

Cluster III

***341** THE CASE FOR AFRICAN AMERICAN AND LATINA/O COOPERATION IN
CHALLENGING
RACIAL PROFILING IN LAW ENFORCEMENT

Kevin R. Johnson [FN1]

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The formal and informal targeting of African Americans, Latinas/os, and other racial minorities for police stops on account of race, known popularly as racial profiling, has grabbed national attention. [FN1] Race-based enforcement of the United States' immigration laws, which grew in importance as the U.S. government escalated efforts to deport undocumented immigrants in the 1990s, has just begun to gain public awareness. [FN2] The two law ***342** enforcement practices share a common thread--both use race as a signal of potential unlawful conduct or status.

This Essay contends that African Americans and Latinas/os share mutual concerns with governmental reliance on race in the enforcement of the criminal and immigration laws. Both suffer civil rights deprivations resulting from the reliance on statistical probabilities by law enforcement officers. Overlapping interests create the potential for intellectual linkages and political alliances designed to remove the taint of race from law enforcement. [FN3] More generally, the criminal justice system in the United States, which skews enforcement, prosecution, and imprisonment toward young African American and Latino males, [FN4] represents a legitimate target for concerted action. The common need and goal of reforming law enforcement creates the potential for far-reaching alliances. [FN5]

Eliminating racial bias from law enforcement through multiracial coalitions-- like all diverse alliances--will no doubt prove to be an arduous project, marked by setbacks as well as breakthroughs. Formidable barriers exist to the building of political coalitions between and among African Americans and Latinas/os, as well as other minority communities. [FN6] Importantly, the various groups may perceive themselves as having competing interests. Nonetheless, political realities dictate that alliances are essential to the quest for racial justice in the United States. [FN7]

Critical Latina/o Theory has much to add to the analysis of coalition-building. LatCrit theorists contend that, to fully understand racial subordination in the United States, scholars must study its impact on African Americans, Latinas/os, and other groups, and how the subordination of various groups fits into broader patterns of racial and other

discrimination. [FN8] Coalitions designed to combat racial inequality are *343 central to LatCrit Theory. [FN9] Both aspects of LatCrit Theory are implicated by the potential African American and Latina/o challenge to race-based law enforcement.

Part I of this Essay sketches the legal problems with race profiling in criminal and border enforcement, showing how both forms adversely impact Latinas/os and African Americans. Part II studies the common interests of Latinas/os and African Americans in eliminating race-based law enforcement. Part III analyzes the efficacy of coalitions to remedy the racism at the core of law enforcement in the United States. This Essay concludes that, difficult as it may be, collective action is essential to bring about much needed racial reform in law enforcement.

I. RACIAL PROFILING IN LAW ENFORCEMENT

Racial profiling in both criminal and immigration law enforcement adversely affects African Americans, Latinas/os, and other racial groups. Unfortunately, misconceptions and stereotypes result in law enforcement's excessive reliance on physical appearance as a proxy for legal wrongdoing. Intellectually and practically, racial profiling in criminal law differs little in kind and substance from that employed in immigration enforcement. The reliance on race has proven difficult to eliminate from law enforcement. This Essay contends that race cannot be removed selectively from one form of law enforcement but not the other. As history suggests, once race-based enforcement taints one aspect of law enforcement, it almost inevitably infects other areas. [FN10] Consequently, the most durable solution is to seek to remove the impermissible use of race, root and branch, from all forms of law enforcement.

A. Criminal Law Enforcement

Few dispute that African American men are routinely stopped by police for "driving while Black." [FN11] This practice is the tip of the proverbial iceberg *344 of discrimination against the African American community in this nation's criminal justice system. [FN12] Similarly, police officers stop Latinas/os for "driving while Brown." [FN13] Police departments in urban metropolises like Chicago, Los Angeles, and New York City, for many years have focused the criminal justice machinery on Latinas/os, just as African Americans have been targets of law enforcement. [FN14] Studies show that police "are stopping ... blacks, Latinos and Asians approximately eight to ten times as often as they are stopping whites." [FN15]

Few deny the concrete harms of racial profiling. When criminal investigation focuses on African Americans and Latinas/os, more members of these groups will be arrested and convicted of crimes, thereby contributing to disparate incarceration rates. [FN16] Racial profiles punish, embarrass, and humiliate innocent people, whose skin color is used as a proxy for criminal conduct. [FN17] Moreover, as U.S. society becomes *345 increasingly multiracial, "the possibility for error [when using race in law enforcement] likewise increases, simply because the diversity of groups and of individuals within each group makes extrapolations from group characteristics to individual conduct more tenuous." [FN18] Unfortunately, profiling, as part of a long history of discriminatory law enforcement, fosters a deep cynicism among racial minorities about the criminal justice system. [FN19] Fearing the police, they may not cooperate in the reporting and investigation of criminal activity. [FN20] Ultimately, the targeting of African Americans and Latinas/os for police stops increases the likelihood that they will suffer police brutality. [FN21]

Besides African Americans and Latinas/os, Asian Americans are, at times, affected by racial profiling. The Wen Ho Lee case, in which an Asian American scientist was jailed on

trumped up espionage charges, is a well-known example. [FN22] Police in some localities also employ gang profiles to target Asian American youth. [FN23]

To comply with the Constitution, police officers ordinarily must have individualized reasonable suspicion of criminal conduct before conducting an investigatory police stop. [FN24] Reliance on racial profiles, based on alleged *346 group propensities, generally violate the law. [FN25] Unfortunately, the courts have not been particularly effective in removing race and racism from criminal law enforcement. [FN26] The Supreme Court has repeatedly failed to recognize the racial context of criminal law enforcement or the racially-disparate implications of its decisions. Police departments across the country also have proven to be resistant to reform. [FN27] Consequently, investigations and reports of racial profiling continue. [FN28]

Racial profiling is just one of many discriminatory aspects of the criminal justice system adversely affecting African Americans and Latinas/os. Both groups are demonized as criminals, drug dealers, and gang *347 members, [FN29] are the most likely victims of police brutality, [FN30] and are disproportionately represented in the prison population. [FN31]

B. Immigration Enforcement

Judicially-sanctioned race profiling is central to the U.S. government's enforcement of the immigration laws. [FN32] In [United States v. Brignoni-Ponce](#), [FN33] the Supreme Court stated that "[t]he likelihood that any given person of Mexican ancestry is an alien is high enough to make Mexican appearance a relevant factor" to the Border Patrol in making an immigration stop. [FN34] Given this encouragement, Border Patrol officers *348 routinely admit that a person's "Hispanic appearance" contributed to their decision to question a person. [FN35] Over the years, plaintiffs in lawsuits have regularly alleged that the Border Patrol relies almost exclusively on race in immigration enforcement. [FN36] One experienced court of appeals judge observed that "of all of the cases involving people who were stopped or searched because of their 'foreign-looking' appearance or 'foreign-sounding' names, we are not aware of any in which the targeted individuals were Caucasian." [FN37]

Like racial profiling in criminal law enforcement, [FN38] race-based immigration enforcement fails at a number of levels. Dignitary harms to Latinas/os lawfully in the United States, including embarrassment, humiliation, and other attacks on their membership in U.S. society, result from the unjustified interrogation of their citizenship status. [FN39] The vast majority (roughly ninety percent) of the Latinas/os in the United States are lawful immigrants or citizens; [FN40] therefore Latina/o ancestry is not a particularly good indicia of undocumented status. "That the Border Patrol targets persons of 'Hispanic appearance' almost invariably contributes to the fact that close to ninety percent of [all] removals [are of] Mexican and [Latin] American citizens, even though they only constitute slightly more than one-half of the total undocumented population in the United States." [FN41] *349 Finally, race-based immigration enforcement may well contribute to well-documented Border Patrol abuses of persons of Mexican ancestry. [FN42]

Importantly, race-based border enforcement adversely impacts racial minorities other than Latinas/os. A U.S. General Accounting Office study of searches by U.S. Customs Service officers showed that Black women entering the country were more likely to be subject to intrusive searches than any other group:

Black women who were U.S. citizens ... were 9 times more likely than White women who were U.S. citizens to be x-rayed after being frisked or patted down

.... But on the basis of x-ray results, Black women who were U.S. citizens were less than half as likely to be found carrying contraband as White women who were U.S. citizens. [FN43]

In one lawsuit, customs inspectors subjected an African American woman, a U.S. citizen returning from Nigeria who complained about the treatment of a Nigerian citizen by inspectors, to a full pat down and strip search, and many other intrusive procedures, including examination of her rectal and vaginal cavities, in an unsuccessful hunt for drugs. [FN44] Incidents of discrimination in customs searches at ports of entry are regularly reported. [FN45]

In addition, persons of African ancestry who arrive at airports often are presumed to be entering the country unlawfully. The Immigration and Naturalization Service (INS) accused a Black college student, returning from a visit to Jamaica, with lawful immigration status, of being in the United States on false documents and strip searched, shackled, and detained him. [FN46] At San Francisco International Airport, immigration officials *350 shackled an African American U.S. citizen returning from Africa, accusing her of unlawfully entering the United States. [FN47] Similarly, in [Orhorhaghe v. INS](#), [FN48] the court of appeals found that the INS was wrong to investigate a person's immigration status based on his possession of a "Nigerian-sounding name," which the court reasoned might serve as a proxy for race. [FN49] Such abuses fit into a larger pattern of exclusion of immigrants of African ancestry from the United States. [FN50] The pattern of racial policing at the border reflects reliance on stereotypes about persons of African ancestry as lawbreakers, the same preconceptions that contribute to racial profiling in domestic criminal law enforcement. [FN51]

At the border, the law permits racial profiling, just as it does in immigration enforcement in the interior of the country. [FN52] Indeed, the Supreme Court has held that the U.S. government has free reign to conduct warrantless searches without probable cause at ports of entry. [FN53] As the Court explained, "[s]ince the founding of our Republic, Congress has granted the Executive plenary authority to conduct routine searches and seizures at the border, without probable cause or a warrant, in order to regulate the collection of duties and to prevent the introduction of contraband into this country." [FN54] As one court emphasized in rejecting the challenge of a lawful U.S. immigrant from Nigeria to a search, the "contention that a border search is not routine [and thus subject to the *351 requirement that a border officer have reasonable suspicion of wrongdoing] if motivated by ethnicity of a person searched is groundless." [FN55]

Racial profiles in immigration enforcement affect other groups as well. The U.S. government has harshly treated Arab and Muslim persons, who had been classified as suspected terrorists, in the name of fighting terrorism. [FN56] Based on stereotypes of Arab and Muslims as terrorists, Congress enacted harsh immigration laws, which the Attorney General has *352 enforced with vigor. [FN57] Arab and Muslim immigrants, and at times citizens, have suffered the full legal consequences.

