States

Edited by Suzanne Oboler

palgrave
macmillan

Waste Is a Terrible Thing to Mind <i>Dixon Valderruten</i>	175
Closing The Gap: Mentoring Latina Students to Reach Out to Incarcerated Latinas <i>Marcia Esparza</i>	181
Part III: The Art of Resistance	187
Latino Visual Culture Behind Bars: Artistic Inspiration and Redemption Within the Bowels of Despair <i>Víctor Alejandro Sorell</i>	189
“Troubadour of Justice”: An Interview With Raúl Salinas <i>Alan Eladio Gómez</i>	213
Peltier 1 / Peltier 2 <i>Raúl Salinas</i>	223
“Estoy como cuero de jicotea, que ni las balas me pasan”: An Interview with Rafael Cancel Miranda <i>Gabriel Torres-Rivera</i>	227
<i>La alegría de tener vergüenza</i> <i>Rafael Cancel Miranda</i>	235
Part IV: The Way Forward	237
Chicana(o)/Latina(o) Prisoners: Ethical and Methodological Considerations, Collaborative Research Methods, and Case Studies <i>Juanita Díaz-Cotto</i>	239
Toward a Pinta/o Human Rights? New and Old Strategies for Chicana/o Prisoner Research and Activism <i>B. V. Olguín</i>	261
Contributors	281
Index	285

Introduction

“*Viviendo en el olvido . . .*”**Behind Bars—Latino/as and
Prison in the United States***Suzanne Oboler*

Before I built a wall I'd ask to know,
What I was walling in or walling out.

—Robert Frost, “*Mending Wall*”

The worst thing about being in prison isn't even the loss of my freedom. *Es saber que estoy viviendo en el olvido.* [It is knowing that I am alive, but forgotten.]

—Carlos, prisoner, upstate New York

These are the words of an incarcerated Latino currently in a prison in upstate New York: words that echo throughout the penal system of the United States, whether from the jails, the state and federal prisons, the immigrant detention centers, the high-security facilities, the private incarceration buildings, the military prison in Guantanamo Bay. This anthology is a direct response to those words—an effort to say to that incarcerated Latino and to all the men and women in the U.S. criminal justice system, “No! You are not living ‘*en el olvido.*’ You, your lives, your presence as part of both our community and our society—whether behind walls or barbed-wire fences—are important to those of us on the outside. You have not been forgotten!”

As Supreme Court Justice William Brennan wrote, “Prisoners are persons whom most of us would rather not think about. Banished from everyday sight, they exist in a shadow world that only dimly enters our awareness. . . . Nothing can change the fact, however, that the society that these prisoners inhabit is our own. Prisons may exist on the margins of that society, but no act of will can sever them from the body politic” (quoted in Elsner 2006, 16).

The struggle of incarcerated Latino/as—indeed, of all incarcerated people in the United States—for their dignity and their humanity is the struggle that Latino/as and this society as a whole must engage today—now. There must be a societal response to the government's insistence on using imprisonment as a means for dealing with the nation's minorities and poor populations and as a source of jobs—as well as free prison labor—in the small rural towns in regions now depleted of previous sources of economic well-being.

What is being "walled in"—to use the words penned by Robert Frost—in these prisons? What histories, what life stories, what justifications, what violations and abuses, what secret methods of breaking the human spirit? And, similarly, what part of our society's role in ensuring justice, equality, respect, and human dignity is being "walled out"?

The Issues

The authors of the articles and essays in this anthology address these questions in various ways. Undoubtedly, the fact that Latinos are, as José Luis Morín observes in this chapter, the fastest growing group in the U.S. prison system—accounting, by the end of 2004, for 19.2 percent of the total population in U.S. state and federal jurisdictions—is also an underlying cause for the urgency of this book.¹ Providing an overview of the U.S. criminal justice system and its implications for U.S. society, Morín explains that although "differences between Latino/as and African Americans also exist, most notably that Latino/as are subject to myths linking criminality to immigrant status," there are several reasons why Latinos, like African Americans, are increasingly "trapped" by the phenomenon of "mass imprisonment."² Thus, he retells key moments in the history and experiences of Latino/as in the United States, providing an overview of various prominent trends that feed into this society's penal system, including the racialization of crime, the manner in which criminal justice policy is formulated and justified around the fear of crime, how the courts and the criminal justice system operate, and the role of the media in promoting negative images of Latino/as.

Indeed, the current increase in the incarceration rates of Latino/as, whether in state or federal prisons or in immigrant detention facilities, and the rush to control the borders, to conduct raids, to build fences, to demand national identity cards—like the current inhumanity of mainstream politicians and the media toward immigrants—demeans us all. These actions are also reducing citizenship rights and the freedom of movement and human creativity that the ideals of this society's democratic traditions guarantee to all who live in this country. In their place, what seems to be emerging is an impermeable barrier of complacency and indifference grounded in social insecurity, fear, and even terror of one another (Glasser 1999). Public anxieties are creating new policies and methods of addressing these fears that are challenging the basic premises and traditional practice of the nation's constitutional history and laws, including the very requirements of criminal law curricula in the law schools of the United States. As one prominent law professor recently wrote:

I am a criminal law professor. I know about penal codes, police practices, sentencing, and the use of incarceration to punish criminals. Like most criminal law professors, I know precious little about American immigration law. I have always considered it to be a different part of the law school curriculum, and one that had little, if anything, to do with criminal law. Even in my federal criminal law course, immigration law played no part in the curriculum. Lately, however, it has become evident that things have changed. In today's world, immigration enforcement and criminal law enforcement activities are two sides of the same coin, at least for non-citizens. What criminal law professors and practitioners alike are discovering is that immigration law—including the practices of detention and deportation, as well as prosecution for reentry and document fraud—has emerged as a key missing chapter in American criminal law. (Guerra-Thompson 2007)

Guerra-Thompson's observation was confirmed in a recent *New York Times* article reporting on the Pew Hispanic Foundation study on Latino/as and incarceration (Lopez and Light, 2009). Noting that they currently make up 13 percent of the U.S. population, the study found that, in 2007, Latino/as became "the largest ethnic group in the federal prison system, accounting for 40 percent [or one third] of those convicted for federal crimes," almost half of whom (48 percent) were behind bars for immigration crimes. Quoting Lucas Guttentag, a lawyer for the American Civil Liberties Union, the article goes on to affirm that, "the immigration system has essentially become criminalized at a huge cost to the criminal justice system, to courts, to judges, to prisons and prosecutors. And the government has diverted the resources of the criminal justice system from violent crimes, financial skullduggery and other areas that have been the traditional area of the Justice Department" (Moore 2009). The growing connection and increasing convergence between immigration and criminal law, now referred to as "criminalization law," has become, in the words of one scholar, "the most important development in immigration law today" (Stumpf, 2006).

It is almost a cliché today to state that immigration has traditionally been one of the key foundational pillars of this nation's self-image and development. A renewed concern and, indeed, widespread hysteria about the presence of immigrants, particularly Latino/as, permeates the society, and heinous hate crimes against people of Latin American descent are increasingly reported across the country. Equally widespread is the unfounded perception of the threat (curiously detached from the nation's political economy) that Latino/as supposedly pose to the United States (Chavez, 2008). In short, US society is being treated today to an unrelenting racialization and demonization of immigrants, again, most specifically of Latin American immigrants, particularly, although by no means exclusively, of Mexicans living and working in this country.

The result has been a prevailing perception that Latino/as in U.S. society are primarily undocumented immigrants born in other parts of the hemisphere and, as such, are permanently "illegals," "aliens," or foreigners in the United States. Homogenizing the Latino/a population in these terms and, in this sense, separating them from the general population has allowed for the development of laws and policies ostensibly aimed at protecting "us" from "them." This has, in turn, overtly

or otherwise negatively impacted the constitutional rights of all U.S. residents—citizens and noncitizens alike (Oboler, 2006, 3-30).

Thus, despite the fact that more than half (59.8 percent) of all Latinos in the United States today are native-born citizens (Fry and Hakimzadeh 2006), the perception of Latinos as inherently foreign to the very image and idea of “being an American” has now become deeply ingrained—to such an extent that early on in the 2008 presidential campaign, *The Christian Science Monitor* noted that “the touchy subject” of immigration had “become a political minefield for ‘08 contenders.” “Pundits,” the newspaper continued, “dub the immigration issue ‘a minefield,’ ‘a new third rail,’ as well as a ‘megaissue’” (Marks 2007). Indeed, one of the prospective presidential candidates, Colorado Representative Tom Tancredo, saw it fit to base his platform and “debate points” almost exclusively on the issue of immigration and border control, explicitly tying Latino/a immigrants to the “war on terror”: “I am 100 percent opposed to amnesty. . . . I will secure our borders so illegal aliens do not come and I will eliminate benefits and job prospects so they do not stay.” Moreover, Tancredo “also routinely tie[d] the broken immigration system to the terrorist threat” (Marks 2007).

The above state of social anxiety and violent response to the presence of immigrants in the United States, however, is not without precedent. As David Hernández’s makes clear in his chapter, it is worth recalling that, historically, borders, like border controls, in the United States have long marched in step with detentions and deportations. The criminalization of the “other,” has often occurred under the guise of the imperative to increase “national security” as well as of (re)constructing or creating new notions of who is “illegal” (Ngai 2005; De Genova 2006). Equally important is the historical recourse to xenophobic and racializing responses to “otherness,” including linguistic, social, gendered, and sexual factors. These responses in turn ensure the approval, tacit or otherwise—if not the indifference—of mainstream public opinion toward the fate of those who, like the majority of the ancestors of U.S. citizens of European descent, have been forced to leave their homelands for a variety of reasons in search of a better life for themselves and their children in this country. Particularly in the last few decades, societal responses to otherness have reinforced, in a fundamental way, the perception of Latino/as as “criminal” and therefore as “disposable” people, as “unworthy” of benefiting from the democratic and moral values that are presumed to underlie US society’s insistence on fairness and justice for all.

As is often noted, history repeats itself, although, as Marx aptly stated, first as a tragedy, then as a farce. Therefore, historical examples are essential both as records of past injustices and as a measure of how far a nation has moved, or not, in the direction of becoming more humane and just. In his chapter, Alan Eladio Gómez tells the story of Chicanos and Puerto Rican *Independentistas* imprisoned in the Leavenworth Federal Penitentiary in Kansas during the 1970s. He discusses the efforts of the Latinos at Leavenworth to create alliances with others, particularly African Americans and Native Americans; to educate themselves about the U.S. criminal justice system; to understand and address the society that created it; and to make the connections and comparisons to the practices and implications of carceral institutions in other parts of the world, especially Latin America and Africa. In the process,

his chapter describes the ways that this self-education empowered and “armed” those like Raúl Salinas “with knowledge and truth,” hence leaving the poet-activist “with his dignity intact.” Gómez also assesses the ways that this empowerment contributed to their efforts to reform the system, whether through the prison newsletter, through informing those on the outside about the conditions within, or through court suits directly challenging the system’s brutality and inhumanity. Noting that there was a 500 percent increase in the U.S. prison system (including a 2,800 percent increase in the number of women in state and federal prison or local jails) between 1972 and the mid-1990s, Gómez concludes that

the political analysis of Latino prison activists uncovered how the intricate calibrations of violence within the prison regime were related to law, race, and social control outside prison, an important theoretical understanding when trying to untangle the political ideology of law and order as it relates to race, incarceration, and white supremacy (Rodríguez 2006). Incarceration—functioning as “incapacitation”—for a surplus army of labor of women, men, immigrants, criminalized by their mere existence, is directly implicated in the acceptance of preventative detention with regard to racial, ethnic, and, in a post 9-11 world, national and religious minorities.

As José Luis Morín states in his chapter, “Latinas/os, like African Americans, are perceived as a class of poor people of color that pose a threat to the social order, and thus must be controlled and dominated.” Victor Rios directly addresses this perception in his chapter, through his discussion of its consequences in the juvenile justice system. His contribution to this volume provides a case study of the way that the politics underlying the introduction of tougher sanctions against both Latino and African American youth increasingly relies and plays on public anxieties about the supposed link of race with crime, hence reinforcing the harmful prejudice.

Several of the authors in this anthology emphasize that although Latinos have long been part of the history, society, culture, and economic development of this country, it is still deplorably the case that they are too-often consigned to a collective space of nonbelonging, regardless of their citizenship status and, again, largely as a result of racial, language, social, and xenophobic discrimination. Together with the collective solidarities and alliances they create among themselves, Latino/as, as the contributors to this anthology attest, draw upon their culture and language background, their ongoing learning, the experiences of their past, and the endless creativity of the human spirit—even behind bars—to face up to and resist the violent and brutal experience of the U.S. prison system.

