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COLLOQUIUM PROCEEDINGS: PANEL ONE: LATCRIT THEORY, INTERNATIONAL HUMAN RIGHTS, POPULAR CULTURE, AND THE FACES OF DESPAIR IN INS RAIDS

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BIO:

* Assistant Professor of Law, University of Texas at Austin. I want to thank Berta Hernandez-Truyol for encouraging me to speak at this panel and Margaret Montoya for the conversation we had about Lone Star, as well as for her continuing contributions to the evolving LatCrit literature. My special thanks to Frank Valdes for asking me to speak at LatCrit I. This is an expanded and annotated version of my presentation as a panelist at the gathering of Latina/o law professors at the annual meeting of the Hispanic National Bar Association meeting, held in October, 1996 in Miami, Florida.

SUMMARY: ... Thank you very much Celina, for your overview remarks intended to guide us in our sessions today on the relationship between the emerging LatCrit theory and International Human Rights, and for this panel, on how the focus on identity politics in LatCrit theory can broaden our understanding of "human rights law and policy. ... Mercedes' actions reinforce her acquired identity as the good "American citizen," and that of the *mojados* as the bad and illegal "aliens." ... My purpose here is not to examine all of the themes of borders and transgression or of mythical and inviolable boundaries based on race and class raised by *Lone Star*, but rather to illustrate the impact of this fascinating two-hour film in helping crystallize the essence of the dialogue we had initiated in May, 1996 at the first LatCrit conference. ... One could see LatCrit theory as redefining the racial politics of identity for its failure to be sufficiently ethnicized or for conflating the meaning of race discrimination into ethnicity-based discrimination. ... My musings on LatCrit theory, border crossings, and the usefulness of stories in popular culture to explore the intersection of law and social justice forced me to look at the newspaper article about the INS raid with a fresh and most offended view. ... It is a wonderful compilation of ninety oral histories used to examine the patterns of Mexico-U.S. immigration flow as an identity-shaping phenomenon for some Mexican villages and for Mexican, Chicana/o people in the United States. ...

[*245] I. INTRODUCTION

Thank you and good morning. I understand we are on a really tight schedule so my comments will be brief. Thank you very much Celina, for your overview remarks intended to guide us in our sessions today on the relationship between the emerging LatCrit theory n1 and International Human Rights, and for this panel, on how the focus on identity politics in LatCrit theory can broaden our understanding of "human rights law and policy."

[*246] You made several important points, Celina: one is how our teaching and scholarship in "civil rights law" could benefit by bringing in a human rights perspective. As one who teaches this subject, I have often felt that contemporary civil rights textbooks could improve their doctrinal presentations by also examining the historical, social, economic, and political conditions surrounding a civil rights dispute. You have inspired me to expand my own horizons in this course by experimenting with materials which illustrate the intersection between such bodies of law as immigration, employment discrimination, n2 constitutional

torts, and international human rights. n3 Second, you noted correctly that the discourse of international human rights and LatCrit theorists shares a concern with "accountability." Finally, I agree that what is being called "LatCrit theory" has probably always been around but just had not been given a label. n4

I have been very enthusiastic about participating on this panel, following, as it does, on the heels of the first LatCrit conference sponsored by the California Western School of Law last May in La Jolla, California. n5 I want to begin by sharing some of my own process in becoming part of this developing discourse called "LatCrit theory." As I noted back in May, I felt somewhat tentative in my role as a "first generation LatCrit theorist," given the heavily feminist and "queer" n6 directions in my scholarship. [*247] Yet, I have always felt that my "Latinaness" has expressed itself in my lesbian/feminist writings--usually as a critical voice reminding progressive scholars of the importance of diversity and conflict raised by race, gender, sexuality, and class within our own movements. n7 In this vein, I would like to express my own observations about the promises and the challenges for this developing discourse. For example, the first LatCrit conference displayed a commitment to diversity and identities by including as attendees, not only supportive whites, Asians, African-American, and Native-Americans, but also lesbian and gay men and women. I hope we will continue to display that respect for multiple consciousness n8 which will enrich our discourse, and also challenge us to practice conflict resolution when tensions arise because our identities have collided on one or more of the factors by which we define ourselves. I also sincerely hope that the centering of issues like gender, sexuality, and multiple consciousness in this developing LatCrit movement will be a catalyst for the enhanced production of writings by and about Latinas, aimed at empowering Latinas/Hispanas n9 everywhere. I therefore encourage my Latino colleagues to include, wherever possible, the gendered perspective in their studies. n10