Similarly, persons of Asian ancestry have suffered from race-based immigration enforcement. In one case, a court ruled that the "appearance of being oriental" combined with other factors justified continued observation by an INS officer. [FN58] Similarly, the Board of Immigration Appeals stated that "Oriental appearance, combined with the past history of illegal alien employment at [a] particular restaurant, and [an] anonymous tip" justified INS questioning of restaurant workers about their immigration status. [FN59] Not that long ago, Portland earned the nickname "Deportland" because of the rigorous scrutiny by the INS of the immigration status of Asian tourists, causing a major airline carrier to end direct flights from Japan to the city. [FN60] Exemplified by the infamous Japanese internment during World War II, [FN61] Asian Americans,

whatever their immigration status, long *353 have been classified as foreigners, [FN62] which makes them of presumptively suspect immigration status.

II. SIMILAR HARMS, COMMON CONCERNS, AND THE RELATIONSHIP BETWEEN DIFFERENT FORMS OF RACE-BASED LAW ENFORCEMENT

Similar harms to African Americans and Latinas/os flow from the influence of race in the enforcement of criminal and immigration laws. [FN63] Importantly, race-based law enforcement is part of a larger series of institutions and cultural practices that relegate racial minorities to a caste-like, second-class citizenship. [FN64] Both African Americans and Latinas/os have suffered serious limitations to their citizenship rights, often finding those rights manipulated through law. [FN65] The only way that both groups can move toward full membership in U.S. society is by "de-racing" law enforcement.

Common concerns suggest the need for political coalitions generally challenging the use of race in law enforcement. [FN66] The operation of the criminal justice system deeply shapes the lives of African Americans and Latinas/os in the United States. These groups, both overrepresented in our jails and prisons, must work together politically to eradicate the endemic *354 racism in the criminal justice system. Past successful multiracial coalitions suggest the possibility of future ones. [FN67]

African Americans and Latinas/os disproportionately suffer harms from racial profiling in criminal law enforcement. [FN68] Discrimination against Blacks and Browns in the criminal justice system are deeply interrelated. Not coincidentally, many lawsuits challenging racial profiling by police departments claim that African Americans and Latinas/os suffer discrimination due to the practice. [FN69] Similarly, race-based border enforcement not only adversely affects Latinas/os, but also injures persons of African and Asian ancestry. [FN70] Given the similar injuries caused by the influence of race on law enforcement, racial minorities have common interests in removing race from the enforcement calculus.

Because of the disparate racial impacts of the operation of law, criminal and immigration law scholarship have taken similar intellectual trajectories. As in the criminal law, [FN71] attention is now being paid to the racial consequences of immigration law and its enforcement. [FN72] Indeed, Professor Randall Kennedy treats the use of race in both criminal law and immigration enforcement as interchangeable. [FN73] This makes sense given that they are difficult to distinguish intellectually.

The Los Angeles Police Department (LAPD), which has a long history of violating the civil rights of Latinas/os and African Americans, offers a case study of the relationship between race-based criminal and immigration enforcement. During the Depression, the LAPD helped facilitate the forced repatriation--in the name of reducing the welfare rolls--of Mexican citizens and immigrants to Mexico. [FN74] Later, during the infamous "Zoot Suit" riots in which white mobs attacked Mexican "gang" members during World War II, the LAPD declined to protect the minority crime victims. [FN75] *355 In 1992, violence sparked by the legal vindication of police officers who brutalized Rodney King [FN76] was followed by police abuse of African Americans and Latinas/os, many of whom were rounded up by the LAPD and turned over to the INS for removal as part of the massive effort to quell the violence. [FN77] Over the last few years, media attention has focused on the infamous LAPD Ramparts Division for its systematic violations of the civil rights of African American and Latina/o youth. [FN78] Part of this unit's unlawful strategy involved police cooperation with the INS, including street sweeps, arrests of Latinas/os, and turning over noncitizens to the INS who could not be subject to criminal prosecution due to the lack of evidence, all of which violated official departmental policy. [FN79]

As this brief history of the LAPD suggests, local police at times have assisted federal authorities in immigration enforcement, [FN80] which has increased in recent years because Congress has given local police greater *356 authority in the enforcement of the immigration laws. [FN81] Local authorities, however, have violated the civil rights of noncitizens. Consider a few examples. Local police in Riverside County, California were videotaped beating two unarmed, undocumented Mexican immigrants who tried to evade the Border Patrol. [FN82] In a much publicized effort to rid the community of undocumented immigrants, local police in a Phoenix, Arizona suburb violated the constitutional rights of U.S. citizens and lawful immigrants of Mexican ancestry by stopping persons because of their skin color or their use of the Spanish language. [FN83] One can expect civil rights violations when local authorities, who generally are not well-versed in the nuances of the immigration laws, seek to enforce those laws. [FN84]

The racial focus of the "War on Drugs" both in our cities and at our borders [FN85] shows how criminal and border (customs and immigration) enforcement are deeply intertwined. [FN86] Two notorious recent incidents of police brutality involved immigrants of African ancestry. [FN87] Police often use *357 racial profiles in traffic stops as a tool to uncover drugs, just as immigration and customs officers employ drug courier profiles at the border stops. [FN88] Professor Dorothy Roberts observes that the "War on Drugs" has distinctly racial impacts and "facilitates the incarceration of large numbers of inner-city blacks" not in proportion to their drug use. [FN89]

The detrimental use of race in law enforcement against different racial minorities suggests the potential for coalitions between those groups designed to end the use of race in criminal and immigration enforcement. No evidence suggests that race can be removed from one mode of law enforcement without elimination from the other. To the contrary, the use of race by governmental officials appears to be inextricably interrelated.

III. THE EFFICACY OF MULTIRACIAL COALITIONS IN CHALLENGING RACIAL PROFILING IN LAW ENFORCEMENT

African Americans and Latinas/os suffer common harms from race profiling in law enforcement. [FN90] Consequently, collective action is more than justified to eliminate race-based law enforcement. But cooperation between the African American and Latina/o communities in the United States on issues small and large faces formidable barriers. If permitted, the various barriers could prevent much-needed cooperation by African Americans and Latinas/os on matters of pressing common concern. [FN91]

*358 Critical Latina/o Theory is devoted to the investigation of the relationship of various subordinations, [FN92] which in turn has fostered intellectual exchange on the viability of multiracial coalitions. [FN93] Commitment to building political alliances is a fundamental tenet of Critical Latina/o Theory. [FN94] In seeking to remedy the racism in the criminal justice system, we must acknowledge and address the formidable impediments to interracial cooperation. Not infrequently, the relations between African Americans and Latinas/os have been marred by stress, strain, and conflict. Perceived economic and political competition, due in no small part to the changing demographics caused by immigration, have helped fuel such tension. [FN95]

As a purely historical matter, durable coalitions between African Americans and Latinas/os have not proven to be easy. Even intellectual exchanges among minority scholars about the efficacy of the Black/White paradigm in civil rights scholarship have at times been hostile. [FN96] Conflict can be seen in dialogues between influential African American and Latina/o intellectuals. [FN97] On the pages of the New York Times,

African American sociologist Orlando Patterson criticized the publicity surrounding the 2000 Census as suggesting that Whites would soon be a minority because, in his words, many Latinas/os are "white in every social sense of this term"; Patterson proceeded to blame the media reports of the decline of the White population and Latinas/o inclusion in affirmative action programs for the loss of support for efforts to remedy past discrimination, and questioned whether coalitions between African Americans and Latinas/os could benefit Blacks. [FN98] Although the contention that Latinas/os are functionally "White" *359 ignores a history of well-documented discrimination suffered by persons of Mexican ancestry in the Southwest, [FN99] as well as the colonization of the Puerto Rican people, [FN100] it is a recurring issue that finds some support in U.S. history. [FN101]

Nor are the barriers to coalitions simply intellectual ones. At the grassroots level, racism toward African Americans unquestionably exists in the Latina/o community. [FN102] "Nonblack minorities ... often distinguished themselves from and at times expressly denigrated blacks." [FN103] In turn, African Americans are not immune from nativist, anti-Latina/o sentiment. As Tauyna Banks observes, "[n]ativism is a continuing problem among segments of the [African] community"; some "nativist Blacks ... act upon these claims and disadvantage non-White immigrants." [FN104] Such animosity works against broad-based coalitions between African Americans and *360 Latinas/os, even when the leaderships are in agreement on the need for collective action.