In her chapter, Laurie Schaffner focuses on how Latina juvenile delinquents use language and culture as a way of establishing a sense of solidarity in prison as well as a way of unsettling what Schaffner refers to as “the orderly flow of the punitive surveillance.” Schaffner notes that the findings she presents run counter to traditional narratives of juvenile delinquency, which often reinforce the image of juvenile delinquents as alienated.

At the same time, the simultaneous “inclusion/exclusion” swings in public attitudes and discussions about “what is to be done with *them*” continue apace with the complicated history of U.S. relations with the rest of the hemisphere. As a

result, the country and polity is deprived of a sustained discussion, one free of intermittent sensationalisms about the latest wave of immigrants and their undeniable, multiple contributions to this society. Similarly, any dialogue concerning the ongoing exclusion of U.S.-born Latino/as from the polity through their rapidly rising rates of incarceration and consequent loss of the right to vote and to exercise their full citizenship also continues to be silenced. As Juan Cartagena observes in his chapter, “the prison industrial complex continues to sustain itself by misguided political ploys regarding so-called ‘drug wars’ and ‘tough-on-crime’ politicians to the point that crime is generally at record lows, while imprisonment is at historic highs. Latinos’ collective political strength is directly affected: lost are the votes that are taken from our communities upon incarceration; skewed are the counts of fictitious ‘residents’ that inflate the relative political strength of these prison towns; and unemployed are the hundreds of former prisoners who face statutory impediments to finding a decent job.”

Pointing out that the *Voting Rights Act* is the most important single piece of civil rights legislation in U.S. history, Cartagena notes that all but one *Voting Rights Act* challenge to the discriminatory nature of felon disfranchisement, brought up by Latino, African American, and Native American prisoners, have been rejected by the courts. These court challenges, he argues, “are critically important in understanding the contours of racial discrimination because they lie at the intersection of voting discrimination and discrimination in the criminal justice system today.”

Collectively, the contributors to this anthology seek to exemplify, in various ways, *why* it is imperative today that more attention be devoted to the connections between Latino/as and the rest of U.S. society, specifically from the perspective of the causes and implications of the rising rates of incarceration, the conditions under which Latino/as survive inside the prisons, and their subsequent, disempowered lives as both private individuals and citizens once they are released. Looking inside the conditions of the incarceration of Latino/as, including their pre- and postprison experience, can serve to bring to light the socioeconomic, political, and cultural contexts from which they come, and key moments in their historical and current experiences. Just as importantly, these conditions serve as an eloquent reminder of the contributing role played by society’s ongoing passivity and indifference to the injustices of social and economic deprivation in Latino/a communities throughout the country.

The Lived Experience

Several of the authors in this anthology draw specifically on their own daily professional lives and experiences working with Latino/as caught in the labyrinth of the criminal justice system, and, in so doing, provide valuable insight into the full implications of the workings of the system for Latino/as in US society. The ongoing perception of Latino/as as a “threat to the social order” is amply exemplified by Mercedes Castillo in her essay describing the Los Angeles Police Department’s total disregard for Latino/as’ basic constitutional and human rights and the consequent treatment and indignities to which Latino/as are subjected whenever they demand

the very right to uphold their rights. Similarly, Laura Garcia’s chapter points out the painful irony of the self-incriminating implications of Latino/as’ reliance on a common language and cultural background as they seek to communicate and explain their predicament to Spanish-speaking officers at the time of their arrest.

Erik Camayd-Freixas made international headlines with the poignant account in his chapter of the two weeks he spent as an interpreter for the hastily set up federal court in Postville, Iowa, in May of 2008. Breaking the strict rules of silence and confidentiality to which interpreters are held, Camayd-Freixas provides a rare, detailed disclosure and analysis of the workings of the federal courts against undocumented immigrants. He describes the legal procedures in the immediate aftermath of the raid in Postville, Iowa, and the subsequent detentions and deportations of the undocumented workers. The majority of the latter were indigenous people whose lack of knowledge of Spanish and English during their appearance in the courts, only served to further highlight the abusive and surreal nature of their courthouse experience. A chilling warning of the threats posed by the current bureaucratization of justice in the United States, Camayd-Freixas’s essay emphasizes the broader immoral and inhumane consequences of the war on terror in shaping the extent to which the rulings of federal immigration judges are now determined and constrained by the (il)legalities still in force, of the Bush administration’s national security doctrine. In so doing, Camayd-Freixas denounces the criminalization of workers and deconstructs the totalitarian agenda of immigration enforcement and the politics of intolerance of what he defines as “a dark period in American history.”

Latino/as’ struggle for survival within the confines of prison walls, their efforts toward self- and group education, the construction of alliances and group solidarities across national as well as racial lines, and under extremely adverse conditions, for their part, refocus attention on their lives and thoughts far beyond the confines of specific prisons and their impact on themselves as well as on their families and communities.

Dixon Valderruten describes his work in the prisons as both a health education facilitator and as a mentor to incarcerated men in upstate New York. His chapter discusses the ways that, in addition to their educational value, the use of health, and particularly AIDS, education programs can serve to empower prisoners and prepare them in a variety of ways to confront the difficulties of recreating their lives once on the outside. As Valderruten forcefully argues, the existence and role of mentors who help Latino/as once they leave prison is essential for the process of prisoner reintegration.

A recent article about the conditions of women in detention facilities describes a study conducted by the Southwest Institute of Research on Women and the James E. Rogers College of Law at the University of Arizona. As the *New York Times* reported, “The study concluded that immigration authorities were too aggressive in detaining the women, who rarely posed a flight risk, and that as a result, they experienced severe hardships, including a lack of prenatal care, treatment for cancer, ovarian cysts and other serious medical conditions, and, in some cases, being mixed in with federal prisoners” (Frosch, 2009, A23).

In her chapter, Marcia Esparza discusses the need for mentors to help women in their reentry process and focuses on the pedagogical and personal issues entailed by both herself and her students in the course of training them to mentor recently

released Latinas. Noting that many of her students come from the same social backgrounds as the women they mentor, Esparza stresses the need to acknowledge mentors' own individual and cultural strengths and self-awareness and her consequent shift to a pedagogy that reflects a more equal, horizontal relationship with her students. This approach, she argues, provides the latter with a new sense of their own authority, making them more effective in fulfilling their objective to become bridges between the incarcerated women they work with and the society into which the latter reenter.

The Art of Resistance

Art, Victor Sorell argues, is both a form of resistance and a significant means for the incarcerated trying to cope with the profound misery of life in prison. His chapter in this anthology describes a particular form of prison art painted on *pañños*, or handkerchiefs, contextualizing his critical analysis of this form of artistic production in the histories of both prison art and the international history of art. Through the words and works of six incarcerated Latino artists, Sorell describes their sense of urgency to create, analyzing their depictions of daily life in prison, invoking the depth of their feeling, the hopes and fears their artistic work contains, the personal and political resistance it expresses, and its boundless capacity for redemption. Also included in Sorell's chapter is a discussion of the artistic production of Leonard Peltier, the renowned Native American activist, author, artist, and "related prisoner of conscience/political prisoner" to whom the poet and activist Raúl Salinas, himself a former prisoner, forcefully pays homage in his two poems in this anthology, Peltier 1 and Peltier 2. Like the works of the Latino/a artists discussed by Sorell, Peltier's artwork—whose own patently unjust incarceration in 1977 continues to this day—manifests, too, the solidarities among Latino/as, African Americans, and Native Americans behind bars.

Alan Gomez's interview with Raúl Salinas in this anthology reinforces the solidarities across racial and national groups. Providing us with a powerful description of the extent to which their realities and resistance art helped both to educate incarcerated Latino/as and their allies and to openly explore and share their experiences, Raúl Salinas describes how art served as both a learning and an organizing tool during the 1970s prison rebellions.

Similarly, in his interview in this anthology, Puerto Rican nationalist and former political prisoner Rafael Cancel Miranda narrates his experience behind bars in Alcatraz, Leavenworth, and Marion prisons, detailing his response to the inhumanity of incarceration through principled activism and solidarity as well as through his poetry. His interviewer, Gabriel Torres Rivera, is himself a lifelong community activist who at one time was imprisoned with Cancel Miranda and who, since his release, has continued to fight for the human and citizen rights of all incarcerated people. The dialogue between Cancel Miranda and Torres Rivera reveals the revolutionary nature of Cancel Miranda's lifelong activism as a Puerto Rican nationalist. As both his interview and his poem, *La alegría de tener vergüenza*, included in this anthology, convey, it is a life that has always been grounded in the art of a resistance that

emphasizes human dignity and integrity as the stance from which to respond to the oppressive and dehumanizing conditions of the U.S. prison system.

The Way Forward

There is no doubt whatsoever that further research of Latino/as in prison is greatly needed—indeed, there is a serious dearth of available accounts and analyses. While a few autobiographies, letters, academic essays, newspaper articles, poems, and artwork by and about incarcerated Latino/as have recently been published and have therefore reached a wider public, the issue of how to research and do justice to the intimate and often incommunicable and devastating experience of suffering and despair that the authors document here remains wide-open. How to avoid distorting that experience while providing a voice that speaks for the voiceless is the subject of Juanita Díaz-Cotto's chapter. Her essay provides an in-depth analysis of the available literature and reviews researchers' motivations for conducting their studies, the major questions they pose, their work methods, findings, and conclusions, and their interrelationships. Díaz-Cotto concludes that different approaches and methods specific to prison research can yield quite different findings, results, and conclusions. She thus makes several suggestions for future research, specifically from the perspective of a methodology that ensures a more comprehensive and critical understanding of the Latino/a prison experience, including a comparative analysis with other incarcerated populations and criminal justice institutions in both the United States and abroad.

There is a pressing need for further exploration of the implications of mass confinement and its impact on the fundamental rights of all prisoners and detainees, as well as on free citizens, insofar as all are members of national and international communities and histories. Thus, this anthology emphasizes Latino/as' long and multiple struggles against injustice—the inhumanity of border controls; the raids against immigrants; the detention, internment, and deportation of immigrants; family separations; the failures of the U.S. justice system; the workings of the prison system and its aftermath; the policies of control and subversion of the rights of people of Latin American descent in US society; and the narratives of formerly-imprisoned Latino/as' own resistance and struggles to affirm their dignity and humanity both during and after their incarceration. In so doing, the articles in this volume ultimately seek to highlight current conditions in the prison system of the United States and simultaneously contextualize and insert it within a broader transnational framework. Collectively, these chapters underscore the fact that prison writings did not come to an end somewhere in the late 1960s and the early 1970s; rather, they continue to reveal specific aspects of the interconnections among nations, societies, citizens, noncitizens, and human rights that can no longer be ignored. Together, they drive home the point that imprisonment has a profound bearing on many aspects of life, society, and community for millions of people beyond the individuals immediately affected.

The political rhetoric and grossly distorted discourses associated with immigrants, crime, national security, and fear provides much of today's mainstream

justifications for the increased “warehousing” of Latino/as, African Americans, Native Americans, and other racialized poor populations in the United States. Moreover, there is no doubt whatsoever that these justifications, like our own inaction, dehumanize us all, for as Ruth Wilson Gilmore (2007, 243) has argued, “dehumanization is also a necessary factor in the acceptance that millions of people (sometimes including oneself) should spend part or all of their lives in cages.” Not surprisingly, the shameful indifference of the richest and most powerful nation in the world toward those who are less fortunate in our society—and the willful neglect of the ravages of poverty and racial discrimination, the long-term consequences of inadequate housing, the unacceptable educational and recreational facilities, and the deteriorating neighborhoods in which large sectors of the Latino/a population grow up and live their entire lives—account for much of the lack of societal and institutional support. The creation of societal and institutional support networks could easily prevent the growing incarceration of large numbers of Latino/as, both young and old, as well as the criminal neglect and disregard of their human rights once in prison. As Dixon Valderruten’s chapter suggests, this support could and—where it exists—*does* contribute toward easing the reentry of those who have been released.³ This support also empowers them and helps them to redirect their lives and the lives of those in the communities to which they return.