I now turn to my role on this panel. Because I have been in this process of trying to figure out the role LatCrit theory will [*248] play in my scholarship and teaching, I experienced some angst about how to address the themes of this panel--the relationship between LatCrit theory and the theoretical/historical origins of "first generation" human rights--also known as "civil and political rights." Being asked to think about the differences and commonalities in a LatCrit agenda, which promotes the recognition and enforcement of human rights in domestic and international forums sounded like such an ominous task! Energized as I was after the first LatCrit conference, I was having some difficulty putting "it"--the first LatCrit experience--into concrete terms. What finally lit my fire was a movie I saw over the summer while still on the wave of energetic enthusiasm generated last May at La Jolla.

II. LAW, SOCIAL JUSTICE, AND POPULAR CULTURE

Legal theorists have recently begun to pay greater attention to the role that popular culture, in particular films and theater, can play in not just telling stories, but in communicating ideas about the meaning and practice of the law and social justice. n11 Feminist and critical race theorists have also noted the value of telling good stories to question the status quo for social groups who are at the bottom of white male hierarchies. n12 I have valued the use of stories to construct the meaning of individual and collective experiences in a particular time noted for the intensity of its gendered politics. n13 I suspect that LatCrit theorists will also use storytelling to construct the meaning of identity raised by a scholarship focusing on the social justice issues for Latina/o communities in the United States. I begin my discussion today, therefore, with the story of a movie which helped me see the complexity of the issues raised for analysis by this emerging commitment to articulate the premises of engaging in LatCrit theory.

John Sayles' recent film *Lone Star* is a good example of [*249] popular culture which educates viewers about a complex social and political history by simply relating the life of a town and its people. The first words I spoke as I exited *Lone Star* were, "this movie touched on all those issues we just explored at this conference I attended in La Jolla on LatCrit theory!"

Very briefly, the film situates a murder mystery in a south Texas U.S.-Mexico border town after a member of the nearby military base out on a desert excursion finds a skeleton, a Mason ring, and a sheriff's badge. A

follow-up investigation produces a bullet and identifies the victim as a male who had died at least thirty-five years prior, about the time Rio County's much-hated Sheriff Wade had disappeared without a trace. Described by oldtimers as an arrogant racist and iron-fisted bully, Wade had ruled this territory bordering on the Rio Grande with ruthless exercises of the southern white male privilege he enjoyed. Flashback stories reveal everything from beatings of people who threatened his authoritarian enforcement of the racially segregated patterns of 1950s America in south Texas to brutal murders of "coyotes,"ⁿ¹⁴ who had defied Wade's payoff system for being allowed to transport undocumented Mexicans across the border. Wade had killed or at least physically or financially hurt many of those who had questioned his run of law enforcement in Rio County.

I was struck by the ease with which *Lone Star's* characters, events, and situations embodied so many of the concepts we had tentatively explored as critical to the discourse on identity politics, power, and oppression of the LatCrit movement. I urge use of this film as a powerful teaching tool for examining the intersection of immigration and employment discrimination law, foreign policy, human rights, and civil and political rights. It also provides an excellent point of departure for exploring the "borderlands" conceptⁿ¹⁵ being used by some critical scholars to [*250] illustrate the ways in which social borders are created, internalized and used by others and ourselves to shape and reshape our identities. *Lone Star's* characters and their stories can be used to explore how relations between individuals seemingly of the same culture, race/ethnic group, etc., come to exist nearly "worlds apart" as their experiences, marked by factors like age, class, education, and personal history illustrate the tension, conflict, and transformation that arise from either accepting or rejecting the value system of a "borderlands." The history in *Lone Star* centers on the meaning a town and its people give to the U.S.-Mexico border and to border crossings. At the same time the film's fluid use of flashbacks breaks down the border between the past and the present. In the fictional Rio County, several characters' stories illustrate the shifting attitudes of various social groups and individuals for whom the U.S.-Mexico border means having an identity and sense of community with the better "us" (whites), while maintenance of the border prevents being overtaken by the lesser "them" (Mexicans and African-Americans).ⁿ¹⁶ The changing methods of policing the U.S.-Mexico border are portrayed through flashback stories of the 1950s when local and state officials were the primary enforcers of the international boundaries, as contrasted with today, where the U.S. side of this boundary is policed by the federal government through the Immigration and Naturalization Service (INS) Border Patrol.