Moreover, fault lines exist on substantive issues. Importantly, African Americans often have been concerned about the negative impacts of immigration on their community, [FN105] and less concerned than Latinas/os with immigration enforcement as a civil rights issue. [FN106] Many poor and working-class African Americans have felt in competition with Latina/o immigrants for low-skilled jobs and have seen some industries move from having predominately Black to Latina/o work forces. [FN107] Some claim that employers prefer hiring undocumented Latinas/os over domestic African Americans. [FN108] The "rivalry between blacks and Latinos/as ... is fueled by innumerable factors, including contests over jobs, access to education and housing, and politicking of a wedge variety [B]lacks often see Latinos/as as a racially mobile group capable of leapfrogging over them, with access to whiteness and all that it entails" [FN109] Such sentiments tend to foster African American support for immigration restrictions and heightened immigration enforcement.

Despite race and class differences, African Americans and Latinas/os must recognize their common interests in removing race from law enforcement, immigration as well as criminal. Perhaps more so with respect to law enforcement than other civil rights issues, African Americans and Latinas/os share common interests in extracting race from the justice system. By working together, they might best be able to improve and reform the system for the benefit of their respective communities.

Political realities show the need for coalitions. The Bureau of the Census projects that, by 2050, Hispanics will constitute nearly twenty-five *361 percent of the U.S. population. [FN110] African Americans need Latinas/os' growing political numbers and the Latina/o community, which includes immigrants who cannot vote and a citizen population that at least until recently has a low voter turnout record, [FN111] will require the assistance of the mobilized African American community. Both need the moral and political force of the other to challenge the devastating impact that law enforcement has on their communities. If either balks, neither stands to secure meaningful change of the status quo.

The classic prisoner's dilemma offers useful insights about the potential for African American/Latina/o coalition. [FN112] For example, Latinas/os may see themselves as

the beneficiaries of the profiling of Blacks by police while African Americans may believe that they benefit by racial profiling of Latinas/os in immigration enforcement. Once race is let out of the proverbial genie's bottle, however, it is difficult to limit where and when it will be considered by law enforcement authorities. The impact on both African Americans and Latinas/os in criminal and immigration enforcement reveals how law enforcement uses race against both groups in an indiscriminate fashion. [FN113] If they do not cooperate, both will suffer.

Political coalitions between diverse communities are complex and often fragile. [FN114] Building such alliances requires significant time and effort to build *362 trust. [FN115] By necessity, such coalitions will be most feasible on narrow issues. [FN116] Rather than engage in the difficult task of coalition building, the easy way out would be for minority groups to pursue independent agendas without regard to other minority groups. [FN117] As Richard Delgado posed the question, will African Americans and Latinas/os "be able to work together toward mutual goals--or [will] the current factionalism and distrust continue into the future, with the various minority groups competing for crumbs while majoritarian rule continue[s] unabated?" [FN118]

In considering strategic alliances, Latina/o and African American leaders must consider the means of seeking to bring about meaningful social change. Both legal and political mechanisms may be used to challenge the use of race in law enforcement. [FN119] Litigation may offer certain benefits, although it has its limits. [FN120] Political action has the potential to bring about more drastic reforms and to create a means of enforcing the law. The use of race in law enforcement may prove to be a powerful organizing issue among minority communities, as well as sympathetic Whites, especially in *363 a time when color-blindness and race neutrality dominate the political landscape. [FN121]

IV. CONCLUSION

African Americans, Latinas/os, and other racial minorities share common interests in eliminating race profiling from all--criminal and immigration--law enforcement. Race-based law enforcement damages all communities of color, immigrants and citizens alike, at our borders and in our cities. It is defeatist to contend that such coalitions are too complex to understand, too difficult to construct, and too amorphous in their goals. Despite the formidable challenges posed by multiracial coalitions, such alliances must be pursued and fostered in the fight for social justice by those truly committed to that goal.

Footnotes:

FN1. Associate Dean for Academic Affairs at the University of California-Davis School of Law and Chicana/o Studies; Director, Chicana/o Studies Program (2000- 2001), University of California, Davis. B.A., University of California at Berkeley; J.D., Harvard University. This Essay was presented in draft form at the University of Florida as part of the Sixth Annual Critical Latina/o Theory Conference, LatCrit VI, in April 2001. I thank the conference planning committee, especially Berta Hernández, for organizing a successful conference; Devon Carbado, who asked me to participate on the panel; and those who attended the presentation and offered comments. This Essay benefitted from discussions with Richard Delgado and Ken Nunn as well as the comments of George A. Martínez, Mary Romero, and Sylvia Lazos on a draft.

FN1. See, e.g., THE PRESIDENT'S INITIATIVE ON RACE, THE ADVISORY BOARD'S REPORT TO THE PRESIDENT--ONE AMERICA IN THE 21ST CENTURY: FORGING A NEW FUTURE 78 (1998) [hereinafter THE PRESIDENT'S INITIATIVE ON RACE] (discussing racial profiling in law enforcement as a criminal justice problem); 60 Minutes: Blacks and Latinos Deal with Harassment from Police (CBS television broadcast, Feb. 11, 2001).

FN2. See, e.g., Susan Sachs, Files Suggest Profiling of Latinos Led to Immigration Raids, N.Y. TIMES, May 1, 2001, at B1; Jim Yardley, Some Texans Say Border Patrol Singles Out Too Many Blameless Hispanics, N.Y. TIMES, Jan. 26, 2000, at A17. Similarly, the growing number of deaths of Mexican citizens resulting from increased border enforcement operations has begun to attract national attention. See, e.g., James Sterngold, Devastating Picture of Immigrants Dead in Arizona Desert, N.Y. TIMES, May 25, 2001, at A1; James Sterngold, Rights Groups Urge Change in Border Policy, N.Y. TIMES, May 26, 2001, at A10. See generally Bill Ong Hing, [The Dark Side of Operation Gatekeeper](#), 7 U.C. DAVIS J. INT'L L. & POL'Y 121 (2001) (analyzing human toll of U.S. border enforcement).

FN3. See, e.g., George A. Martínez, [African-Americans, Latinos, and the Construction of Race: Toward an Epistemic Coalition](#), 19 CHICANO-LATINO L. REV. 213 (1998).

FN4. See infra text accompanying notes 10-62.

FN5. See infra text accompanying notes 63-121.

FN6. See infra text accompanying notes 90-121.

FN7. See infra text accompanying notes 110-21.

FN8. See Elizabeth M. Iglesias, Foreword: [Identity, Democracy, Communicative Power, Inter/National Labor Rights and the Evolution of LatCrit Theory and Community](#), 53 U. MIAMI L. REV. 575, 595, 622-29 (1999); Athena D. Mutua, [Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm](#), 53 U. MIAMI L. REV. 1177, 1202-15 (1999); Francisco Valdes, [Piercing Webs of Power: Identity, Resistance, and Hope in LatCrit Theory and Praxis](#), 33 U.C. DAVIS L. REV. 897, 897-98 (2000); see also Mari J. Matsuda, [Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition](#), 43 STAN. L. REV. 1183 (1991) (analyzing the importance of multiracial coalitions because of the interrelationships between all subordinations).

FN9. See Francisco Valdes, Foreword: [Under Construction--LatCrit Consciousness, Community, and Theory](#), 85 CAL. L. REV. 1087, 1094 (1997).

FN10. See infra text accompanying notes 74-89.

FN11. See, e.g., Angela J. Davis, [Race, Cops, and Traffic Stops](#), 51 U. MIAMI L. REV. 425, 431-32 (1997); David A. Harris, [The Stories, the Statistics, and the Law: Why "Driving While Black" Matters](#), 84 MINN. L. REV. 265, 275-88 (1999); Tracey Maclin, [Race and the Fourth Amendment](#), 51 VAND. L. REV. 333, 342-62 (1998); David Rudovsky, [Law Enforcement by Stereotypes and Serendipity: Racial Profiling and Stops and Searches Without Cause](#), 3 U. PA. J. CONST. L. 296 (2001); Katheryn K. Russell, ["Driving While Black": Corollary Phenomena and Collateral Consequences](#), 40 B.C. L. REV. 717, 718-19 (1999); David A. Sklansky, [Traffic Stops, Minority Motorists, and the Future of the Fourth Amendment](#), 1997 SUP. CT. REV. 271; Anthony C. Thompson, [Stopping the Usual Suspects: Race and the Fourth Amendment](#), 74 N.Y.U. L. REV. 956, 957 (1999).

FN12. See, e.g., DAVID COLE, NO EQUAL JUSTICE: RACE AND CLASS IN THE AMERICAN JUSTICE SYSTEM (1999); DAVID A. HARRIS, PROFILES IN INJUSTICE: WHY RACIAL PROFILING CANNOT WORK (2002); RANDALL KENNEDY, RACE, CRIME AND THE LAW (1997); KATHERYN K. RUSSELL, THE COLOR OF CRIME: RACIAL HOAXES, WHITE FEAR, BLACK PROTECTISM, POLICE HARASSMENT, AND OTHER MACROAGGRESSIONS (1998).