There are no simple solutions to the issues highlighted by the judicial confinement of what Gómez estimates to be 2.5 million people (including immigrant detainees), over 60 percent of whom are blacks and Latino/as in U.S. federal and state prisons (Harrison and Beck 2006).⁴ To the extent that today, as B. V. Olguín points out in his chapter, “the War on Crime has converged with the War on Terror through the deliberate subversions of international treaties and protocols to which the United States is a signatory,” it is essential that a two-prong struggle against the government’s practice of willful imprisonment of Latino/as be launched. The first approach involves the restoration of the U.S. government’s respect for the rule of law both at home and abroad, which is clearly fundamental to the claim and well-being of this society’s democracy. In this respect, the various laws enacted since September 11, 2001, have served, as Olguín succinctly states in his essay, to

collectively curtail constitutional freedoms of speech, association and information; infringe constitutional rights to legal representation, a timely public trial and protection from unreasonable searches; and also allow for the use of extrajudicial imprisonment and secret military tribunals for citizens and non-citizens accused of aiding or abetting terrorism.

Perhaps more importantly, the war on terror has introduced the category of “enemy combatant,” a classification unique in American jurisprudence because it situates its designee in the interstices of domestic and international law.

It is this infringement of both U.S. constitutional traditions and the Geneva Conventions, as suggested in Olguín’s forcefully argued and documented chapter, that justifies the second approach for addressing the issues discussed above; that is, the shift of the locus of debates on imprisonment in the United States firmly to the international sphere and specifically under the jurisdiction of international human

rights standards. Olguín primarily focuses on the incarceration of Latino/as and other people of color to draw attention to and address the full implications of the rejection by the United States of international human rights protocols. Similarly, his focus emphasizes the insistence of the US on the “might is right” argument in the context of the prerogatives that the sole superpower on the planet exercises whenever it deems fit. These include the exclusive right to adhere to or ignore international agreements according to its unchallengeable priorities, justifying human rights abuses and violations—documented by Amnesty International, to cite but one example—irrespective of commitments to the rule of law and justice in international relations. Arguing that the issue at hand is “the treatment of human beings, not simply prisoners per se,” Olguín calls for the use of the courts, mass mobilizations, and, while keeping them local, the simultaneous internationalization of prisoner rights campaigns. “We must show” he argues, “that the new U.S. carceral is in fact inhumane and in regular and deliberate violation of international treaties and norms.”

Ultimately, then, the focus on Latino/as and prisons invites careful and nuanced analyses and discussions that call into question the current rhetorical, opportunistic, and problematic responses to the pressing problem of an unjust and unequal criminal justice system, which, for so long, has violated the human rights of those it imprisons, often—as Raúl Salinas attests in his interview with Alan Gómez—with full impunity. Salinas’s interview and his poems about the still-imprisoned Native American activist Leonard Peltier, like Gabriel Torres Rivera’s interview with Rafael Cancel Miranda, and the latter’s poem, are eloquent and moving testimonies.

Moreover, as the authors in this anthology suggest, the full import of the arguments and data they present can only be comprehended within a broader framework that conceptualizes and questions political and social institutions in the United States (Wilson Gilmore 2007). This includes the government’s current emphasis on national security, immigration, the militarization of border controls, the policing, and abuse of power against both Latino/as and other minorities.

The demonization of individuals and groups, specifically of Latino/as, is intimately related to the fact that the U.S. government’s recent policies tend to pursue injustice rather than justice, to leave inhumanity unchecked, to choose xenophobic enclosure over its traditional ideals of human dignity and the right of all human beings to have rights. How to deal with an enemy is one of the cornerstones of all human legal systems—whether ancient or of the most modern variety—for it is the reverse side of the same mirror in which a community contemplates its own identity. The definition and treatment of the “enemy” or of “guilt” and “blame” are but the corollaries of our understanding and experience of humans living together. It is in view of this that Aristotle (1983)—the eternal foreigner in the most celebrated of all democracies, Athens, from which he was exiled in old age—claimed justice to be “what holds the city together” and a quintessentially human task.

Today, we are confronted with the very disturbing reality that the United States builds walls with little if any public debate on what it is walling in and what it is walling out. This book seeks to make a critical contribution in this regard, for once this reality is fully acknowledged, and its implications better understood, we then must mobilize to tear down the many wrongful separations. The only “wall” that

a genuine democracy must build, and one that guarantees its true existence, is a safeguard against injustice in all its dimensions, while guaranteeing rights to all its people, including Latinas and Latinos in the United States.

With a few exceptions, the articles and essays included in this anthology were first presented at the conference entitled "Behind Bars: Latinos and Prison," sponsored by the journal *Latino Studies* and held at the University of Illinois at Chicago (UIC), in October of 2006. The papers were part of a special double issue of *Latino Studies* published in 2007, and are now being published, with several new additions, in this anthology. I want to thank the University of Illinois at Chicago for hosting the journal's conference. I want to give special recognition and appreciation to Karen Benita Reyes, the managing editor of *Latino Studies*, whose assistance in organizing the conference was invaluable to me and certainly key in ensuring its success. A special *muchas gracias* also goes to Marta E. Ayala, Community Affairs Specialist for the Department of Latin American and Latino Studies at UIC for her firm support and enthusiasm, and multiple contributions during the conference.

I thank Elitza Bachvarova and Anani Dzidzienyo for their incisive comments and suggestions for this introduction and for their consistent support of my work. As always, to both of you, *mucho obligada!* Last, but by no means least, to all the participants of the conference and the contributors to this anthology: your wonderful collegiality and friendship, unyielding commitment and dedication, and strong support during the entire process of this project made this book possible. *Muchas gracias a todos ustedes!*

Notes

1. For a compendium of data and analysis of the status of Latino/as in the criminal justice system, see Walker et al. (2004).
2. According to Mauer and King (2007), African Americans are incarcerated at nearly six (5.6) times the rate of whites; and Hispanics are incarcerated at nearly double (1.8) the rate of whites.
3. For an authoritative discussion of much needed reforms and public policies pertaining to prisoner reentry, see the pioneering work of Travis (2005).
4. The headline of a December 5, 2007, press release from the U.S. Department of Justice, Office of Justice Programs, Bureau of Statistics, conveys the stark fact that "One in Every 31 U.S. Adults Was in a Prison or Jail or on Probation or Parole at the End of Last Year." <http://www.ojp.usdoj.gov/bjs/pub/press/p06ppus06pr.htm> (accessed September 9, 2008).

References

- Aristotle. 1983. *Nicomachean ethics*. Oxford: Oxford University Press.
- Chavez, Leo R. 2008. *The Latino Threat. Constructing Immigrants, Citizens and the Nation*. Stanford: Stanford University Press.

- De Genova, Nicholas. 2006. The legal production of Mexican/migrant "illegality." In *Latinos and citizenship: The dilemma of belonging*, ed. Suzanne Oboler, 61–90. New York: Palgrave.
- Elsner, Alan. 2006. *Gates of injustice: The crisis in America's prisons*. Upper Saddle. 2nd edition. River, NJ: Prentice Hall.
- Frosch, Don. 2009. Report Faults Treatment of Women Held at Immigration Centers. *The New York Times*, January 21, A23.
- Frost, Robert. 1914. *Mending wall*. In *North of Boston*. London: David Nutt.
- Fry, Richard, and Shirin Hakimzadeh. 2006. A statistical portrait of Hispanics at mid-decade. *Pew Hispanic Center*. <http://pewhispanic.org/reports/middecade/>.
- Glassner, Barry. 1999. *The culture of fear: Why Americans are afraid of the wrong things*. New York: Basic Books.
- Guerra-Thompson, Sandra. 2007. Immigration and the law. *Noticias 5* (1). Center For Mexican American Studies, University of Houston. http://www.tache.org/pdfs/5520_CMAS_noticias_last.pdf (accessed January 3, 2008).
- Harrison, Paige M., and Allen J. Beck. 2006. *Prisoners in 2005*. U.S. (NCJ 215092). Washington, D.C.: U.S. Department of Justice: Bureau of Justice Statistics. www.ojp.usdoj.gov/bjs/pub/pdf/p05.pdf
- Lopez, Mark H., and Michael T. Light. 2009. *A rising share: Hispanics and federal crime*. Report. Pew Hispanic Foundation. February, 18.
- Marks, Alexandra. 2007. Immigration issue could make or break presidential candidates. *Christian Science Monitor*, November 19. <http://www.csmonitor.com/2007/1119/p01s02-uspo.html> (accessed February 19, 2009).
- Moore, Solomon. 2009. Study shows sharp rise in Latino federal convicts. *New York Times*, February 18. A14 http://topics.nytimes.com/top/reference/timestopics/people/m/solomon_moore/index.html?inline=nyt-per.
- Mauer, Marc, and Ryan S. King. July 2007. Uneven justice: State rates of incarceration by race and ethnicity. The Sentencing Project. <http://www.sentencingproject.org/PublicationDetails.aspx?PublicationID=59> (accessed January 9, 2008).
- Ngai, Mae M. 2005. *Impossible subjects: Illegal aliens and the making of modern America*. Princeton: Princeton University Press.
- Oboler, Suzanne, ed. 2006. *Latinos and Citizenship: The Dilemma of Belonging*. New York: Palgrave.
- Stumpf, Juliet P. 2006. The crimmigration crisis: Immigrants, crime, & sovereign power. Berkeley Electronic Press, Legal Series. <http://law.bepress.com/expresso/eps/1635>
- Travis, Jeremy. 2005. *But They All Come Back: Facing The Challenges Of Prisoner Reentry*. Washington D.C. The Urban Institute Press.
- Walker, N., J. M. Senger, F. Villarruel, and A. Arboleda. 2004. *Lost opportunities: The reality of Latinos in the U.S. criminal justice system*. Washington, D.C.: National Council of La Raza.
- Wilson Gilmore, Ruth. 2007. *Golden gulag: Prisons, surplus, crisis, and opposition in globalizing California*. Berkeley: University of California Press.

Part I

The Issues

Latino/as and U.S. Prisons

Trends and Challenges

José Luis Morín

Already the country with the highest rate of incarceration in the world, the United States continues to steadily increase its prison population on an annual basis (Harrison and Beck 2006b). At year-end 2005, persons held in all U.S. federal and state prisons, territorial prisons, local jails, immigration facilities, military facilities, jails under Native American jurisdiction, and juvenile facilities totaled 2,320,359 (Harrison and Beck 2006b, 1). Concomitant with the alarming expansion of the U.S. prison population is the issue that the drive to incarcerate most adversely affects communities of color, including Latino/as (Mauer 1999; Human Rights Watch 2002; Sentencing Project 2003; Walker et al. 2004; Morín 2009). While the overall percentage of the adult population in state or federal prisons increased dramatically between 1971 and 2001, Latino/as experienced a ten-fold increase in incarceration (Bonczar 2003, 5). Based on data from the U.S. Justice Department's Bureau of Justice Statistics (Harrison and Beck 2002), the Sentencing Project (2003, 1) points out that "Hispanics are the fastest growing group being imprisoned."¹

Like African Americans, Latino/as emerge as trapped by the phenomenon known as "*mass imprisonment*" (Garland 2001a). Many factors appear to converge to produce the increasing number of Latino/a prisoners. As with African Americans, the construction of race in the United States provides fertile ground for the unequal treatment of Latino/as within the criminal justice system. While not identical, the Latino/a experience in the United States tends to mirror many patterns of domination and subordination endured by African Americans. Adverse perceptions and policies toward anyone considered nonwhite have been prevalent throughout U.S. history. It is an ignominious past that has harmed many groups, including Latino/as. As is the case with African Americans, Latino/as have suffered the indignities of *de jure* segregation and today high levels of *de facto* segregation across the nation. Latino/as, arguably, are also affected by hyperincarceration and

the symbiotic relationship between prison and the ghetto that Wacquant (2001) identifies when examining the mass incarceration of African Americans.

The formulation of public policy around crime and the fear of crime—like the role of the media in promoting fear and negative images—are both influential in producing high incarceration rates that unfavorably affect persons of color (Beckett and Sasson 2004; Western 2006; Simon 2007). As many analysts point out (e.g., Beckett 1997; Garland 2001a, 2001b; Harris 2002; Haney López 2003), examining the conventional operation of the court, law enforcement, and the criminal justice systems provides insights into the production of the racial and ethnic disparities evident in the penal system.