Certain relationships in *Lone Star* serve as metaphors for the ways in which an individual self-constructs borders as a way to shape an identity or role in a community or a relationship. This is best illustrated by the conflict-filled relationship between two female characters, a mother and a daughter. Each represents first and second generation Mexican-American women whose identities have been critically shaped by the value system of the borderlands, a not uncommon situation for millions of [*251] Mexicans, Latinas/os, and Chicanas/os living in the Southwest today. The story of the elder Mercedes Cruz, who is frequently at odds with the views of her daughter Pilar, involves not only a secret crossing of the Rio Grande as an illegal "wetback," but also the loss of a young husband to an untimely and violent death at the hands of the hated Sheriff Wade. Mr. Cruz had served as a "coyote" for Mexicans desiring to cross the border illegally to work in the United States, but he had also underestimated the depth of Wade's powerful rage against those who defied the payoff system for his "protection." The border cost Mercedes Cruz her husband.

Meanwhile, a past secret affair with Wade's possible killer, an Anglo, has produced a complex mystery by which Mercedes comes into some money that enables her to open a restaurant. She gives birth to a daughter who grows up not knowing she is half Anglo and half Mexican, who thinks her father was the unjustly murdered Mr. Cruz, and who does not understand that it was her mother's fear of incest and not racism which destroyed her first love to an Anglo boyfriend. These secrets underlie the tense emotional and intergenerational borders which have arisen between Mercedes and her daughter, Pilar, because each has a different view of the role of the border crossings in their lives. Mrs. Cruz has buried the memories of her life of poverty in Mexico and her river crossing as if the events occurred in another life;ⁿ¹⁷ yet, she

allows her daughter to nurture the belief that her father was a martyr. That story has undoubtedly played a role in the shaping of Pilar's identity as a "Tejana" n18 citizen who questions the borderlands' hypocritical value system. Pilar decries her mother's denial of her heritage and her mother's harsh treatment of recent Mexican immigrants while manager of the town's largest restaurant staffed by Mexican workers. Pilar is a politicized Tejana who views her duties as a high school teacher as requiring her to teach a multicultural history of the United States through which the complex intersection of racism and classism in the Southwest are exposed.

[*252] Age, culture, class, education, and power intersect in a tense scene between the two women, which dramatizes how each sees her "Latina identity" differently from the other. The daughter's conflict with her once-*mojada* n19 mother shows when she questions her mother's tyrannical management of the workers in her large and prosperous Mexican restaurant. Pilar also disapproves of her mother's distrust of her workers and her demand to them that they "speak English only." The mother/daughter tensions illustrate how differently they have experienced and internalized or rejected the dominant value system. In another scene, the daughter is seen arguing with defensive colleagues over the role of multiculturalism in the curriculum. Meanwhile, her own mother has identified with the oppressor's values and has come to believe in the Pdigm of "us/them" based on race, class, language, nationality, and residence status as the shaper of people's identities and their moral worth. Mrs. Cruz's identity critically depends on internalized oppression. She denies her own ties to the life of poverty her workers have left behind, by not only demanding that they speak "English only," but also by summoning the Border Patrol on the *mojados* she often sees running from the river and across her backyard to safety. Mercedes' actions reinforce her acquired identity as the good "American citizen," and that of the *mojados* as the bad and illegal "aliens." It is a scene that illustrates how deeply some immigrants internalize the values and meaning given to physical borders by a dominant culture and region like that of Texas and the southwestern United States, especially where the transition leads to personal success accompanied by gratitude and loyalty to the new sovereign power.

Mrs. Cruz's own river crossing long ago and her acquired identity as a wealthy *Americana* clash in another scene where, instead of summoning the Border Patrol, she provides shelter to a *mojado* she recognizes as one of her valued employees and his intended wife. Seeing the young woman injured and helpless, Mrs. Cruz crosses her self-constructed border--a border which sePtes her identity as a U.S. nationalized citizen and vigilante from her identity as a compassionate Mexican woman who [*253] is unable to barricade her own feelings of compassion and, as a result, ends up providing the immigrants with shelter and aid.