FN13. See, e.g., [Chavez v. Illinois State Police](#), 251 F.3d 612 (7th Cir. 2001) (analyzing claims of police racial profiling of Latinas/os and African Americans); [Martinez v. Village of Mount Prospect](#), 92 F. Supp. 2d 780, 781 (N.D. Ill. 2000) (discussing Latina/o racial profiling); [Rodriguez v. Cal. Highway Patrol](#), 89 F. Supp. 2d 1131, 1134 (N.D. Cal. 2000) (Latina/o and African American profiling); [Nat'l Cong. for Puerto Rican Rights v. City of New York](#), 191 F.R.D. 52 (S.D.N.Y. 1999) (Latina/o and Black plaintiffs); [Chavez v. Ill. State Police](#), 27 F. Supp. 2d 1053 (N.D. Ill. 1998) (Latinas/os and African Americans); see also Devon W. Carbado, [\[E\]Racing the Fourth Amendment](#), 100 MICH. L. REV. 946 (2002) (analyzing Fourth Amendment decisions', negative impact on African Americans and Latinas/os); Frank Rudy Cooper, [The Un-Balanced Fourth Amendment: A Cultural Study of the Drug War, Racial Profiling and Arvizu](#), 47 VILL. L. REV. 851 (2002) (same).

FN14. See, e.g., Cruz Reynoso, Hispanics and the Criminal Justice System, in HISPANICS IN THE UNITED STATES: AN AGENDA FOR THE TWENTY-FIRST CENTURY 277 (Pastora San Juan Cafferty & David W. Engstrom eds., 2000); see also Robert Garcia, [Latinos and Criminal Justice](#), 14 CHICANO-LATINO L. REV. 6, 7 n.4 (1994) (observing the lack of academic attention to Latinas/os in criminal justice system); Laura E. Gómez, [Race, Colonialism, and Criminal Law: Mexicans and the American Criminal Justice System in Territorial New Mexico](#), 34 LAW & SOC'Y REV. 1129 (2000) (investigating impact of race on persons of Mexican ancestry in criminal justice system of territorial New Mexico); Mary Romero, [State Violence and the Social and Legal Construction of Latino Criminality: From El Bandido to Gang Members](#), 78 DENV. U.L. REV. 1081 (2001) (analyzing negative impacts of police classification of Latina/o youth as gang members and criminals); Reynaldo Anaya Valencia, [Latinos and the Criminal Justice System: An Overview of the Invisible/Visible Minority](#), 1 HARV. LATINO L. REV. 27 (1994) (analyzing available data on Latinas/os in criminal justice system).

FN15. Symposium: Panel V: [Promoting Racial Equality](#), 9 J.L. & POL'Y 347, 365 (2001) (discussing comments of Professor Deborah A. Ramirez).

FN16. See infra note 31 and accompanying text.

FN17. Because of the intersection of race and class in U.S. society, poor and working class African Americans and Latinas/os suffer the brunt of race-based policing. See generally David A. Harris, [Factors for Reasonable Suspicion: When Black and Poor Means Stopped and Frisked](#), 69 IND. L.J. 659 (1994).

FN18. Viet D. Dinh, [Races, Crime, and the Law](#), 111 HARV. L. REV. 1289, 1303 (1998) (book review).

FN19. See Harris, *supra* note 11, at 298-300; see also William J. Stuntz, [Race, Class, and Drugs](#), 98 COLUM. L. REV. 1795, 1797 n.6 (1998) (reviewing survey data reflecting that African Americans have deeply negative views of the criminal justice system).

FN20. See Erik Luna, [Transparent Policing](#), 85 IOWA L. REV. 1107, 1118-19 (2000).

FN21. See DERRICK BELL, RACE, RACISM AND AMERICAN LAW § 9.6, at 478 (4th ed. 2000); see, e.g., JOHN L. BURRIS & CATHERINE WHITNEY, BLUE VS. BLACK 15-25 (1999) (discussing various incidents of police brutality); Alan Feuer, Three Are Guilty of Cover-Up Plot in Louima Attack, N.Y. TIMES, Mar. 7, 2000, at A1 (describing brutal attack by New York police on Abner Louima, a Black Haitian immigrant); Jane Fritsch, 4 Officers in Diallo Shooting Are Acquitted of All Charges, N.Y. TIMES, Feb. 26, 2000, at A1 (reporting on acquittal of police officers in the killing of Black immigrant, Amadou Diallo).

FN22. See generally Neil Gotanda, [Comparative Racialization: Racial Profiling and the Case of Wen Ho Lee](#), 47 UCLA L. REV. 1689 (2000). In large part, the U.S. government's investigation of Wen Ho Lee was founded on stereotypes of Asians as "foreigners," see *infra* text accompanying notes 61- 62, and enemies of the United States. See ERIC K. YAMAMOTO ET AL., RACE, RIGHTS AND REPARATIONS: LAW AND THE JAPANESE AMERICAN INTERNMENT 464-74 (2001).

FN23. See Cynthia Kwie Yung Lee, [Race and Self-Defense: Toward a Normative Conception of Reasonableness](#), 81 MINN. L. REV. 367, 439 n.283 (1996); see also Suzin Kim, Note, [Gangs and Law Enforcement: The Necessity of Limiting the Use of Gang Profiles](#), 5 B.U. PUB. INT. L.J. 265, 277-78 (1996).

FN24. See, e.g., [United States v. Sokolow](#), 490 U.S. 1, 7 (1989); [Terry v. Ohio](#), 392 U.S. 1, 27 (1968).

FN25. See [United States v. Laymon](#), 730 F. Supp. 332, 339-40 (D. Colo. 1990) (granting motion to suppress evidence in case in which drug task force focused enforcement efforts on African Americans and Latinas/os). But see [United States v. Weaver](#), 966 F.2d 391, 396 (8th Cir. 1992) (allowing law enforcement to rely on drug courier profile, including race, in questioning person); [United States v. Malone](#), 886 F.2d 1162, 1164-65 (9th Cir. 1989) (affirming conviction in case in which Drug Enforcement Administration agents claimed that person fit "L.A. gang member" profile, including that he was Black). Unlawful race profiling differs factually and legally from investigatory stops of African Americans after a victim has identified a Black person

as the perpetrator of a crime. For example, in [Brown v. City of Oneonta, 221 F.3d 329 \(2d Cir. 1999\)](#), cert. denied, [534 U.S. 816 \(2001\)](#), the court of appeals dismissed a civil rights action against police for stopping African American men because a crime victim had identified the assailant as Black. [Brown, 221 F.3d at 341](#). For criticism of police reliance on race in this manner, see Richard Banks, [Race-Based Suspect Selection and Colorblind Equal Protection Doctrine and Discourse, 48 UCLA L. REV. 1075 \(2001\)](#); Andrew E. Taslitz, [Stories of Fourth Amendment Disrespect: From Elian to the Internment, 70 FORDHAM L. REV. 2257, 2316-27 \(2002\)](#).

FN26. See, e.g., [Illinois v. Wardlow, 528 U.S. 119, 125-26 \(2000\)](#) (refusing to disturb conviction in which police stopped defendant because individual fled upon seeing police patrol area known for heavy narcotics trafficking, despite fact that innocent minorities might flee police out of fear for personal safety); [Whren v. United States, 517 U.S. 806, 813 \(1996\)](#) (holding that, even if traffic stop was pretextual and based on race, Fourth Amendment requirements satisfied so long as probable cause existed that the driver had committed traffic infraction); [McCleskey v. Kemp, 481 U.S. 279, 320-21 \(1987\)](#) (upholding imposition of death penalty on African American man in face of strong statistical evidence that State of Georgia administered death penalty in racially discriminatory manner).

FN27. See, e.g., infra text accompanying notes 74-79 (describing corruption in Los Angeles Police Department).

FN28. See Debra Livingston, [Police Reform and the Department of Justice: An Essay on Accountability, 2 BUFF. CRIM. L. REV. 815, 815-17, 816 n.4 \(1999\)](#) (stating that U.S. Department of Justice was reportedly investigating several local police agencies for racial profiling and other civil rights violations).

FN29. See, e.g., [United States v. Weaver, 966 F.2d 391 \(8th Cir. 1992\)](#) (allowing law enforcement to rely on drug profile including race in questioning person); [United States v. Malone, 886 F.2d 1162 \(9th Cir. 1989\)](#) (allowing law enforcement to rely on drug profile including race in questioning person); see also Shelan Y. Joseph, [Six Flags Magic Mountain: A Family Entertainment Park, But Only If You Wear the Right Clothes, 16 LOY. L.A. ENT. L. REV. 359 \(1995\)](#) (analyzing amusement park's gang screening policy directed at African American and Latina/o youth employed by amusement park); Kim, supra note 23 (discussing use of gang profiles by law enforcement and detrimental impacts on African Americans, Latinas/os, and Asian Americans); Margaret M. Russell, [Entering Great America: Reflections on Race and the Convergence of Progressive Legal Theory and Practice, 43 HASTINGS L.J. 749 \(1992\)](#) (analyzing critical theory to offer insights on how progressive lawyers might challenge amusement park's gang profiles that targeted Latina/o and African American youth).

FN30. See supra note 21 (citing authorities).

FN31. See Kenneth B. Nunn, ["Darden Dilemma": Should African Americans Prosecute Crimes?, 68 FORDHAM L. REV. 1473, 1480 \(2000\)](#) ("African Americans are roughly twelve percent of the national population. Yet, African Americans constitute more than fifty percent of the inmates held in prisons and jails in the United States."); Margaret E.