As is the case with African Americans, common misconceptions associating Latino/as with criminal behavior must be challenged. But differences between Latino/as and African Americans also exist, most notably that Latino/as are subject to myths linking criminality to immigrant status. The fear of crime as a driving force in criminal justice policy making and persistent negative media images of Latino/as and immigrants in relation to crime pose formidable obstacles to the implementation of long-overdue, meaningful, and sensible changes in the prison and criminal justice systems. Ultimately, comprehensive efforts to engage many sectors of society will be necessary to help reverse the trends in Latino/a incarceration in the United States.

The Latino/a Prison Population Upsurge

The Latino/a presence in the U.S. prison population today is troubling, especially in view of the dramatic increases over the last twenty years. In 2004, the rate of Latino/a incarceration in state and federal prisons was 2.6 times greater than for whites (1,220 per 100,000 compared to 463 per 100,000 (Harrison and Beck 2005). As Walker et al. point out (2004, 105), “one in four federal prison inmates is Latino, even though fewer than one in eight U.S. residents is Latino.” However grave these statistics appear, the severity of the problem of Latino/a incarceration becomes evermore evident when one considers the exponential increase over the last two decades.

In concluding that Latino/as are “the fastest growing minority group being imprisoned,” the Bureau of Justice Statistics found that from 1985 to 1995, “the number of Hispanics in prison rose by 219%, with an average 12.3% increase each year” (Mumola and Beck 1997, 9). While Latino/as represented 10.9 percent of all state and federal inmates in 1985, by 1995, the percentage had grown to 15.5 percent. Since then, annual growth in the Latino/a prisoner population has continued. The total percentage of Latino/a prisoners in state and federal jurisdictions had increased to 19.2 percent by the end of 2004 (Harrison and Beck 2005, 8–9).

As Simon (2007, 141) observes, mass imprisonment in the United States has not produced “racially uniform” results.² In 2001, approximately 7.7 percent of Latino males were current or former state or federal prisoners—almost three (2.65) times the number of white males. In a lifetime, Latino males, at 17.2 percent, are also nearly three times as likely to go to prison as white males (5.9 percent) (Bonczar 2003, 5, 8).

When examining Latina incarceration rates for 2004, the Bureau of Justice Statistics finds that “female incarceration rates, though substantially lower than male incarceration rates at every age, reveal similar racial and ethnic disparities” Although African American women experienced an incarceration rate four times that of whites (170 per 100,000 compared to 42 per 100,000, respectively), at 75 per 100,000, Latinas were not far behind at nearly twice the rate of white women (Harrison and Beck 2005, 8).

In a state-by-state look at Latino/a incarceration, the racial/ethnic disparities are strikingly severe. Incarceration rates of Latino/as as compared to whites can be summarized as follows:

- In nine states, between 4 and nearly 8% of adult Latino men are incarcerated.
- In 12 states, between 2 and 4% of Hispanic adults (men and women) are incarcerated.
- In 10 states, Latino men are incarcerated at rates between five and nine times greater than those of white men.
- In eight states, Latina women are incarcerated at rates that are between four and seven times greater than those of white women.
- In four states, Hispanic youths under age 18 are incarcerated in adult facilities at rates between seven and 17 times greater than those of white youth. (Human Rights Watch 2002, 2)³

A major contributor to the rise in Latino/a imprisonment rates is the phenomenon of *mass imprisonment*. As defined by Garland (2001a, 1, 2), mass imprisonment is characterized by unprecedented high rates of incarceration that are “markedly above the historical and comparative norm for all societies of this type” and by “the systematic imprisonment of whole groups of the population” rather than of individuals. With respect to this phenomenon, the United States far surpasses other comparable countries, such as those in Europe and Scandinavia, with an incarceration rate six to ten times higher (1). Additionally, Latino/as increasingly appear to meet the criterion of a group systematically subjected to disproportionately high levels of imprisonment.

Citing LaFree, Drass, and O’Day (1992) and Sampson and Lauritsen (1997), Loïc Wacquant (2001, 82) points out that racial inequality in the penal system becomes most discernible when one considers how the ethnic composition of prisoners in the United States reverses dramatically, “turning over from 70 percent white at the mid-century point to nearly 70 percent black and Latino today, although ethnic patterns of criminal activity have not been fundamentally altered during that period.” Focusing on the African American experience, he posits that the current ethno-racial makeup of the prisons is part of a continuum that can be traced to the institutions that have historically provided the means for dominating and dividing persons based on race and ethnicity. Moreover, Wacquant argues (2001, 83–84) that just as the institutions of slavery and Jim Crow provided the means to keep “African Americans ‘in their place,’ i.e., in a subordinate and confined position in physical, social, and symbolic space” in earlier times, the ghetto and the ever-expanding prison system in the United States in the post-civil-rights

era form “a *carceral continuum* that ensnares a supernumerary population of younger black men, who either reject or are rejected by the deregulated low-wage labor market, in a never-ending circulus between the two institutions.” Wacquant posits that a symbiotic relationship between ghetto and prison exists that “enforces and perpetuates the socioeconomic marginality and symbolic taint of the urban black subproletariat, feeding the runaway growth of the penal system that has become a major component of the post-Keynesian state” (84). He further asserts that this symbiosis “plays a pivotal role in the remaking of ‘race’ and the redefinition of the citizenry via the production of a racialized public culture of vilification of criminals” (84).

If applied to Latino/as in the United States, Wacquant’s thesis resonates as similarly true, given the historical and present-day Latino/a experience and place in U.S. society. Regarding the question as to which groups would be most vulnerable to incarceration at present, it is worth noting that, in addition to African Americans, other groups considered “nonwhite” were typically subordinated and targeted for discrimination in U.S. history. As early as 1740, the South Carolina Slave Code identified “the people commonly called negroes, Indians, mulattos and mestizos have [been] deemed absolute slaves, and the subjects of property in the hands of particular persons the extent of whose power over slaves ought to be settled and limited by positive laws so that the slaves may be kept in due subjection and obedience” (quoted in Hall, Wiecek, and Finkelman 1996, 37). Indeed, as the institution of slavery evolved in the United States, a person considered a mulatto or a person “of mixed race” raised the presumption of slavery (191). This history is instructive as to how Latino/as would be regarded in later years, since persons of mixed racial backgrounds—as many Latino/as are—have been, and often continue to be, viewed with disdain and subject to discrimination by the dominant “white” social structure. Consonant with Wacquant’s analysis, Latino/as, like African Americans, are perceived as a poor class of people of color that pose a threat to the social order and thus must be controlled and dominated.

Historically, race has played a central role in defining U.S. laws and policies having to do with Latin Americans and subsequently with Latino/as in the United States. Premised on the ideology of the racial, religious, and cultural superiority of Anglo Americans known as Manifest Destiny, in 1848, at the end of the U.S.-Mexican War, the United States wrested approximately half of Mexico’s land base, an area that now comprises roughly one-third of the continental United States (Stephanson 1995; Perea et al. 2000, 248; Morín 2009). Indeed, as Horsman (1981, 208) notes, “the catalyst in the overt adoption of a racial Anglo-Saxonism was the meeting of Americans and Mexicans, in the Southwest the Texas Revolution, and the war with Mexico.” Advancing the image of Latin Americans as racially “other” and the white Anglo American as superior was key in justifying the U.S. imperial enterprise of the 1800s, including, in addition to its conquests in Mexico by 1848, the subsequent colonization of Puerto Rico and of other islands and peoples in 1898 (Morín 2009, 19–48).

In addition to justifying Anglo-American territorial expansion and hegemony, the racially negative depiction of Latin Americans played a crucial role in securing Anglo-American power and control over the conquered territories and the peoples

of those territories. Although the Treaty of Guadalupe Hidalgo of 1848 was supposed to afford U.S. citizenship and equal rights under U.S. law to Mexicans in the conquered territories, contrary to international law, Mexicans were not granted equal rights and full protections. “Whiteness” became the standard for deciding who is or is not deserving of equal rights of U.S. citizenship. The characterization and categorization of Mexicans in the newly conquered territories as mongrels, barbaric, and inferior provided abundant justification for their subordination and unequal treatment (Horsman 1981).

Similarly, under present U.S. law, Puerto Ricans in their own homeland do not benefit from full rights under the U.S. Constitution even though they were made U.S. citizens through a unilateral act of Congress in 1917. As peoples of a territory colonized by the United States, Puerto Ricans cannot vote for the President of the United States, who is empowered to recruit and order them to fight U.S. wars. Moreover, they have no voting representation in the U.S. Congress, a body that legislates on all of the most fundamental aspects of their political, economic, social, and cultural lives (Perea et al. 2000, 246–366; Morín 2009, 19–48). Supreme Court decisions known as the *Insular Cases*—which form the legal framework that has helped justify the separation of the right to political participation from citizenship for the people of Puerto Rico as well as of Guam and the Virgin Islands—still operate today in a manner that casts Puerto Ricans as a form of “second-class citizens” (Rivera Ramos 2001, 160–61). In fact, in *Balzac v. Porto Rico* [sic], 258 U.S. 298 (1922), the U.S. Supreme Court made clear that in spite of having been accorded “citizenship,” Puerto Rico is not considered “part” of the United States, and thus basic constitutional rights, including fundamental rights to a trial by jury under the U.S. Constitution, are not automatic but can only be accorded if granted by the U.S. Congress.

Conquest and the undermining of basic rights have led some analysts, such as Angel Oquendo (1996), to point out the parallel experiences of Puerto Ricans and Mexicans in ways that help define the concept of what it is to be “Latino” in the United States. Post-1848, Mexicans and many other Latino/a groups have continued to be disempowered and discriminated against, as U.S. laws and the criminal justice system were readily infused with racialized portrayals of Latino/as as “other” or as dangerous “aliens.” As Bender (2003) points out, the stereotype of Latino/a as “criminally inclined” has persisted in U.S. law, media, and society from the earliest period of Anglo-American conquest to the present. Alfredo Mirandé (1987) has characterized the long trajectory of unequal treatment of Latino/as under the U.S. legal and criminal justice systems as “gringo justice.” The racialization of Latino/as within U.S. society and its criminal justice system helped to establish and advance a system premised on biases that have continued to empower and favor whites over Latino/as and other people of color.

The 1855 “Greaser Act”—an anti-vagrancy law enacted in California that defined vagrants as “all persons who are commonly known as ‘Greasers’ or the issue [children] of Spanish and Indian blood”⁴—was a deliberate use of criminal law to specifically target persons of Latin American descent based on “racial” criteria. By the 1940s, Mexican Americans in Los Angeles had been relegated to the socioeconomic margins of society, as manifested by their poverty and segregation into *barrios* in a city that used to be a part of Mexico.

In an early example of the systematic racial profiling of Latino/as, military and law enforcement personnel singled out for attack Latino youths who defiantly wore zoot suits as a form of self-identity and expression. Today, the 1943 Zoot Suit Riots are remembered as emblematic of a legal and criminal justice system predisposed to characterize Latino/a youths as criminals in order to maintain Latino/as subordinate to the dominant white society (Escobar 1999; Acuña 2007, 201–205).

Like African Americans, Latino/as, too, have suffered the indignities of *de jure* segregation. In fact, the practice of school segregation of children of Latino ancestry was legal and common until the 1940s, when it was challenged in *Mendez v. Westminster School District of Orange County* in 1947⁵—a case that served as a precursor to the landmark 1954 *Brown v. Board of Education* case. In *Hernandez v. Texas*, 347 U.S. 475 (1954), decided by the U.S. Supreme Court three weeks before *Brown*, the court struck down the practice of excluding persons of Mexican descent from service as jury commissioners, grand jurors, and petit jurors. In its decision, the court acknowledged the many years during which Mexicans suffered Jim-Crow-type treatment, including school segregation, separate bathroom facilities, and restaurants that held signs announcing “No Mexicans Served” (*Hernandez v. Texas*, 347 U.S. 475, 479–480 [1954]; see also Olivas 2006).

The upsurge in anti-immigrant and anti-Mexican sentiment in the 1950s gave rise to yet another law targeting Latino/as: “Operation Wetback.” Under the federal program created by this law, growing nativist demands to stop Mexican migration were satisfied through a military operation that purported to deport undocumented Mexicans from the United States. As its derogatory name implies, safeguarding human and civil rights was not a concern. In fact, this law served as a pretext for illegal searches and seizures and resulted in the mass deportation of many Mexicans with U.S. citizenship (Mirandé 1987, 125–29; Acuña 2007, 225–26; Healey 2007, 310). As a result, from 1954 to 1959, Operation Wetback led to the deportation of more than 3.7 million persons of Mexican ancestry, many of whom were U.S. citizens (McWilliams 1948/1990, 315–18; Mirandé 1987, 125–29; Perea et al. 2000, 317).