III. SHAPING A VIEW OF LATCRIT SCHOLARSHIP

My purpose here is not to examine all of the themes of borders and transgression or of mythical and inviolable boundaries based on race and class raised by *Lone Star*, but rather to illustrate the impact of this fascinating two-hour film in helping crystallize the essence of the dialogue we had initiated in May, 1996 at the first LatCrit conference. Among those themes, at a minimum, were the meaning of identity politics for Latinas/os, internalized oppression, the black/white race Pdigm and the nature of Latina/o racism, intersectionality, gender, and the politics of history. *Lone Star* helped me formulate some tentative organizing concepts for a discourse which has definitely affected my personal identity as a Latina and my professional identity as a feminist, Latina, lesbian law professor. My expanded vision literally has me looking at the world very differently, not unlike the expanded awareness I recently experienced as I explored the gendered nature of our cultural attitudes by writing about discrimination against transgenders. n20 I am now in touch with a new meaning of the "border concept" at the theoretical level. At the experiential level, the stories of this not-so-fictional town, n21 set in the very state in which I currently reside in, connected my inquiry into the meaning of LatCrit theory to a familiar desire of mine to humanize the law by using stories to critically examine the impact of law and public policy.

Lone Star's examination of the lives of blacks, whites, and browns in Rio County, reminded me of, and also reshaped my understanding of, the Pdigm of white supremacy over black and brown. Again I understood

how white supremacy is capable of nurturing intergroup conflict and hostilities between members of "the oppressed." n22 I saw how the hypocrisy of immigration law enforcement, which has focused so heavily on one border, the Southwest, has managed to escape criticism for its racist nature [*254] and has continued to exist because fear, economic need, and greed allow the system to thrive. The stories of killings, loves lost, and dehumanization in Rio County were all centered on the somewhat peaceful yet tense coexistence of African-Americans, Mexicans, and whites--a coexistence which depended upon the values of greed, racism, white male supremacy, fear, deceit, denial, and struggles for power and control.

IV. WHAT IS LATCRIT THEORY?

At this point I asked myself some of the questions I needed to focus on for this panel's theme; the most critical being, what is LatCrit theory? I see LatCrit theory as an intention to broaden the scope of legal analysis and scholarship so that it reflects the needs of the diverse Latina/o communities of this nation. I also see LatCrit theory as embracing a commitment to multiple consciousness; that is, a recognition that as we define our Latina/o identities, that identity is not essentialist, but rather, is inclusive of our gender and sexuality, culture, class, language, religion, resident status, age, and ability. I then connected these organizing concepts to issues of international human rights, with which I am less familiar but understand somewhat from a feminist perspective, thanks to Berta Hernandez's work. n23 As I thought about how to connect LatCrit theory and international human rights, I borrowed from the way in which feminists have argued that one's views of human rights change when one asks whether a nation can be deemed "good" on human rights if it does not consider issues like sexual harassment or genderrelated bias to be human rights abuses. n24

With these analogies in mind, I queried how these two things, LatCrit theory and human rights, intersect. One could see LatCrit theory as redefining the racial politics of identity for its failure to be sufficiently ethnicized or for conflating the meaning of race discrimination into ethnicity-based discrimination. n25 Some LatCrit scholars may see their mission as centering [*255] the existence of unrecognized social groups in the white male and heterosexist discourse of American legal theory, which has tended to focus more on the black/white race Pdigm. In this vein, LatCrit theory may be seen as trying to validate the concerns of those various U.S. communities, rural and metropolitan, made up in the United States of those people we call (and this list is not exhaustive): Mexican-American, Chicano, Puerto Rican, Cuban, Caribbean, Central American, South American, and more specifically, Guatemalan, Salvadoreno, and Nicaraguense. Similarly, a human rights discourse connected to a LatCrit perspective may change one's views about a nation like the United States when we consider the extent to which Latinas/os, whether residing in the United States legally or not, are discriminated against based on the intersection of those factors which typically characterize a "Latina/o" identity (e.g., ethnicity, race, language, and resident status). n26

I had these formative ideas in mind one day when I opened up the *Austin-American Statesman* daily newspaper and read on the front page about the latest INS raid in Austin which affected about four or five construction companies and nine hundred workers. n27 My musings on LatCrit theory, border crossings, and the usefulness of stories in popular culture to explore the intersection of law and social justice forced me to look at the newspaper article about the INS raid with a fresh and most offended view. I have traveled far in this talk to make a point, which is nothing new to at least one of my copanelists, n28 and the point that the published account of the contemporary INS raid serves more as an effective propaganda tool rather than as a recorder of actual history. I would like to suggest that one goal of LatCrit theory, then, is to humanize the law and policy through more detailed [*256] stories, designed to expose the need for more humane treatment of those Latinas/os known as Chicanas/os, Mexicans, and Mexican-Americans whose lives, especially in the Southwest, have been affected by the INS practice known as the workplace raid.