Montoya, Of "[Subtle Prejudices, White Supremacy, and Affirmative Action: A Reply to Paul Butler](#), 68 U. COLO. L. REV. 891, 924 (1997) ("[T]he states with the four largest prison populations, California, Texas, New York, and Florida, all have substantial Latino/a

populations. Approximately one-third of the prison populations of California and New York are Latino/a, although the percentages of Latinos/as in the general population are twenty-seven percent and thirteen percent, respectively."); Reynoso, *supra* note 14, at 293-94 (offering statistical data on Latina/o rates of incarceration); see also Paul Butler, [Racially Based Jury Nullification: Black Power in the Criminal Justice System](#), 105 YALE L.J. 677, 695-96 (1995) (offering capsule summary of racism against African Americans in criminal justice system in United States).

FN32. Arguments for ending the practice are elaborated on in detail in Kevin R. Johnson, The [Case Against Race Profiling in Immigration Enforcement](#), 78 WASH. U. L.Q. 675 (2000).

FN33. [422 U.S. 873 \(1975\)](#).

FN34. [Id. at 886-87](#). But see [United States v. Montero-Camargo](#), 208 F.3d 1122 (9th Cir. 2000) (en banc) (disregarding this language in *Brignoni-Ponce* and holding that Border Patrol cannot lawfully consider "Hispanic appearance" in deciding to make an immigration stop). Race-based immigration enforcement stands out as a striking anomaly from the color-blindness in governmental programs required by the current Supreme Court. See, e.g., [Adarand Constructors, Inc. v. Peña](#), 515 U.S. 200, 235 (1995) (holding that all racial classifications, including those in federal program to increase government contracting with minority businesses, are subject to strict scrutiny); [City of Richmond v. J.A. Croson Co.](#), 488 U.S. 469, 494 (1989) (holding to the same effect as [Peña](#), 515 U.S. at 235).

FN35. See, e.g., [United States v. Cruz-Hernandez](#), 62 F.3d 1353, 1356 (11th Cir. 1995); [United States v. Rodriguez](#), 976 F.2d 592, 595 (9th Cir. 1992), amended, [997 F.2d 1306 \(9th Cir. 1993\)](#).

FN36. See, e.g., [Hodgers-Durgin v. de la Vina](#), 199 F.3d 1037, 1040 (9th Cir. 1999); [Nicacio v. INS](#), 797 F.2d 700, 701 (9th Cir. 1985); [LaDuke v. Nelson](#), 762 F.2d 1318, 1321 (9th Cir. 1985), modified, [796 F.2d 309 \(9th Cir. 1986\)](#); [Ramirez v. Webb](#), 599 F. Supp. 1278, 1280 (W.D. Mich. 1984), aff'd, [787 F.2d 592 \(6th Cir. 1986\)](#) (per curiam); [Illinois Migrant Council v. Pilliod](#), 540 F.2d 1062, 1065 (7th Cir. 1976), modified, [548 F.2d 715 \(7th Cir. 1977\)](#) (en banc); [Murillo v. Musegades](#), 809 F. Supp. 487, 490- 91 (W.D. Tex. 1992); see also *United States v. Portillo-Aguirre*, 2002 U.S. App. LEXIS 22712 (5th Cir. Nov. 1, 2002) (reversing drug conviction in case in which Border Patrol stopped bus, questioned passengers about citizenship, and searched for drugs); Norma Ortiz, Comment, *The Dangers of Unguarded Discretion: The Unconstitutional Stops of Buses by Roving Patrols*, 2 SCHOLAR 289, 292 (2000) (criticizing Border Patrol practice of stopping buses in small towns on the U.S./Mexico Border to search for undocumented persons). The Border Patrol's undocumented immigrant profile contains class as well as racial elements. See, e.g., [Nicacio v. INS](#), 797 F.2d 700, 704 (9th Cir. 1985) (discussing INS official's testimony that an officer might properly rely, along with Hispanic appearance, on a "hungry look" and the fact that a person was "dirty, unkempt," or "wears work clothing").

FN37. [Orhorhaghe v. INS, 38 F.3d 488, 498 n.16 \(9th Cir. 1994\)](#).

FN38. See supra text accompanying notes 16-31.

FN39. See Johnson, supra note 32, at 711-16; see also MIKE DAVIS, MAGICAL URBANISM: LATINOS REINVENT THE U.S. CITY 59-65 (2000) (discussing how border enforcement adversely affects Latinas/os lawfully in United States far from the border).

FN40. See Johnson, supra note 32, at 708-09 (reviewing statistical data to make this estimate).

FN41. See id. at 712 (emphasis added).

FN42. See AMNESTY INT'L, UNITED STATES OF AMERICA: HUMAN RIGHTS CONCERNS IN THE BORDER REGION WITH MEXICO (1998); AMERICAN FRIENDS SERVICE COMMITTEE, HUMAN AND CIVIL RIGHTS VIOLATIONS ON THE U.S. MEXICO BORDER 1995-97, SAN DIEGO, CA. (1998), available at www.afsc.org/border.htm. See, e.g., [Murillo v. Musegades, 809 F. Supp. 487 \(W.D. Tex. 1992\)](#).

FN43. See U.S. GEN. ACCOUNTING OFFICE, U.S. CUSTOMS SERVICE: BETTER TARGETING OF AIRLINE PASSENGERS FOR PERSONAL SEARCHES COULD PRODUCE BETTER RESULTS 2 (2000).

FN44. [Brent v. United States, 66 F. Supp. 2d 1287, 1289 \(S.D. Fla. 1999\)](#), aff'd sub nom., [Brent v. Ashley, 247 F.3d 1294, 1306 \(11th Cir. 2001\)](#).

FN45. See, e.g., David Stout, Customs Service Will Review Drug-Search Process for Bias, N.Y. TIMES, Apr. 9, 1999, at A18 (reporting claims of racial discrimination by U.S. Customs officers in searches); Daria MonDesire, Stripped of More Than My Clothes, USA TODAY, Apr. 7, 1999, at 15A (offering personal account of strip search by U.S. Customs of the only African American woman on flight). In response to concerns about racial profiling, the Customs Service adopted reforms, including limiting discretion of officers to conduct searches, that reduced unwarranted searches of minorities while increasing drug seizures. See Kevin R. Johnson, [U.S. Border Enforcement: Drugs, Migrants, and the Rule of Law, 47 VILL. L. REV. 897, 912-15 \(2002\)](#).

FN46. See Toni Locy, Lawsuit Spotlights Alleged INS Abuses at Airports, USA TODAY, Oct. 18, 2000, at 11A.

FN47. See Reynolds Holding, Power of INS Agents Outweigh Proof, S.F. CHRON., June 4, 2000, at 3.

FN48. [38 F.3d 488 \(9th Cir. 1994\)](#).

FN49. [Id. at 497-98](#).

FN50. See Bill Ong Hing, [Immigration Policies: Messages of Exclusion to African Americans](#), 37 *HOW. L.J.* 237 (1994) (documenting exclusion of African immigrants to United States through immigration law and its enforcement); Lolita K. Buckner Inniss, [Tricky Magic: Blacks as Immigrants and the Paradox of Foreignness](#), 49 *DEPAUL L. REV.* 85 (1999) (analyzing treatment of Black immigrants and African Americans in United States); Hope Lewis, [Global Intersections: Critical Race Feminist Human Rights and Inter/National Black Women](#), 50 *ME. L. REV.* 309 (1998) (discussing international human rights issues of Jamaican immigrant women to United States).

FN51. See supra text accompanying notes 11-31.

FN52. See supra text accompanying notes 33-35.

FN53. See Theodore P. Metzler, Thirtieth Annual Review of Criminal Procedure: Introduction and Guide for Users: I. Investigation and Police Practices: [Warrantless Searches and Seizures](#), 89 *GEO. L.J.* 1084, 1141-46 (2001) (analyzing case law of border searches); see also [United States v. Zapata-Ibarra](#), 223 F.3d 281, 281 (5th Cir. 2000) (Wiener, J., dissenting) (contending that U.S. "government's so-called War on Drugs and its efforts to interdict illegal immigration" have eviscerated Fourth Amendment protections in entire border region).

FN54. [United States v. Montoya de Hernandez](#), 473 U.S. 531, 537 (1985) (citation omitted) (emphasis added).

FN55. [United States v. Ojebode](#), 957 F.2d 1218, 1223 (5th Cir. 1992) (emphasis added), cert. denied, 507 U.S. 923 (1993). Similarly, the Supreme Court created the plenary power doctrine to immunize the substantive Congressional immigration requirement, which at times has shielded racial and national origin exclusions in the immigration laws. See, e.g., [The Chinese Exclusion Case \(Chae Chan Ping v. United States\)](#), 130 U.S. 581 (1889). Although much-criticized, see, e.g., GERALD L. NEUMAN, *STRANGERS TO THE CONSTITUTION: IMMIGRANTS, BORDERS AND FUNDAMENTAL LAW* (1996), the doctrine remains good law. See, e.g., [Reno v. Flores](#), 507 U.S. 292, 305-06 (1993); [Fiallo v. Bell](#), 430 U.S. 787, 792 (1977).