Today, in the application of contemporary U.S. law and in the operation of criminal justice system, Latino/as most often continue to be relegated to a “racialized” status. The use of abusive language and racial and ethnic slurs by police officers, racial profiling, and the excessive use of physical and deadly force against Latino/as and other people of color has been found to be a regular occurrence (Amnesty International 1998, 17–54; Morín 2009, 49–83; Walker, Delone, and Spohn 2007, 110–38).

Another example of how racialized groups are targeted by law enforcement and discriminated against by the justice system is the common practice of racial profiling. Although illegal, in recent decades, racial profiling remains a problem in law enforcement. Its practice by New Jersey state troopers during the decade of the 1990s, in which at least eight out of every ten cars driven by Latino/as and African Americans were singled out for searches on the New Jersey Turnpike, brought to the fore the systematic and institutionalized discrimination practiced in the day-to-day operations of the criminal justice system (Kocieniewski and Hanley 2000).

Reports issued by the New York State Attorney General and the United States Commission on Civil Rights have provided additional evidence that in New York City, race has frequently been used as the sole criterion in the acts committed by law enforcement agents, making evermore apparent the problem of racial profiling as it affects Latino/as (Spitzer 1999; United States Commission on Civil Rights 2000). The New York City Police Department insisted that the reason Latino/as and African Americans were stopped and frisked at higher rates was because they live in high crime-rate neighborhoods. However, a report by the state Attorney General’s office found that even after accounting for differences in crime rates between communities of color and white communities, across all crime categories in New York City, Latino/as were still “stopped” by police officers 39 percent more often than whites (Spitzer 1999, x).

Studies conducted in other cities reveal a similar pattern of illegal racial profiling by the police. In a study conducted in Chicago, 80 percent of African American high school students and 62 percent of Latino/a high school students reported being stopped by police, with 62 and 63 percent, respectively, reporting that, when stopped, they were treated disrespectfully by the police (Freidman and Hott 1995, 111). The pattern of racial profiling and “stops” by law enforcement officials strongly point to a continuation of longstanding stereotypes of Latino/as and other people of color as a criminal element in society. This pattern—along with other aggressive police tactics, stricter sentencing laws, and the practice of selective prosecution—appears to play a part in elevating the number of Latino/as and other people of color ending up in the prison system.

Consistent with Wacquant’s (2001) hypothesis, many Latino/as in the United States have experienced patterns of ghettoization similar to African Americans in the post-1960s’ civil rights era. Many often live in highly segregated and mostly poor areas in cities such as Los Angeles or New York, where they have been most often susceptible to abuse by law enforcement officers and the criminal justice system (Morín 2009). Indeed, Wacquant (2001, 101), citing Ellis (1993), observes that by “the late 1980s, three of every four inmates serving a sentence in the prisons of the entire state of the New York came from only *seven* black and Latino neighborhoods of New York City which also happen to be the poorest areas of the metropolis, chief among them Harlem, the South Bronx, East New York, and Brownsville.”

The experience of many Latino/as who have lived under *de facto* segregation since the middle of the twentieth century is similar to that described by Wacquant (2001, 84), having gone from living in ghettos that resemble prisons to prisons that are now like ghettos. It should not come as a surprise, then, that analysts have concluded that Latino/as manifested their dissatisfaction and disillusionment with the criminal justice system through their participation in the unrest following the acquittal of the white police officers involved in the Rodney King verdict in 1992, with a majority of those arrested being Latino/a and a considerable amount of damage occurring in areas where Latino/as live (Martínez 1993; Pastor 1993).

Crime Policies and Their Impact on Latino/as

As mentioned earlier, the formulation of public policy around the fear of crime and the enormous role of media in driving crime policies based on the fear are also influential in producing incarceration rates skewed against African Americans and Latino/as (Beckett and Sasson 2004; Western 2006; Simon 2007). Given that national data show a decline in the number of crimes committed since the 1990s, it appears that “crime rates themselves may not have driven the prison boom, but long-standing fears about crime and other social anxieties may form the backdrop for the growth in imprisonment” (Western 2006, 48). As Beckett (1997) notes, since the 1960s, politics and policymaking shifted from the “war on poverty” to the “war on crime” and the “war on drugs,” often linking poverty with crime, especially poverty in “minority” communities. Notions about rehabilitation through the penal system gave way to a burgeoning “culture of control,” with fear-filled images of criminals as virtually irredeemable “‘career criminals,’ ‘drug addicts,’ ‘thugs’ and ‘yobs’” (Garland 2001b, 135). Coupled with this imagery is a profoundly racialized victim—“not all victims, but primarily white, suburban, middle-class victims, whose exposure has driven waves of crime legislation” (Simon 2007, 76). Moreover, modern crime legislation has come to represent victims in many powerfully symbolic ways, even when victims may not be referenced in the legislation, and thus even

police are often portrayed in such legislation as victims themselves, not only of criminals, but of defense lawyers, soft-on-crime judges, misguided parole and probation officers, and so on. Prison cells, meanwhile, are the purest expression of the public’s embrace of and promise to protect the victims, and potential victims, of crime. (Simon 2007, 76)

Although crime dropped by almost one-third between 1993 and 2000, it continues to dominate both the news and entertainment media (Beckett and Sasson 2004, 43, 100). To the extent that the media’s influence on public policy can be measured, it appears to “encourage punitive attitudes, especially when the offenders depicted are African American” (101). Hence, the power of the media lies not only in its ability to project fear but also its capacity to convey a highly racialized picture of crime to the public.

Fear of violent crime has been a primary reason for adopting stiffer penalties that aim to incarcerate violent offenders. But it has not generally been the case that the vast majority of those imprisoned are there for committing violent offenses. In fact, the percentage of persons sentenced for nonviolent drug offenses constituted the largest group of federal prisoners, at 55 percent in 2003 and 60 percent in 2002 (Harrison and Beck 2006b, 10).⁶ Of the prisoners held in state facilities from 1995 to 2003, violent offenders have most often constituted only half of those incarcerated: 46.5 percent in 1995, 49 percent in 2001, and 51.8 percent in 2003 (Rennison and Rand 2003, 1; Harrison and Beck 2006b, 9).

Many analysts point out that current policies formulated on the fear of crime frequently produce racial or ethnic inequalities in the prison system (e.g., Beckett

1997; Garland 2001a, 2001b; Harris 2002). “Get-tough” antidrug strategies, commonly referred to as the “war on drugs,” amount to “the single greatest force behind the growth of the prison population” (Human Rights Watch 2003, 1). It is a strategy that has been increasingly recognized as a “war” being fought almost entirely in Latino/a and African American communities, based mainly on a mistaken perception that communities of color bear most of the responsibility for drug-related crime in the country (Donziger 1996; Cole 2001; Human Rights Watch 2003; Walker, Delone, and Spohn 2007).

Contrary to conventional perceptions, Latino/as have not been shown to be any more inclined to engage in illegal drug activity than whites. Citing the 2002 National Survey on Drug Use and Health, the Office of National Drug Control Policy (2003, 1) makes plain that “the lowest rate of lifetime illicit drug use was among Hispanics (38.9%) and Asians (25.6%),” while whites had a 54 percent rate of drug use over a lifetime, followed by African Americans at 43.8 percent. Moreover, the data show whites abusing certain drugs at higher levels. The Office of National Drug Control Policy found that “of 12th graders, whites tended to have the highest rates of use for a number of drugs, including inhalants, hallucinogens, LSD, ecstasy, heroin without a needle, amphetamines, sedatives (barbiturates), tranquilizers, and narcotics other than heroin” (2).

Despite these statistics, the “war on drugs” waged in communities of color has had the “devastating” effect of skyrocketing drug-related arrests and incarceration rates of Latino/as and African Americans (Donziger 1996, 116). Of a total of 23,784 federal offenders charged with drug trafficking in 2001, most were Latino/a (44.7 percent) while only about a quarter (26.2 percent) were white and 28.4 percent were African American (United States Sentencing Commission, 2001, 14, table 4). For state prisons, the statistics are similarly dire. In 1996, 40 percent of Latino/as sentenced to state prisons were convicted of drug-related crimes (Ditton and Wilson 1999, 6). When one considers the available evidence demonstrating that drug use among whites is as high, and in some instances higher, compared to other racial and ethnic groups, it seems inconceivable that in 1991, Latino/as and African Americans comprised 92 percent of drug arrests in New York City (Donziger 1996, 116).

In the haste to combat the perceived drug problem in communities of color, recourse to racial profiling is common, with Latino/as and African Americans most often being singled out. There are documented instances in which law enforcement personnel have been trained to identify narcotics dealers by looking for “people wearing dreadlocks and cars with two Latino males traveling together.” Further, a 1999 Drug Enforcement Agency (DEA) intelligence report identified major heroin traffickers as “Colombian, followed by Dominicans, Chinese, West African/Nigerian, Pakistani, Hispanic, and Indian. Midlevels are dominated by Dominicans, Colombians, Puerto Ricans, African Americans and Nigerians” (Harris 2002, 49).

Drug-courier profiles used by federal agents at airports have included very long lists of seemingly odd and broadly defined categories, such as persons who “made a local call after deplaning . . . made a long-distance call after deplaning . . . carried a small bag . . . carried a medium-size bag . . . carried two bulky garment bags . . . dressed casually . . . left the airport by taxi” and anyone falling under the category of “Hispanics” (Cole 1999, 47–49).

As Georgetown University law professor David Cole (2001, 248) notes, “racial profiling studies . . . make clear that the war on drugs has largely been a war on minorities. It is, after all, drug enforcement that motivates most racial profiling.” Racial profiles appear not to correctly reflect the racial background of either illicit drug consumers or of traffickers. U.S. government data about drug use points to whites using drugs at much the same rate as persons from other racial or ethnic groups. In 2001, “the rate among blacks was 7.4 percent, whites 7.2 percent, and Hispanics 6.4 percent” (Substance Abuse and Mental Health Services Administration 2002, 1). Although precise data in this area is difficult to obtain, illicit drug users also report that they typically obtain drugs from persons of the same race, suggesting that Latino/as and African Americans may not necessarily be more involved in illegal drug distribution either (Riley 1997, 1; Cole 2001, 247).

The impact of the “war on drugs” has also adversely affected women generally, and Latinas in particular. As Mauer, Potler, and Wolf (1999, 1, 2) point out, women in the United States have experienced a drastic increase in incarceration rates, nearly double the rate for men since 1980, and “drug offenses accounted for half (49%) of the rise in the number of women incarcerated in state prisons from 1986 to 1996, compared to one-third (32%) of the increase for men.” The number of women imprisoned for drug offenses in state facilities increased by 888 percent from 1986 to 1996, and by 129 percent for nondrug offenses (3).

Latinas in prison fare even worse compared to white women, as the following statistics indicate:

- In state prisons and jails, Hispanic females are incarcerated at almost twice the rate of white females (117 persons to 63 persons per 100,000 [persons in the] population).
- Hispanic women are three times as likely to go to prison in their lifetime as compared to white women (1.5% versus 0.5%).
- In the U.S. general population, 9.7% of women are Hispanic. In the U.S. prison population, 15 percent of women state prisoners and 32% of women Federal prisoners are Hispanic.
- Between 1990 and 1996, the number of Hispanic female prisoners rose 71%.
- In New York, Hispanic women are 41 percent of the state’s prison population but constitute 44% of women sentenced to prison for drug offenses. (Sentencing Project 2003, 2)

For Latinas, imprisonment represents more than a temporary loss of personal liberty. As Díaz-Cotto (2006) points out in her study of Chicanas in prison, Latinas often face discrimination, harassment, and abuse. Moreover, Latinas must also cope with the harmful effects of imprisonment on their children and family life.

The Courts, the Police, and Latinos

The disproportionately high rate of incarceration of people of color has provoked criticism of the laws that have brought changes in sentencing, including strict mandatory minimum sentencing laws, “three-strikes” legislation, and so-called “truth in sentencing” laws, designed to replace indeterminate sentences with clearly defined penalties without the possibility of early release on parole (Jacobson 2005, 45). Whether stricter state and federal sentencing policies have had a discriminatory impact on people of color has been a subject of considerable study (Walker, Delone, and Spohn 2007, 231–80). Some prominent analysts affirm that changes in sentencing guidelines may have worsened the racial divide within the criminal justice system (e.g., Tonry 1995). Others conclude that discrimination occurs and harsher penalties are imposed, but within certain contexts, as when a person of color is accused of a crime against a white person as opposed to another person of color (Walker, Delone, and Spohn 2007, 280).