V. FACES OF DESPAIR IN INS RAIDS

INS raids, when assessed by way of the standard newspaper article with its skimpy details about who, when, and what happened, tells the American voter that Mexicans, at least in Texas, are taking jobs away from good American workers. Accounts of INS raids encourage readers to believe that, even if it is illegitimate to target such workers solely on the basis of their skin colorⁿ²⁹ or their accented English, no sanctions will be imposed on the offending federal agents.ⁿ³⁰ Furthermore, it may appear legal from these published accounts to enforce the law,ⁿ³¹ not on employers, but rather to focus on the workers. In fact, rarely does an account of a typical INS raid reveal the names of the employers who have been caughtⁿ³² violating the Immigration Reform and Control Act's prohibition against hiring a worker without [*257] proof of citizenship or legal residence.ⁿ³³ Nor does any published account ever explore the impact of a raid on the lives of the people caught without legal papers or of the failure of the INS to come up with nondiscriminatory methods of enforcement.ⁿ³⁴ Because there is so little focus on the employers, there is nothing said about the value of educating them on how to spot illegal documents or forcing them to produce proof that they are not engaging in rehires of illegal workers. Of course, never does an account of an INS raid consider the possibility that the INS's approach to apprehending workers, with its heavy focus on the Mexican population and on people with brown skin,ⁿ³⁵ smacks of blatant human rights abuses when the consequences of getting caught are to send a worker off to be detained and deported without due process or time to contact the family he or she is leaving behind. Nothing in contemporary accounts of INS raids ever suggests that there might be a need to put more of a burden on the employer rather than the worker.ⁿ³⁶ In fact, enforcement fines on employers have been substantially relaxed in recent years.ⁿ³⁷

My LatCrit focus has me wondering how a different kind of account of an INS raid would change our views of this nation's compliance with basic human rights if one humanized the same [*258] stories of recent INS raids and of the design and enforcement of INS policy. The typical studies on INS raids offer at best cold, impersonal data which only reports the numbers.ⁿ³⁸ A newspaper article, which typically is full of facts and stories, is totally lacking in that kind of information when it comes to write-ups on an INS raid. One has to wonder who is discouraging the newspapers from accomplishing their usual task of providing the names of employers who are recidivists in the area of noncompliance with INS regulations. What one gets instead are the propagandist versions of INS raids. For example, one newspaper account reports that in Texas over the last three to four months, there have been over 5000 workers who have been arrested and detained by the INS; however, we are provided with no information that would help us learn about the industry that tends to employ undocumented workers.ⁿ³⁹ Over ninety-eight percent of immigrants arrested were Mexican. In Austin, they were one-hundred percent Mexican, and they included Mexican and American legal residents.ⁿ⁴⁰

LatCrit theory encourages me to go further and beyond the reported numerical data. As I stated earlier, I believe many will view the LatCrit perspective as committed to the methodology of storytelling. This humanizing of law and policy can connect the data to reality and the numbers deported to the people and their experiences of pain, humiliation, fear of "la migra,"ⁿ⁴¹ abandonment [*259] of children, economic and health needs, and discrimination. Thus, for example, I want to get at the underlying experiences which define the term "deportation" in a common INS raid. As a LatCrit theorist, it is no longer enough for me to know of the numbers deported; rather, I want to know: who they deported, where they lived and worked, who employed them, how many times have they been deported and later returned to the same employer, how they got back, whom they are leaving behind, how long they have resided in this country, how they were spotted, whether the INS was contacted by the employer's competitors, were they treated well, and were distinctions made on the job site based on skin color and language. These questions, which for me derive from the "critical" aspect of LatCrit theorizing, tell me that the term "deportation" has a life behind it--the life of a worker, a husband, a father, a mother, a child, a community, and so on. It means being kicked out of the place you are currently calling home. It means no way of making arrangements for children whose parents won't be coming home that night. It means no right to pick up some belongings or to go home to pick up valid identification. It means no right to pick up medication if suddenly you are

being put on a bus or a train back to Mexico. It means even being charged for that bus or the train that is now going to take you thousands of miles away from your home.