FN56. See generally Susan M. Akram, [Scheherezade Meets Kafka: Two Dozen Sordid Tales of Ideological Exclusion](#), 14 *GEO. IMMIGR. L.J.* 51 (1999) (analyzing critically U.S. government's use of secret evidence in seeking to remove two dozen Arab and Muslim noncitizens from United States); Natsu Taylor Saito, [Symbolism Under Siege: Japanese American Redress and the "Racing" of Arab Americans as "Terrorists"](#), 8 *ASIAN L.J.* 1, 11-26 (2001) (analyzing treatment of Arabs as a distinctive "race" and stereotyping them as terrorists with negative immigration consequences); Michael J. Whidden, Note, [Unequal Justice: Arabs in America and United States Antiterrorism Legislation](#), 69

[FORDHAM L. REV. 2825 \(2001\)](#) (analyzing how 1996 immigration reform legislation has resulted in discrimination against persons of Arab ancestry); see, e.g., Al [Najjar v. Reno, 97 F. Supp. 2d 1329 \(S.D. Fla. 2000\)](#) (reviewing habeas corpus petition of Palestinian man detained by the U.S. government while facing removal based on secret evidence); [Kiareldeen v. Reno, 71 F. Supp. 2d 402 \(D. N.J. 1999\)](#) (granting habeas corpus to Palestinian man detained for over a year based on secret evidence of alleged terrorist activity). After the tragic loss of life on September 11, 2001, racial profiling of Arab-and Muslim-appearing people reached new heights as part of the "war on terror." See Susan M. Akram & Kevin R. Johnson, Race, Civil Rights, and Immigration Law After September 11, 2001: The Targeting of Arabs and Muslims, 58 NYU ANNUAL SURVEY AM. L. 101 (forthcoming 2002). For analysis of the civil rights impact of the federal government's responses to the events of September 11, see David Cole, [Enemy Aliens, 54 STAN. L. REV. 953 \(2002\)](#); Bill Ong Hing, [Vigilante Racism: The De-Americanization and Subordination of Immigrant America, 7 MICH. J. RACE & L. 441 \(2002\)](#); Thomas W. Joo, Presumed Disloyal: Wen Ho Lee, War on Terrorism and Construction of Race, 34 COLUM. HUM. RTS. L. REV. (forthcoming 2002); Victor C. Romero, Proxies for Loyalty in Constitutional Immigration Law: Citizenship and Race After September 11, 52 DEPAUL L. REV. (forthcoming 2002); Leti Volpp, The [Citizen and the Terrorist, 49 UCLA L. REV. 1575 \(2002\)](#); see also Samuel R. Gross & Debra Livingston, [Racial Profiling Under Attack, 102 COLUM. L. REV. 1413 \(2002\)](#) (analyzing debate over racial profiling after September 11).

FN57. See STEPHEN H. LEGOMSKY, IMMIGRATION AND REFUGEE LAW AND POLICY 735-37 (2d ed. 1997) (summarizing 1996 changes to immigration law creating special "alien" terrorist removal proceedings, in which noncitizens could be ordered removed from country based on secret evidence); see, e.g., [Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471 \(1999\)](#) (declining review of various constitutional, including First Amendment, challenges to deportation by various noncitizens who allegedly had provided financial support to Palestinian organizations); see also Berta Esperanza Hernández-Truyol, [Nativism, Terrorism, and Human Rights--The Global Wrongs of Reno v. American-Arab Anti-Discrimination Committee, 31 COLUM. HUM. RTS. L. REV. 521 \(2000\)](#) (criticizing the decision in American-Arab Anti-Discrimination Committee on the grounds that it violated international human rights prohibitions on discrimination on the basis of race, nationality, and ethnicity); Adrien Katherine Wing, [Reno v. American-Arab Anti-Discrimination Committee: A Critical Race Perspective, 31 COLUM. HUM. RTS. L. REV. 561 \(2000\)](#) (analyzing American-Arab Anti-Discrimination Committee decision from Critical Race Theory perspective). In response to the events of September 11, 2001, Congress passed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of [2001, Pub. L. No. 107-56](#), 115 Stat. 272 (2001), which expanded the definition of "terrorist activity" under the immigration laws and likely will have an adverse impact on Arab and Muslim noncitizens. See Akram & Johnson, supra note 56.

FN58. [Cheung Tin Wong v. INS, 468 F.2d 1123, 1127-28 \(D.C. Cir. 1972\)](#).

FN59. In re [King & Yang, 16 I. & N. Dec. 502, 504-05 \(BIA 1978\)](#).

FN60. See Florangela Davila, Hard-Line INS Under Fire in 'Deportland', SEATTLE TIMES, Sept. 11, 2000, at B5; Sam Howe Verhovek, Besmirched 'Deportland' Wrestles with the I.N.S., N.Y. TIMES, Aug. 31, 2000, at A14.

FN61. See [Korematsu v. United States, 323 U.S. 214 \(1944\)](#). See generally Symposium, The Long Shadow of [Korematsu, 40 B.C. L. REV. 1 \(1998\)](#) (analyzing implications of Korematsu decision).

FN62. See generally ROBERT S. CHANG, *DISORIENTED: ASIAN AMERICANS, LAW, AND THE NATION-STATE* (1999); Keith Aoki, "Foreign-Ness" and Asian American Identities: Yellowface, World War II Propaganda, and Bifurcated Racial Stereotypes, 4 *UCLA ASIAN PAC. AM. L.J.* 1 (1996); Natsu Taylor Saito, [Alien and Non-Alien Alike: Citizenship, "Foreignness," and Racial Hierarchy in American Law, 76 OR. L. REV. 261 \(1997\)](#). Because of common concerns with immigration enforcement, political coalitions between Asian Americans and Latinas/os to challenge arbitrary INS conduct hold promise. See Kevin R. Johnson, [Racial Hierarchy, Asian Americans and Latinas/os as "Foreigners," and Social Change: Is Law the Way to Go?, 76 OR. L. REV. 347, 365-67 \(1997\)](#). But see Rachel F. Moran, [What If Latinas/os Really Mattered in the Public Policy Debate?, 85 CAL. L. REV. 1315, 1321-31 \(1997\)](#) (questioning whether Asian American and Latina/o experiences are analogous).

FN63. See supra text accompanying notes 16-31, 38-42.

FN64. See generally KENNETH L. KARST, *BELONGING TO AMERICA: EQUAL CITIZENSHIP AND THE CONSTITUTION* (1989) (discussing efforts of various subordinated groups to secure full citizenship status in U.S. social life).

FN65. See Guadalupe T. Luna, The Treaty of Guadalupe Hidalgo and Dred Scott v. Sandford: "Aren't They All Illegal Anyway?," in *RACE IN 21ST CENTURY AMERICA* 297 (Curtis Stokes et al. eds., 2001) (examining how citizenship rights of Chicanas/os and African Americans have been manipulated through legal and illegal means).

FN66. See John Garcia, Coalition Formation: The Mexican-Origin Community and Latinas/os and African Americans, in *IMMIGRATION AND RACE: NEW CHALLENGES FOR AMERICAN DEMOCRACY* 255, 265-74 (Gerald D. Jaynes ed., 2000) (analyzing potential for African American and Latina/o political coalitions); see also Charles R. Lawrence III, [Race, Multiculturalism, and the Jurisprudence of Transformation, 47 STAN. L. REV. 819, 839-47 \(1995\)](#) (discussing importance of multiracial coalitions in seeking to build movement for social change).

FN67. See Kevin R. Johnson, [Lawyering for Social Change: What's a Lawyer to Do?, 5 MICH. J. RACE & L. 201, 226-27 \(1999\)](#) (providing examples of multiracial coalitions in civil rights litigation); William R. Tamayo, [When the "Coloreds" Are Neither Black Nor Citizens: The United States Civil Rights Movement and Global Migration, 2 ASIAN L.J. 1, 30-31 \(1995\)](#) (offering some examples of multiracial political coalitions).

FN68. See supra text accompanying notes 10-62.

FN69. See cases cited supra note 13.

FN70. See supra text accompanying notes 43-62.

FN71. See supra text accompanying notes 11-15.

FN72. See THE PRESIDENT'S INITIATIVE ON RACE, supra note 1, at 90-92; NINETY-EIGHTH AMERICAN ASSEMBLY, RACIAL EQUALITY: PUBLIC POLICIES FOR THE TWENTY-FIRST CENTURY 12-14 (2001); George A. Martinez, [Race and Immigration Law: A Paradigm Shift?](#), 2000 U. ILL. L. REV. 517.

FN73. See KENNEDY, supra note 12, at 150-59.

FN74. See EDWIN J. ESCOBAR, RACE, POLICE, AND THE MAKING OF A POLITICAL IDENTITY: MEXICAN AMERICANS AND THE LOS ANGELES POLICE DEPARTMENT, 1900-1945, at 84-90 (1999).

FN75. See Robert S. Chang, Policing the Criminal Justice System: [Los Angeles as a Single-Celled Organism](#), 34 LOY. L.A. L. REV. 843, 845-49 (2001) (analyzing relationship between Los Angeles Police Department's role in "Zoot Suit Riots" and its current abuses of African Americans and Latinas/os). During the same time period, the Los Angeles police rounded up hundreds of Mexican-American men in seeking to solve a murder case. See CAREY MCWILLIAMS, NORTH FROM MEXICO: THE SPANISH-SPEAKING PEOPLE OF THE UNITED STATES 227-43 (1948); see also [People v. Zammora](#), 152 P.2d 180 (Cal. Ct. App. 1944) (reviewing guilty verdicts in the "Sleepy Lagoon" murder case in which the LAPD investigated the murder and used weak evidence to prosecute Mexican-American defendants). See generally ESCOBAR, supra note 74 (chronicling history of LAPD's treatment of Mexican-Americans from 1900 through the "Zoot Suit Riots").