Studies that specifically look at bias against Latino/as in sentencing reveal a consistent pattern. In analyzing sentencing data collected by the State Court Processing Statistics program of the Bureau of Justice Statistics for the years 1990, 1992, 1994, and 1996, Demuth and Steffensmeier (2004, 1008) found “in general, Hispanic defendants were sentenced more similarly to black defendants than white defendants. Both black and Hispanic defendants tended to receive harsher sentences than white defendants.”

In an earlier study examining ethnicity as well as race as a factor in sentencing, Steffensmeier and Demuth (2001), using quantitative and qualitative data gathered on Pennsylvania sentencing practices, show that Latino/as are vulnerable to harsher penalties because of the prevalence of negative stereotypes and biases that associate Latino/as with illegal drugs activities, low intelligence, and the rise in neighborhood crime. Their qualitative data reinforces this conclusion, with one particular Pennsylvanian judge from a county with an expanding Latino/a population stating: “We shouldn’t kid ourselves. I have always prided myself for not being prejudiced but it is hard not to be affected by what is taking place. The whole area has changed with the influx of Hispanics and especially Puerto Ricans. You’d hardly recognize the downtown from what it was a few years ago. There’s more dope, more crime, more people on welfare, more problems in school” (Steffensmeier and Demuth 2001, 168).

A comprehensive review of bias in the courts confirms the familiar pattern: both Latino/as and African Americans experience bias in sentencing practices and policies, and, as a result, they receive harsher sentences than whites. An examination of forty recent and methodologically sophisticated studies on the effects of race and ethnicity on sentencing—including thirty-two studies of state court decisions and eight studies of federal court decisions—concluded that

black and Hispanic offenders—and particularly those who are young, male, or unemployed—are more likely than their white counterparts to be sentenced to prison; they also may receive longer sentences than similarly situated white offenders. Other categories of racial minorities—those convicted of drug offenses, those

who victimize whites, those who accumulate more serious prior criminal records, or those who refuse to plead guilty or are unable to secure pretrial release—also may be singled out for more punitive treatment. (Spohn 2000, 481–82)

The *Sentencing Reform Act of 1984* (28 U.S.C. 991 [b][1][B]; Supp. 1993), designed to prevent “unwarranted sentencing disparity among defendants with similar records who had been found guilty of similar criminal conduct,” appears not to have eliminated the influence on sentencing decisions of legally irrelevant factors, such as racial and ethnic characteristics and immigrant status. Based on data on 14,189 defendants convicted of drug offenses, Albonetti (1997, 817) points out that in spite of the new federal sentencing guidelines adopted as a result of the *Sentencing Reform Act of 1984*, “judges impose significantly more severe sentences on defendants who are not U.S. citizens and on defendants who are black or Hispanic.”

It is also important to note that biased sentencing is possible because federal judges can circumvent strict sentencing guidelines:

Although the federal sentencing guidelines severely constrain judges’ discretion in deciding between prison and probation and in determining the length of the sentence, they place only minimal restrictions on the ability of judges (and prosecutors) to reduce sentences for substantial assistance or acceptance of responsibility. Mandatory minimum sentences also can be avoided through charge manipulation. (Walker, Delone, and Spohn 2007, 273)

Overwhelmingly, studies on the effects of judicial and prosecutorial discretion on federal sentencing show that African Americans and Latino/as are treated more harshly in sentencing than whites (Walker, Delone, and Spohn 2007, 273). Most notably, Steffensmeier and Demuth (2000), in examining federal court data gathered by the United States Sentencing Commission from 1993 to 1996, found that the ability under the federal sentencing statute to “depart downward” from the sentencing guidelines resulted in leniency toward white defendants and harsher sentences for Latino/a and African American defendants (722).

In examining the operations of the criminal courts and the treatment of Chicano rights movement members in Los Angeles in the late 1960s, Haney López (2003) puts forth the theory that race often functions as a matter of “common sense” in the courts, as it does in the course of many day-to-day events. He found that white judges even unwittingly tended to privilege those of their own race and socioeconomic background, while placing Mexicans at a disadvantage, basing their decisions on a form of “common sense” that implicitly accepts that white persons like themselves are generally worthy of opportunities, such as serving on a grand jury, above Mexicans (8). Thus, Haney López asserts that such “common sense” practices are illustrative of how, today, race is constructed on a daily basis and functions to the benefit of whites over Latino/as and other people of color in the courts and in society at large.

The subject of whether police treat people of color differently from whites has drawn considerable attention. Regarding police practices on the streets,

criminologists have written about the “*racial halo effect*,” “a dynamic whereby being white American, in and of itself, reduces the odds of being viewed with suspicion or being questioned by an officer” (Weitzer and Tuch 2006, 19; see also Weitzer 1999). It has also been said that law enforcement officers are indoctrinated to uphold practices that result in the unequal treatment of people of color. In explaining why even an officer of color may treat persons of his own community unfairly, Anthony Miranda, a former New York City police sergeant and spokesperson for the National Latino Officers Association, states that Latino/a recruits undergo a process of assimilation into a police culture that seeks to separate them from their own communities and identities as Latino/as (Morín 2009, 108–115). In his view, officers—including Latino/a officers—often internalize a “them-versus-us” view of police-community relations, regardless of their race (109–115). Once integrated into the force, police officers typically adhere to the notorious “code of silence” to shield each other from prosecution when facing severe allegations of wrongdoing, abuse, or brutality against persons of color (Amnesty International 1998; Human Rights Watch 1998; Morín 2009, 106–116).

Myths and the Media: Projecting Latino/as as Criminals

A close look at Latino/as and crime in the United States reveals that Latino/as are not necessarily imprisoned at higher rates because they are more prone than whites to commit crimes. As Walker et al. (2004, 4) point out in their study of Latino/as and the U.S. criminal justice system, Latino/as are generally less likely to be involved in violent crime “than their non-Hispanic counterparts.”⁷ The great majority of incarcerated Latino/as are convicted of minor, nonviolent offenses or are first-time offenders, or both;⁸ Latino/as are also more likely than whites to be arrested and charged for drug offenses even though they are no more likely than other groups to use illegal drugs and less likely to use alcohol. Evidence in support of these facts notwithstanding, major news and entertainment media generally paint a very different picture of crime in the United States, frequently linking Latino/as with criminal behavior (Bender 2003). Invariably, such characterization helps promote attitudes that favor prison expansion as a solution to a perceived crime problem.

Studies show that the major media tend to be saturated with stories that inaccurately represent Latino/as. As reported by the National Association of Hispanic Journalists, 66 percent of network news stories about Latino/as in 2002 focused exclusively on three topics: crime, terrorism, and illegal immigration. José Padilla, the suspected “dirty bomb” terrorist occupied “a central role in the coverage of Latinos . . . with 21 network stories or 18 percent of all stories aired on Latinos” (Méndez-Méndez and Alverio 2003, 3). Moreover, post-September 11 anti-immigrant sentiments and the politically opportunistic use of crime in election campaigns pose a formidable challenge to reversing the relentless drive to incarcerate. In spite of the facts that belie their portrayals by the media, Latino/a youth and Latino/a immigrants in particular are consistently and repeatedly associated with criminality conduct in the media.

Latino/a Youths and Crime

Despite a recent spike in violent crime,⁹ the United States has experienced a precipitous drop in violent crime—down 58 percent from 1993 to 2005¹⁰ (Catalano 2006, 1). Nonetheless, polls have shown an increase in the fear of crime as well as an upsurge in its media coverage. As Dorfman and Schiraldi (2001, 3) found, the National Crime Victimization Survey reported violent crime at its lowest in twenty-five years; nevertheless, 62 percent of those surveyed believed that juvenile crime was rising. They note that the fear of being victimized by crimes committed by youth of color was especially strong, even though “Whites are actually three times more likely to be victimized by Whites than by minorities” (4). Dorfman and Schiraldi show that media coverage has tended to present an exaggerated, unbalanced picture of crime: “while Blacks and Hispanics were overrepresented as violent offenders, Whites were underrepresented as violent offenders on the evening news” (15).

Bias in the criminal justice system ostensibly correlates with high rates of incarceration among Latino/a youth (Villarruel et al. 2002; Walker et al. 2004). National data reveal that Latino/a youth are charged with violent offenses at five times the rate of white youth and serve longer sentences than white youth—as much as 143 days longer for violent crimes (Villarruel et al. 2002, 2–3). In Los Angeles, Latino/a youth are incarcerated at rates much higher than white youth—7.3 times as often from 1996 to 1998—and Latino/a youth are prosecuted as adults more often than white youth—2.4 times as often from 1996 to 1998 (Villarruel et al. 2002, 2).

The fear of youth gangs has spawned support for new laws that have had a disproportionate impact on youth of color (Villarruel et al. 2002; Walker, Delone, and Spohn 2007, 386–90). Gang databases, provided for under laws enacted in California and Arizona, for example, have been reported as vehicles for unfairly targeting Latino/a youths and other youths of color (Villarruel et al. 2002, 62; Zatz and Krecker 2003). While seemingly race-neutral, anti-gang laws carry heavier penalties for gang membership and have had a disparate impact on Latino/a youth, who are more readily identified by law enforcement officers as gang members than are whites (Zatz and Krecker 2003, 192).

Latino/a Immigrants and Prisons

In recent years, legislation focused on reigning in immigrants entering the country has spurred anti-immigrant sentiments. In the national media, no one has been as effective and persistent in the proliferation of fear and false information about immigrants as CNN’s Lou Dobbs. In a recent exposé in the *New York Times*, David Leonhardt (2007) revealed that in 2003, Lou Dobbs had falsely stated on one of his broadcasts that “one-third of the inmates now serving time in federal prisons come from some other country—one-third.” Contrary to Dobbs’s assertions, at midyear 2005, noncitizens actually comprise less than one-fifth (19 percent) of all prisoners in federal custody—well below one-third—and noncitizens in federal and state facilities combined comprised only 6.4 percent (Harrison and Beck 2006a, 5). As Butcher and Piehl (2005) point out, immigrants to the United States actually have

lower incarceration rates than other groups in the population. While it is assumed that factors such as low education levels and low average wages would predispose immigrants to engage in criminal conduct, in the main, immigrants tend to come to the country highly motivated to use their skills to forge a better life and are not interested in run-ins with the law that would thwart this goal. Thus, Butcher and Piehl find that immigrants are typically self-selecting and are not typical of the general population.

The presumed link between crime and immigrants from Latin America, and from Mexico specifically, has been shown to be unsubstantiated. As an empirical study of Mexican immigrants revealed, “it is currently the case that immigration and criminal justice policies which appear neutral in relation to Hispanic immigrants, actually bias and distort public perceptions of immigration and crime by inflating Hispanic rates of imprisonment” (Hagan and Palloni 1999, 617). In a comparison of noncitizen immigrants and citizens in state prisons, Hagan and Palloni found that after taking into consideration factors such as age and vulnerability to pretrial detention, noncitizen Latin American immigrants are actually *less* likely to be involved in crime than citizens. The study notes that noncitizen Latin American immigrants come to the United States with strong cultural and family traditions that are incompatible with criminal behavior (630–31). In addition to finding that noncitizen Latin American immigrants are not more involved in criminal activity than citizens, they also noted that “by other measures of well-being—including smoking, alcohol consumption, drug use, and pregnancy outcomes—Mexican immigrants are generally found to do well and sometimes better than citizens” (630–31). To the extent that Latino/a cultural strengths serve to deter crime, the study’s authors recommend that “we may wish to place the priority in policy formation on ways to preserve, protect, and promote the social and cultural capital that Mexican immigrants bring to their experience in the United States. An increasing reliance on imprisonment detracts from this goal by banishing immigrant males from their families and communities” (631).

The distinction between U.S.-born Latino/as and foreign-born Latin Americans is significant. Rumbaut et al. (2006, 84) make clear that

both national and local-level findings . . . turn conventional wisdom on its head and present a challenge to criminological theory. For every ethnic group without exception, the census data show an increase in rates of incarceration among young men from foreign-born to the U.S.-born generations, and over time in the United States among the foreign born—exactly the opposite of what is typically assumed. Paradoxically, incarceration rates are lowest among immigrant young men, even among the least educated, but they increase sharply by the second generation, especially among the least educated—evidence of downward assimilation that parallels the patterns observed for native minorities.