FN76. See generally READING RODNEY KING, READING URBAN UPRISING (Robert Gooding-Williams ed., 1993) (offering variety of perspectives on violence).

FN77. See MANUEL PASTOR, JR. ET AL., LATINOS AND THE LOS ANGELES UPRISING: THE ECONOMIC CONTEXT 11-13 (1993).

FN78. See, e.g., Linda S. Beres & Thomas D. Griffith, [Demonizing Youth](#), 34 LOY. L.A. L. REV. 747, 762 (2001); Theodore W. Maya, Comment, [To Serve and Protect or to Betray and Neglect?: The LAPD and Undocumented Immigrants](#), 49 UCLA L. REV. 1611 (2002). For a troubling narrative description of the depth of corruption in the LAPD, see Peter J. Boyer, Bad Cops, THE NEW YORKER, May 21, 2001, at 60.

FN79. See Chang, supra note 75, at 860-61; Stanley A. Goldman, [Running from Rampart](#), 34 LOY. L.A. L. REV. 777, 782-83 (2001); see also U.S. Gen. Accounting Office, Illegal Aliens: INS Participation in Antigang Task Forces in Los Angeles (2000) (reviewing evidence of LAPD's cooperation with INS).

FN80. See, e.g., [Farm Labor Org. Comm. v. Ohio State Highway Patrol, 308 F.3d 523 \(6th Cir. 2002\)](#) (reviewing evidence that Ohio law enforcement officers asked only Hispanic motorists for immigration documentation); H.G. Reza, Minor Offenders in Orange County Taken to Border Patrol, L.A. TIMES, Feb. 12, 2001, at B1 (reporting that local police agencies had been arresting Latina/o immigrants on minor criminal matters, such as soliciting work or selling flowers at traffic intersections and, rather than prosecuting them for the crime, transported them to nearest INS checkpoint to facilitate their removal from the country); Ty Tagami, INS Arrests 14 Hispanics at Courthouse in Monticello, HERALD-LEADER (Kentucky), Nov. 21, 2000, at B1 (reporting that local police set up roadblocks on highway on route to poultry processing plant to verify driver's licenses, registrations, and automobile insurance, arrested a group of Latina/o immigrants, and notified the INS, which took the immigrants into custody when they appeared in court to pay traffic fines).

FN81. See Jay T. Jorgenson, Comment, The [Practical Power of State and Local Governments to Enforce Federal Immigration Laws, 1997 BYU L. REV. 899](#) (analyzing implications of recent changes in immigration laws delegating increased role to state and local law enforcement authorities in enforcement of immigration laws). Congress has taken such steps as part of increasingly more punitive actions directed toward immigrants who have been convicted of criminal offenses. See generally Nancy Morawetz, [Understanding the Impact of the 1996 Deportation Laws and the Limited Scope of Proposed Reforms, 113 HARV. L. REV. 1936 \(2000\)](#) (analyzing harsh aspects of criminal provisions of 1996 immigration reforms); Gerald L. Neuman, [Habeas Corpus, Executive Detention, and the Removal of Aliens, 98 COLUM. L. REV. 961, 962-69 \(1998\)](#) (summarizing provisions of 1996 amendments barring judicial review of removal orders of certain criminal aliens). The "war on terrorism" has caused the federal government to reconsider its exclusive domain over immigration enforcement and show a new willingness to delegate power to state and local law enforcement agencies to enforce the immigration laws. See [DOJ Legal Opinion Would Broaden Use of State, Local Personnel in Immigration Enforcement, 79 INTERPRETER RELEASES 519 \(2002\)](#); INS Role for Police Considered, WASH. POST, Apr. 4, 2002, at A15; Susan Sachs, Long Resistant, Police Start Embracing Immigration Duties, N.Y. TIMES, at A11. In the summer of 2002, for example, the Justice Department entered an agreement with Florida to train a group of police officers to assist in the enforcement of the immigration laws. See Jonathan Peterson, Noncitizens Must Report If They Move, L.A. TIMES, July 23, 2002, at Part 1, p. 1.

FN82. See Kenneth B. Noble, Videotape of Beating by Authorities Jolts Los Angeles, N.Y. TIMES, Apr. 3, 1996, at A10.

FN83. See OFFICE OF THE ATTORNEY GEN. OF ARIZONA, RESULTS OF THE CHANDLER SURVEY 31 (1997).

FN84. See Linda Reyna Yañez & Alfonso Soto, [Local Police Involvement in the Enforcement of Immigration Laws, 1 HISP. L.J. 9 \(1994\)](#) (discussing civil rights issues posed when local law enforcement authorities attempt to enforce immigration laws).

FN85. See supra text accompanying notes 43-62.

FN86. See Ira Glasser, *American Drug Laws: The New Jim Crow*, 63 ALA. L. REV. 703, 705, 708-09 (2000); Nunn, *supra* note 31, at 1484-85. But see KENNEDY *supra* note 12, at 351-86 (questioning whether War on Drugs discriminates on the basis of race).

FN87. See *supra* note 21 (citing authorities describing killing of Amadou Diallo, an immigrant from Guinea, and violent abuse of Abner Louima, a Haitian immigrant); see also Hope Lewis, [Reflections on "BlackCrit Theory": Human Rights](#), 45 VILL. L. REV. 1075, 1084-85 (2000) (discussing how Diallo and Louima, two Black immigrants, were subject to same police violence suffered generally by African American men in U.S.). Public reports of the Diallo shooting suggested that his limited English proficiency contributed to the panicked response by New York police officers. See Leslie V. Dery, [Amadou Diallo and the "Foreigner" Meme: Interpreting the Application of Federal Court Interpreter Laws](#), 53 FLA. L. REV. 239, 243-48 (2001) (recounting facts of killing as reported in press accounts).

FN88. See Tovah Rennee Calderón, [Race-Based Policing from Terry to Wardlow: Steps Down the Totalitarian Path](#), 44 HOW. L.J. 73, 91 (2000); Jack B. Weinstein & Mae C. Quinn, [Terry, Race, and Judicial Integrity: The Court and Suppression During the War on Drugs](#), 72 ST. JOHN'S L. REV. 1323, 1332-34 (1998). See generally PETER ANDREAS, *BORDER GAMES: POLICING THE U.S.-MEXICO DIVIDE* (2000) (analyzing U.S. efforts at policing flow of drugs and immigrants across U.S./Mexico border and viewing such efforts as a largely politically symbolic gestures).

FN89. Dorothy E. Roberts, [Crime, Race, and Reproduction](#), 67 TUL. L. REV. 1945, 1956 (1993).

FN90. See *supra* text accompanying notes 10-62.

FN91. See BILL PIATT, *BLACK AND BROWN IN AMERICA: THE CASE FOR COOPERATION* (1997); Kevin R. Johnson, [Civil Rights and Immigration: Challenges for the Latino Community in the Twenty-First Century](#), 8 LA RAZA L.J. 42, 66-67 (1995); see also WILLIAM JULIUS WILSON, *THE BRIDGE OVER THE RACIAL DIVIDE: RISING INEQUALITY AND COALITION POLITICS* (1999) (analyzing potential for political coalitions among racial minorities).

FN92. See *supra* text accompanying note 8.

FN93. See Martínez, *supra* note 3, at 221-22; see also Sumi Cho, *Essential Politics*, 2 HARV. LATINO L. REV. 433, 434 (1997) (calling for "very broad-based massive cultural resistance organized by critical legal scholars of color, directed at the courts and at the illegitimate exercise of racial supremacy by the judiciary").

FN94. See *supra* text accompanying note 9.

FN95. See, e.g., Bill Ong Hing, [Beyond the Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of Separatism and Conflict in an Immigration-Driven Multiracial Society](#), 81 CAL. L. REV. 863 (1993); Deborah Ramirez, [Multicultural Empowerment: It's Not Just Black and White Anymore](#), 47 STAN. L. REV. 957 (1995); Eric K. Yamamoto, [Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America](#), 95 MICH. L. REV. 821 (1997). As argued elsewhere, I am uncertain about how productive it is to focus unduly on interethnic conflict as a source of the ills facing communities of color. See Johnson, *supra* note 91, at 56-67.

FN96. See Mutua, *supra* note 8 (discussing debate).

FN97. See Our Next Race Question: The Uneasiness Between Blacks and Latinos, HARPERS, Apr. 1996, at 55 (providing a discussion between Jorge Klor de Alva, Earl Shorris, and Cornel West).

FN98. Orlando Patterson, Race by the Numbers, N.Y. TIMES, May 8, 2001, at A27; see also Wanda Coleman, Remembering Watasha: Blacks, Immigrants and America, THE NATION, Feb. 15, 1993, at 187, 189 (contending that large-scale immigration has injured African Americans economically); Megan Twohey, Role Reversal Jolts Blacks, Hispanics, NAT'L J., Apr. 14, 2001, at 1122 (discussing fissures among African American and Latina/o leaders due to emergence of Latinas/os as the largest minority group).

FN99. See, e.g., RODOLFO ACUNA, OCCUPIED AMERICA: A HISTORY OF CHICANOS (3d ed. 1988); TOMAS ALMAGUER, RACIAL FAULT LINES: THE HISTORICAL ORIGINS OF WHITE SUPREMACY IN CALIFORNIA (1994); MARIO BARRERA, RACE AND CLASS IN THE SOUTHWEST: A THEORY OF RACIAL INEQUALITY (1979); DAVID MONTEJANO, ANGLOS AND MEXICANS IN THE MAKING OF TEXAS, 1836-1986 (1987); LEONARD PITT, THE DECLINE OF THE CALIFORNIOS: A SOCIAL HISTORY OF THE SPANISH-SPEAKING CALIFORNIANS, 1846-1890 (1966).