Among the challenges Rumbaut et al. (2006, 85) identify for developing well-informed and reasoned criminal justice policy is that contemporary criminology has centered on race mostly along black/white lines, keeping “ethnicity, nativity, and generation out of the analysis.”¹¹ They point out that

this is compounded by the national bad habit of lumping individuals into a handful of one-size-fits-all racialized categories (black, white, Latino, Asian) that obliterate different migration and generational histories, cultures, frames of reference, and contexts of reception and incorporation—omitting from scholarly scrutiny the complexities introduced by millions of newcomers from scores of different national and ethnic origins. (Rumbaut et al. 2006, 85)

Further complicating matters, Latin American immigrants are generally recognized as underserved by law enforcement agencies and are susceptible to negative experiences with the criminal justice system. They face numerous obstacles to establishing good relations with police and other law enforcement agencies and many barriers to successfully traverse the criminal justice system, including language barriers and the fear of being subject to immigration law enforcement (Walker, Delone, and Spohn 2007, 107). Moreover, as Johnson (2003, 346) points out, “[j]udicially-sanctioned race profiling is central to the U.S. government’s enforcement of the immigration laws,” adversely affecting Latino/as, African Americans, and other people of color.¹² Hence, noncitizen immigrants have become more susceptible to aggressive and arbitrary immigration policies and practices.

In the period following the events of September 11, 2001, heightened enforcement of federal immigration laws has rendered Latino/a immigrants increasingly vulnerable to federal detention and imprisonment. The number of persons detained by the U.S. Immigration and Customs Enforcement (ICE) agency “more than doubled between 1995 and 2005,” and at year-end 2005, 19,562 persons were being held for immigration violations (Harrison and Beck 2006b, 10). Once in the prison system, there is evidence that persons incarcerated for immigration violations are susceptible to ill-treatment. As Mark Dow (2004) has documented, those in the U.S. immigration prison system are subject to horrific arbitrariness and many forms of abuse by officials and guards for which they are unable to seek adequate redress due to their noncitizen status.

Although organizations such as the Mexican American Legal Defense and Education Fund have vehemently objected to new legislation that would further threaten the rights of immigrants, including proposed laws that would empower state and local police to enforce federal immigration laws (Walker, Delone, and Spohn 2007, 117), in the current climate of anti-immigrant hostility, it is likely that undocumented immigrants will continue to confront new efforts to criminalize their status. As Rumbaut et al. (2006, 84) indicate, the driving forces behind the rates of incarceration of immigrants are the “myths and stereotypes about immigrants and crime [that] often provide the underpinnings for public policies and practices and shape public opinion and political behavior.”

Overcoming the Challenges to Change

Tragically, the many factors that contribute to mass imprisonment also present severe challenges toward the adoption of the most sensible reforms and changes in the criminal justice system that would lower incarceration rates in the United States.

The impetus to continue to subordinate and dominate communities of color in U.S. society, the formulation of public policy around crime and the fear of crime, and the role of the media in promoting fear and negative images of Latino/as and other people of color are among the factors that not only favor the trend in prison expansion but work to prevent change. Many proposals and strategies to address the disparate treatment of Latino/as within the criminal justice system remain unimplemented.

Recent studies of Latino/as and the criminal justice system have recommended measures that could help the criminal justice system rid itself of policies and practices that adversely and disproportionately impact upon people of color (Villarruel et al. 2002; Walker et al. 2004; Morín 2009). Broader acknowledgement of the unfair impact of the criminal justice and correctional system on Latino/as could be an important first step toward ending some of the most detrimental facets of the Latino/a experience within the criminal justice arena. Proposals to curtail racial profiling and other practices that lead to harsher and longer sentences for Latino/as and other people of color, as compared to whites, are included among recent policy recommendations. Addressing longstanding inadequacies of the system that have negative consequences on Latino/as—such as inadequate bilingual and culturally competent services—are also among the recommendations found in a number of analyses on Latino/as and the criminal justice system (Villarruel et al. 2002; Walker et al. 2004; Morín 2009).

There are also specific recommendations for reversing the mass imprisonment phenomenon that merit serious consideration and, in many instances, implementation. For instance, Jacobson (2005) stresses the need to recognize that mass incarceration has led to many inequitable results, including the unfair treatment of certain racial and ethnic groups. He calls for the downsizing of the prison system as a solution to the prison population explosion and suggests various seemingly efficacious and cost-effective alternatives. His proposals support sentencing reform, strategies to reduce recidivism rates, job training, and increased community-based services.

Other sensible recommendations and approaches, as advocated by Travis (2005) and Jacobson (2005), seek to address the problems of recidivism and prisoner reentry. Their recommendations include creating or enhancing education opportunities and job training while in prison, the development of programs that help sustain and strengthen family and community ties during incarceration, and establishing projects that in other ways help enable incarcerated persons to become productive upon their release.

Greater dissemination of the accurate information about the realities of Latino/as in relation to the criminal justice and penal systems could prove to be constructive and indispensable in the effort to mobilize communities and political support for the process of achieving substantive change. Comprehensive efforts in Latino/a communities similar to that proposed by Villarruel et al. (2002)—efforts that involve engaging parents, youths, community, law enforcement, and the political process—provide a model for effecting needed and long overdue changes in the prison and criminal justice system—changes that may assist in turning around the dangerous trend toward increased Latino/a imprisonment.

Notes

1. Data collected by the U.S. Justice Department's Bureau of Justice Statistics are cited throughout this article. The Bureau of Justice Statistics uses the U.S. Census Bureau as its collection agent to gather information about the prison population in each of the fifty states and the Federal Bureau of Prisons (Harrison and Beck 2005, 11). Unlike other data collected under four federally recognized racial categories (white, black, Asian or Pacific Islander, and American Indian or Native Alaskan) used by government agencies, including the Uniform Crime Reports from the Federal Bureau of Investigation (FBI), the Bureau of Justice Statistics National Prisoner Statistics program data includes "Hispanics" as a category in gathering information. While inconsistencies in the collection and use of the "Hispanic" designation occur state by state (Walker, Delone, and Spohn 2007, 14–16), the Bureau of Justice Statistics data on the racial and ethnic composition of the prison system is considered among the most reliable information of its kind available and, therefore, it is used widely in criminal justice analyses.
2. Both data consistently show African Americans and Latino/as as having significantly higher incarceration rates than whites. Why African American incarceration rates are higher than Latino requires further study and empirical analysis beyond the scope of this article.
3. Human Rights Watch (2002, 1) based its findings on the U.S. Census 2000 data on race, gender, and age of persons in all forms of confinement facility for the fifty U.S. states. An explanation of the Census 2000's methodology can be found at <http://factfinder.census.gov/servlet/MetadataBrowserServlet>
4. The 1855 "Greaser Act was codified in the Act of April 30, 1855, ch. 175, § 2, 1855, Cal. Stat. 217 (quoted in Haney López 1996, 145).
5. The *Mendez v. Westminster School District of Orange County* decision can be found in 64 F. Supp. 544, 549 (S.D. Cal. 1946), aff'd, 161 F.2d. 774 (9th Cir. 1947).
6. The Bureau of Justice Statistics distinguishes between violent crimes, such as homicides and robbery, from nonviolent crimes, such as property offenses (e.g., burglary and fraud), drug offenses, and public-order offenses (e.g., immigration and weapons violations) (Beck and Harrison 2001, 12, table 19).
7. Walker et al. (2004, 4) support this claim based on data from the Bureau of Justice Statistics (2000).
8. Walker et al. (2004, 4) cite evidence provided by Kamasaki (2002) in support for this claim.
9. Preliminary crime figures for January to June 2006 released by the Federal Bureau of Investigation (FBI) show that violent crime rose 3.7 percent compared to levels for the first half of 2005, while property crimes for the same period dropped by 2.6 percent (Federal Bureau of Investigation, 2006). Notwithstanding this recent spike in violent crime, violent crime rates today remain well below the rates registered in 1973, 1983, and 1993 (Bureau of Justice Statistics 2006a, 5).
10. "The overall violent crime rate fell 58% from 51 to 21 violent victimizations per 100 persons age 12 or older between 1993 and 2005" (Bureau of Justice Statistics 2006a, 5).
11. As argued by Moran (1997), the "unique needs and characteristics" of U.S. Latino/as and immigrants from Latin America deserve increased consideration by government officials and policymakers. This author holds, as do Rumbaut et al. (2006), that this is true, but not at odds with an understanding of the ways in which Latino/as and Latin American immigrants have been "racialized" in the U.S. context, resulting in unjust treatment in the administration of criminal justice system and immigration policies and practices.
12. Johnson (2003, 346) cites *United States v. Brignoni-Ponce*, 422 U.S. 873, 886–887 (1973), as the U.S. Supreme Court precedent for making "Mexican appearance a relevant factor" in justifying a border patrol stop.

References

- Acuña, Rodolfo. 2007. *Occupied America: A history of Chicanos*. 6th ed. New York: Pearson Longman.
- Albonetti, Celesta A. 1997. Sentencing under the federal sentencing guidelines: Effects of defendant characteristics, guilty pleas, and departures on sentence outcomes for drug offenses, 1991–1992. *Law & Society Review* 31 (4): 789–822.
- Amnesty International. 1998. *United States of America: Rights for all*. New York: Amnesty International Publications.
- Beck, Allen J., and Paige M. Harrison. 2001. *Prisoners in 2000*, NCJ 188207. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.
- Beckett, Katherine. 1997. *Making crime pay: Law and order in contemporary American politics*. Oxford: Oxford University Press.
- Beckett, Katherine, and Theodore Sasson. 2004. *The politics of injustice: Crime and punishment in America*. Thousand Oaks, California: Sage Publications.
- Bender, Steven W. 2003. *Greasers and gringos: Latinos, law and the American imagination*. New York: New York University Press.
- Bonczar, Thomas P. 2003. *Prevalence of imprisonment in the U.S. population, 1974–2001*. NCJ 197976. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.
- Bureau of Justice Statistics. 2000. *Sourcebook of criminal justice statistics, 1999*. Washington, D.C.: U.S. Department of Justice.
- Butcher, Kristin F., and Anne Morrison Piehl. 2005. Why are immigrants' incarceration rates so low? Evidence on selective immigration, deterrence, and deportation. Chicago: Federal Reserve Bank of Chicago. http://www.chicagofed.org/publications/workingpapers/wp2005_19.pdf (accessed June 17, 2007).
- Catalano, Shannan M. 2006. *Criminal victimization, 2005: National Crime Victimization Survey*, NCJ 2146644. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.
- Cole, David. 1999. *No equal justice: Race and class in the American criminal justice system*. New York: New Press.
- . 2001. Formalism, realism, and the war on drugs. *Suffolk University Law Review* 35: 241–55.
- Demuth, Stephen, and Darrell Steffensmeier. 2004. Ethnicity effects on sentencing outcomes in large urban courts: Comparisons among white, black and Hispanic defendants. *Social Science Quarterly* 85: 994–1011.
- Díaz-Cotto, Juanita. 2006. *Chicana lives and criminal justice: Voices from el barrio*. Austin: University of Texas Press.
- Ditton, Paula M., and Doris James Wilson. 1999. *Truth in sentencing in state prisons: Bureau of Justice Statistics special report (January 1999)*, NCJ 170032. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.
- Donziger, Steven R., ed. 1996. *The real war on crime: The report of the National Criminal Justice Commission*. New York: Harper Perennial.
- Dorfman, Lori, and Vincent Schiraldi. 2001. *Off balance: Youth, race and crime in the news*. Washington, D.C.: Building Blocks for Youth.
- Dow, Mark. 2004. *American gulag: Inside U.S. immigration prisons*. Berkeley: University of California Press.
- Ellis, Edwin. 1993. *The non-traditional approach to criminal justice and social justice*. Harlem: Community Justice Center, mimeographed, 8 pages.
- Escobar, Edward J. 1999. *Race, police, and the making of a political identity: Mexican Americans and the Los Angeles Police Department 1900–1945*. Berkeley: University of California Press.

- Federal Bureau of Investigation. 2006. Preliminary semiannual uniform crime report, January-June 2006. Washington, D.C.: U.S. Department of Justice.
- Freidman, Warren, and Martha Hott. 1995. *Young people and the police: Respect, fear and the future of community policing in Chicago*. Chicago: Chicago Alliance for Neighborhood Safety.
- Garland, David, ed. 2001a. *Mass imprisonment: Social causes and consequences*. London: Sage.
- . 2001b. *The culture of control: Crime and social order in contemporary society*. Chicago: University of Chicago Press.
- Hagan, John, and Alberto Palloni. 1999. Sociological criminology and the mythology of Hispanic immigration and crime. *Social Problems* 46 (4): 617–32.
- Hall, Kermit, L., William M. Wiecek, and Paul Finkelman. 1996. *American legal history: Cases and materials*. 2nd ed. New York: Oxford University Press.
- Haney López, Ian F. 1996. *White by law: The legal construction of race*. New York: New York University Press.
- . 2003. *Racism on trial: The Chicano fight for justice*. Cambridge, MA: Belknap/Harvard University Press.
- Harris, David A. 2002. *Profiles in injustice: Why racial profiling cannot work*. New York: New Press.
- Harrison, Paige M., and Allen J. Beck. 2002. *Prisoners in 2001*, NCJ 195189. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.
- . 2005. *Prisoners in 2004*. NCJ 210677. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.
- . 2006a. *Prison and jail inmates at midyear 2005*. NCJ 213133. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.
- . 2006b. *Prisoners in 2005*. NCJ 215092. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.
- Healey, Joseph F. 2007. *Race, ethnicity, gender, and class in the United States: Inequality, group conflict, and power*. 4th ed. Thousand Oaks, CA: Pine Forge Press.
- Horsman, Reginald. 1981. *Race and manifest destiny: Origins of American racial Anglo-Saxonism*. Cambridge, MA: Harvard University Press.
- Human Rights Watch. 1998. *Shielded from justice: Police brutality and accountability in the United States*. New York: Human Rights Watch.
- . 2002. *Race and incarceration in the United States: Human Rights Watch briefing*. New York: Human Rights Watch. <http://www.hrw.org/backgrounders/usa/race/pdf/race-bck.pdf> (accessed January 5, 2007).
- . 2003. *Incarcerated America: Human rights watch backgrounder*. New York: Human Rights Watch.
- Jacobson, Michael. 2005. *Downsizing prisons: How to reduce crime and end mass incarceration*. New York: New York University Press.
- Johnson, Kevin R. 2003. The case for African American and Latino/a cooperation in challenging racial profiling in law enforcement. *Florida Law Review* 55: 341–62.
- Kamasaki, Charles. 2002. Testimony on drug sentencing and its effects on the Latino community, February 25, 2002. Presented before the United States Sentencing Commission, Washington D.C. http://search.netscape.com/ns/boomframe.jsp?query=Kamasaki&page=4&offset=0&result_url=redir%3Fsrc%3Dwebsearch%26requestId%3D685b03bdf7716d6%26clickedItemRank%3D47%26userQuery%3DKamasaki%26clickedItemURN%3Dhttp%253A%252F%252Fwww.uscc.gov%252Fhearings%252F25_25_02%252Fkamasaki.PDF%26invoicationType%3Dnext%26fromPage%3DNSCPNextPrevB%26amp%3BampTest%3D1&remove_url=http%3A%2F%2Fwww.uscc.gov%2Fhearings%2F25_02%2Fkamasaki.PDF (accessed January 5, 2007).
- Kocieniewski, David, and Robert Hanley. 2000. Racial profiling was routine. *New York Times*, November 28.
- LaFree, Gary, K. Drass, and P. O'Day. 1992. Race and crime in post-war America: Determinants of African American and white rates, 1957–1988. *Criminology* 30:157–88.
- Leonhardt, David. 2007. Immigrants and prison. *New York Times*, May 30. <http://www.nytimes.com/2007/05/30/business/30leonside.html?ex=1184299200&en=e350a7f3a7435f38&ei=5070> (accessed: July 8, 2007).
- Martínez, Elizabeth. 1993. Beyond black/white: The racisms of our time. *Social Justice* 20 (1–2): 22–34.
- Mauer, Marc. 1999. *Race to incarcerate*. New York: The New Press.
- Mauer, Marc, Cathy Potler, and Richard Wolf. 1999. *Gender and justice: Women, drugs, and sentencing policy*. Washington, D.C.: The Sentencing Project.
- McWilliams, Carey. 1948/1990. *North from Mexico: The Spanish-speaking people of the United States*. New York: Praeger.
- Méndez-Méndez, Serafín, and Diana Alverio. 2003. *Network brownout 2003: The portrayal of Latinos in network television news, 2002*. Washington, D.C.: National Association of Hispanic Journalists.
- Mirandé, Alfredo. 1987. *Gringo justice*. Notre Dame, IN: University of Notre Dame Press.
- Moran, Rachel F. 1997. Neither black nor white. *Harvard Latino Law Review* 2:61–99.
- Morin, José Luis. 2009. *Latino/a rights and justice in the United States: Perspectives and approaches*. 2nd ed. Durham, NC: Carolina Academic Press.
- Mumola, Christopher J. and Allen J. Beck. 1997. *Prisoners in 1996*. NCJ 164619. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.
- Office of National Drug Control Policy. 2003. *Minorities and drugs*. Washington, D.C.: Office of National Drug Control Policy.
- Olivas, Michael A., ed. 2006. “Colored men” and “hombres aquí”: *Hernandez v. Texas and the emergence of Mexican-American lawyering*. Houston, TX: Arte Público Press.
- Oquendo, Angel. 1996. Colloquium proceeding: Comments by Angel Oquendo. *La Raza Law Journal* 9:43–47.
- Pastor, Manuel, Jr. 1993. *Latinos and the L.A. uprising*. Tomas Rivera Center Study, Los Angeles, California.
- Perea, Juan F., Richard Delgado, Angela P. Harris, and Stephanie M. Wildman. 2000. *Race and races: Cases and resources for a diverse America*. St. Paul, MN: West Group.
- Rennison, Callie Marie and Michael R. Rand. 2003. *Criminal victimization, 2002: Bureau of Justice Statistics National Crime Victimization Survey (August 2003)*, NCJ 199994. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.
- Riley, K. Jack. 1997. *Crack, powder cocaine, and heroin: Drug purchase and use patterns in six U.S. cities*. Washington, D.C.: U.S. Department of Justice, National Institute of Justice.
- Rivera Ramos, Efrén. 2001. *The legal construction of identity: The judicial and social legacy of American colonialism in Puerto Rico*. Washington, D.C.: American Psychological Association.
- Rumbaut, Rubén, Roberto G. Gonzales, Golnaz Komaie, Charlie V. Morgan, and Rosaura Tafoya-Estrada. 2006. Immigration and incarceration: Patterns and predictors of imprisonment among first- and second generation young adults. In *Immigration and crime: Race, ethnicity, and violence*, ed. Ed. Ramiro Martínez, Jr., and Abel Valenzuela, Jr., 64–89. New York: New York University Press.
- Sampson, Robert J., and Janet L. Lauritsen. 1997. Racial and ethnic disparities in crime and criminal justice in the United States. In *Ethnicity, crime, and immigration: Comparative and cross-national perspectives*, ed. Michael Tonry, 311–74. Chicago: University of Chicago Press.

- Sentencing Project. 2003. *Hispanic prisoners in the United States*. Washington, D.C.: Sentencing Project. <http://sentencingproject.org/pdfs/1051.pdf>.
- Simon, Jonathan. 2007. *Governing through crime: How the war on crime transformed American democracy and created a culture of fear*. Oxford: Oxford University Press.
- Spitzer, Elliot. 1999. *The New York City Police Department's "stop and frisk" practices: A report to the people of the state of New York from the attorney general*. New York: Civil Rights Bureau.
- Spohn, Cassia C. 2000. Thirty years of sentencing reform: The quest for a racially neutral sentencing process. In *Criminal Justice 2000*, Vol. 3, 427–80. Washington, D.C.: U.S. Department of Justice.
- Steffensmeier, Darrell, and Stephen Demuth. 2000. Ethnicity and sentencing in U.S. federal courts: Who is punished more harshly? *American Sociological Review* 65:705–29.
- . 2001. Ethnicity and judges' sentencing decisions: Hispanic-black-white comparisons. *Criminology* 39:145–78.
- Stephanson, Anders. 1995. *Manifest destiny: American expansion and the empire of right*. New York: Hill and Wang.
- Substance Abuse and Mental Health Services Administration. 2002. *Results from the 2001 national household survey on drug abuse: Volume 1. Summary of national findings*. NHSDA Series H-17, DHHS Publication No. SMA 02-3758. Rockville, MD: Office of Applied Studies.
- Tonry, Michael. 2005. *Maligned neglect: Race, crime and punishment in America*. New York: Oxford University Press.
- Travis, Jeremy. 2005. *But they all come back: Facing the challenges of prisoner reentry*. Washington, D.C.: Urban Institute Press.
- U.S. Commission on Civil Rights. 2000. *Police practices and civil rights in New York City: A report of the United States Commission on Civil Rights*. Washington, D.C.: U.S. Commission on Civil Rights.
- United States Sentencing Commission. 2001. *2001 sourcebook of federal sentencing statistics*. Washington, D.C.: United States Sentencing Commission.
- Villarruel, Francisco A., and Nancy E. Walker, with Pamela Minifree, Omara Rivera-Vázquez, Susan Peterson, and Kristen Perry. 2002. *¿Dónde está la justicia? A call to action on behalf of Latino and Latina youth in the U.S. justice system*. Washington, D.C.: Michigan State University/Building Blocks for Youth.
- Wacquant, Loïc. 2001. Deadly symbiosis: When ghetto and prison meet and mesh. In *Mass imprisonment: Social causes and consequences*, ed. Garland, David, 82–120. London: Sage.
- Walker, Samuel, Miriam Delone, and Cassia Spohn. 2007. *The color of justice: Race, ethnicity, and crime in America*. 4th ed. Belmont, CA: Thomson/Wadsworth.
- Walker, Nancy, E., J. Michael Senger, Francisco A. Villarruel, and Angela M. Arboleda. 2004. *Lost opportunities: The reality of Latinos in the U.S. criminal justice system*. Washington, D.C.: National Council of La Raza.
- Weitzer, Ronald. 1999. Citizens' perceptions of police misconduct: Race and neighborhood context. *Justice Quarterly* 16:819–46.
- Weitzer, Ronald, and Steven A. Tuch. 2006. *Race and policing in America: Conflict and reform*. New York: Cambridge University Press.
- Western, Bruce. 2006. *Punishment and inequality in America*. New York: Russell Sage Foundation.
- Zatz, Marjorie S., and Richard P. Krecker, Jr. 2003. Anti-gang initiatives as racialized policy. In *Crime control and social justice: The delicate balance*, ed. Darnell F. Hawkins, Samuel L. Meyers Jr., and Randolph N. Stone, 173–196. Westport, CT: Greenwood Press.

2

Pursuant to Deportation

Latinos and Immigrant Detention

David Manuel Hernández

Increasingly, the immigration system functions—like the criminal justice system—to socially control through confinement in secure, disciplinary facilities the unpopular and the powerless, which in this case are undocumented people of color.

—Teresa A. Miller (2002, 216)

This essay explores the contemporary terrain of Latino immigrant detention outside of the shadow cast by the events of September 11, 2001,¹ and within the context of a larger genealogy of Latino detention. Although one of the most distinctive features of the post-9/11 era is the continual avowal of its inimitability, immigrant detention in the United States is a long and continuing story that when understood historically and comparatively, more properly contextualizes the alarming trends in immigrant detention today. In so doing, it allows us to move beyond the exceptionalist rhetoric found in the government's construction of the "war on terror" to a clearer understanding of what the *New York Times* termed the "fastest-growing form of incarceration" (Bernstein 2007). Further, this essay seeks to explore the racialized features of immigrant detention, in particular its long-term effects on Latino non-citizens and citizens, who, prior to 9/11, suffered the consequences of immigrant detention as it expanded throughout the last century. Immigrant detention, as a process related to the deportation of noncitizens, is thus part of the larger history of federal, local, and individual practices that criminalize immigrants, especially nonwhite immigrants. The incarceration of noncitizens is thus related to their surveillance, punishment, and overall inequality in the areas of labor, education, public health, political representation, and everyday mobility.

Although the histories of Latinos in detention differ in many respects from the experiences of the racially targeted group of Arabs, Muslims, and South Asians who were detained immediately after 9/11, critical features of their collective detentions, such as racial profiling, legal vulnerabilities stemming from their immigrant