FN100. See, e.g., JOSE A. CABRANES, CITIZENSHIP AND THE AMERICAN EMPIRE: NOTES ON THE LEGISLATIVE HISTORY OF THE UNITED STATES CITIZENSHIP OF PUERTO RICANS (1979); JOSE TRIAS MONGE, PUERTO RICO: THE TRIALS OF THE OLDEST COLONY IN THE WORLD (1997); JUAN R. TORRUELLA, THE SUPREME COURT AND PUERTO RICO: THE DOCTRINE OF SEPARATE AND UNEQUAL (1985); Pedro A. Malavet, [Puerto Rico: Cultural Nation, American Colony](#), 6 MICH. J. RACE & L. 1 (2000); Ediberto Román, [Empire Forgotten: The United States's Colonization of Puerto Rico](#), 42 VILL. L. REV. 1119 (1997); Sylvia R. Lazos Vargas, [History, Legal Scholarship, and LatCrit Theory: The Case of Racial Transformations Circa the Spanish American War, 1896-1900](#), 78 DEN. U.L. REV. 921 (2001).

FN101. At times, Latinas/os have claimed to be Spanish or White and have been classified as such by law even though subject to discrimination. See Kevin R. Johnson, ["Melting Pot" or "Ring of Fire"?: Assimilation and the Mexican-American Experience](#), 85 CAL. L. REV. 1259, 1305-06 (1997); George A. Martínez, The Legal Construction of Race: Mexican-Americans and Whiteness, 2 HARV. LATINO L. REV. 321 (1997); see also Luna, *supra* note 65, at 306 ("That Chicana/os are legally

identified as white must not be seen as a hindrance for progressive coalitions and joint efforts toward eradicating racial injustice" and arguing that both African Americans and Chicana/os have enjoyed less than full citizenship and membership in United States). See generally Cheryl I. Harris, [Whiteness as Property](#), 106 HARV. L. REV. 1709 (1993) (analyzing "whiteness" as a property right).

FN102. See Johnson, *supra* note 101, at 1274 & n.46.

FN103. Dinh, *supra* note 18, at 1292.

FN104. Tauyna Lovell Banks, [Both Edges of the Margin: Blacks and Asians in Mississippi Masala Barriers to Coalition Building](#), 5 ASIAN L.J. 7, 34-35 (1998).

FN105. See Lawrence H. Fuchs, The Reactions of Black Americans to Immigration, in IMMIGRATION RECONSIDERED: HISTORY, SOCIOLOGY, AND POLITICS 293 (Virginia Yans-McLaughlin ed., 1990) (analyzing history of restrictionist views on immigration among African Americans); see, e.g., Salim Muwakkil, The Division Potential: Blacks Need to Form Political Coalition with Hispanics, CHI. TRIB., July 2, 2001, at 13 (discussing recent tensions between Mexican immigrants and African Americans in United States).

FN106. However, the treatment of Haitian refugees in the 1990s raised African American consciousness about the centrality of race to immigration law and policymaking. See, e.g., [Sale v. Haitian Ctrs. Council, Inc.](#), 509 U.S. 155 (1993); Joyce A. Hughes & Linda R. Crane, [Haitians: Seeking Refuge in the United States](#), 7 GEO. IMMIGR. L.J. 747 (1993).

FN107. See VERNON M. BRIGGS, MASS IMMIGRATION AND THE NATIONAL INTEREST 211-15 (1992).

FN108. See Jack Miles, Blacks vs. Browns: The Struggle for the Bottom Rung, THE ATL. MONTHLY, Oct. 1992, at 41; see also Regina Austin, ["Bad for Business": Contextual Analysis, Race Discrimination, and Fast Food](#), 34 J. MARSHALL L. REV. 207 (2000) (analyzing employer preference for Latina/o and Asian immigrants over African Americans as employees in fast food industry, causing discrimination against African Americans).

FN109. Mutua, *supra* note 8, at 1186; see also Tamayo, *supra* note 67, at 12-21; Coleman, *supra* note 98, at 189-90.

FN110. See U.S. BUREAU OF THE CENSUS U.S. DEPT. OF COMMERCE, CURRENT POPULATION REPORTS--POPULATION PROJECTIONS OF THE UNITED STATES BY AGE, SEX, RACE, AND HISPANIC ORIGIN: 1995 TO 2050, at 13 tbl. J. (1996).

FN111. See generally Rodolfo O. de la Garza & Louis DeSipio, [Save the Baby, Change the Bathwater, and Scrub the Tub: Latino Electoral Participation After Seventeen Years of Voting Rights Act Coverage](#), 71 TEX. L. REV. 1479 (1993) (examining impact of Voting Rights Act on Latinas/os and considering various impacts on limited political participation, including relatively low naturalization rates among Latina/o immigrants and low voter turnout among Latinas/os).

FN112. See Ian F. Haney López, [Institutional Racism: Judicial Conduct and a New Theory of Racial Discrimination](#), 109 YALE L.J. 1717, 1763-64 & n.173 (2000) (discussing application of prisoner's dilemma to analysis of discrimination). For study of the prisoner's dilemma and game theory, see AVINASH K. DIXIT & BARRY J. NALEBUFF, THINKING STRATEGICALLY: THE COMPETITIVE EDGE IN BUSINESS, POLITICS, AND EVERYDAY LIFE 111-14 (1991).

FN113. See supra text accompanying notes 10-89.

FN114. See Mutua, supra note 8, at 1178 ("[T]he problems of building coalitions and developing political agendas bring us face-to-face with the reality that different racial and ethnic groups have distinct histories and interests, some of which collide."); see also Mary Romero, [Historicizing and Symbolizing a Racial Ethnic Identity: Lessons for Coalition Building with a Social Justice Agenda](#), 33 U.C. DAVIS L. REV. 1599, 1599 (2000) ("Although groups centering on discrete identities struggled to find a rallying point from which to advocate social justice and coalition building, this has proven to be a difficult project."); Enid Trucios-Haynes, [The Legacy of Racially Restrictive Immigration Laws and Policies and the Construction of the American National Identity](#), 76 OR. L. REV. 369, 374 (1997) ("Alliances within and among communities of color require an understanding of the situated position of noncitizens of color within the racial hierarchy. Therefore, the hierarchies of race and oppression must be overcome to form effective intra-group and inter-group coalitions.").

FN115. See, e.g., Sumi Cho & Robert Westley, [Critical Race Coalitions: Key Movements that Performed the Theory](#), 33 U.C. DAVIS L. REV. 1377, 1389-94 (2000) (discussing a multiracial coalition that sought to diversify the law faculty at U.C. Berkeley). For analysis of possible multiracial alliances, see ERIC K. YAMAMOTO, INTERRACIAL JUSTICE: CONFLICT AND RECONCILIATION IN POST-CIVIL RIGHTS AMERICA (1999).

FN116. See Richard Delgado, [Derrick Bell's Toolkit--Fit to Dismantle that Famous House?](#), 75 N.Y.U. L. REV. 283, 306-07 (2000) (contending that all minority groups should discard binary views of social life to "open[] up new possibilities for coalitions based on level-headed assessment of the chances for mutual" cooperation); see also Moran, supra note 62, at 1319 (stating that Asian American and Latina/o coalitions in Los Angeles suburbs have been "fragile and unstable" and "may have remained weak because of the racial, ethnic, linguistic, cultural, and class differences between the two groups."); Haunani-Kay Trask, [Coalition-Building Between Natives and Non-Natives](#), 43 STAN. L. REV. 1197, 1210 (1991) (expressing skepticism about coalitions with White groups and concluding that, "[f]or Native peoples under American control, coalitions with non-Natives must be temporary and issue-oriented. We need to see them as an immediate means to an immediate end, not as long-term answers to long-term goals.").

FN117. See Romero, *supra* note 114, at 1622-25 (offering case study of how identity politics undermined coalition building within and between groups with common interests).

FN118. Richard Delgado, [Rodrigo's Fifteenth Chronicle: Racial Mixture, Latino-Critical Scholarship, and the Black-White Binary](#), 75 *TEX. L. REV.* 1181, 1200 (1997) (book review); see also Richard Delgado, [Rodrigo's Fourteenth Chronicle: American Apocalypse](#), 32 *HARV. C.R.-C.L. L. REV.* 275, 298-99 (1997) (raising the question of whether Latinas/os would side with Whites or African Americans in racial struggles to occur in future). There is room, however, for the existence of smaller focused groups, which may be unwilling to compromise core principles to build coalitions. See Richard Delgado, [Rodrigo's Sixth Chronicle: Intersections, Essences, and the Dilemma of Social Reform](#), 68 *N.Y.U. L. REV.* 639 (1993).

FN119. See Johnson, *supra* note 91, at 55-56.

FN120. See generally George A. Martínez, [Legal Indeterminacy, Judicial Discretion and the Mexican-American Litigation Experience, 1930-1980](#), 27 *U.C. DAVIS. L. REV.* 555 (1994) (analyzing limited success of Mexican-Americans in civil rights litigation).

FN121. See, e.g., Neil Gotanda, [A Critique of "Our Constitution is Color-Blind,"](#) 44 *STAN. L. REV.* 1 (1991).