I would stress as important in the LatCrit perspective the methodology of storytelling or the humanizing approach to our criticism of the status quo and of American law and policy for its neglect of the impact of racism, sexism, and nationalism Latinas/os in the United States. The sources of stories can come from unusual places. As an historian, I typically draw from the works of scholars like Professor Vicki Ruiz, whose studies give us a different focus on the impact of the exclusion of the "casual domestic servant" from the Immigration Reform and Control Act. n42 Her study on Mexicana domestic workers in El Paso, Texas, n43 for example, illustrates the hypocrisy of INS law and policy when one sees how Mexican women can be paid low [*260] wages, sexually harassed, and threatened with deportation by vengeful employers, yet, also constitute a critical component of the local economy, which thrives on the abilities of such employers to be exempt from civil rights sanctions or minimum wage laws.

There are other sources of stories for examining the impact of INS raids on people's lives and on the social fabric of the southwestern United States. One book that is clearly a must for research in this area is Marilyn Davis's *Mexican Voices/American Dreams*. n44 It is a wonderful compilation of ninety oral histories used to examine the patterns of Mexico-U.S. immigration flow as an identity-shaping phenomenon for some Mexican villages and for Mexican, Chicana/o people in the United States. Through Davis's detailed stories on the lives of people who came and went, back and forth, and created transnational communities, one can learn about the reality of the hopes, dreams, and existence of that identity which this society labels "the illegal alien." n45 It is a compelling reading not only because we learn of the reasons why people leave their homes, how they fail and try again, and how they eventually succeed, but also because the stories capture the human dilemmas created by the need to continue the crossings even when one has been deported.

To return momentarily to the film *Lone Star*, there is a truly horrific scene involving the killing of Mr. Cruz, who has been caught driving a truckload of Mexican men across the border into Rio County. One should not believe that the rules Cruz defied, of getting protection for such transports in return for a bribe, are a thing of the past. While it is a brutal picture of the costs of a system which depends on the enforcement of "borders," it also communicates an important reality--that of the high personal risks involved in making these continual crossings. There is no guarantee of a successful crossing, and yet, these people continue to try and try until they are caught. Some eventually stay here, but many others continue to try at the risk of losing their own lives. An Austin paper recently reported the story of a truck which was found abandoned on a Texas highway in the middle of [*261] the summer. Twelve men were found dead, suffocated in a locked truck which had been abandoned by their driver who most likely feared being caught by the Border Patrol. n46 Stories like this demonstrate the need to expose the hypocrisy, the injustice, and the fundamental wrongness of the largely exclusive focus on Mexicans and brown people as the source of the United States' immigration "problems."

I will end with a short story based on my own first-hand experience with the impact of an INS raid. I was educated in Mexico for what would have been my high school years. For two years, I lived in a boarding school which opened its doors to approximately 350 day students. By my third year, the school closed its residency program, and I had to live temporarily in the home of a second cousin in Guadalajara, whom I stayed with for a total of five months. I soon learned that my second cousin's husband was living in California and that he sent money back to the family once a month. I think he worked in a meat packing plant. This was a very small house. There were literally three adults, three teenagers, and six small children sharing three rooms, a courtyard, and a water closet.

One day, my cousin's husband appeared on the front door step without prior notice of his arrival. He had been caught in an INS raid and had nothing on him other than the clothing on his back and a few dollars. I

was only fifteen years old at the time, so I was very naive about the violence connected to INS raids and deportation methods.

My family certainly had contact in the United States with many people who had crossed the border illegally; we sometimes hired the friends of friends who needed jobs doing anything, which in our home, was domestic service. But now I was on the other side of the border. I heard Senor Bolanos describe in painful [*262] detail the experience of being treated, in his words, "no better than cattle." He and hundreds of men had endured bad food, little water, and a long three day train ride to the Mexican interior, which for him was at least close to home. Many people were actually sent thousands of miles away from their original hometowns. They had no money and no ability to contact their families; overall he described it as a very frightening event.

The financial impact was felt in my cousin's household for several months because Senor Bolanos returned to California as soon as he could, but was unable to get his old job back. They became dependent on the money that my family was sending to temporarily board me there, which was about fifty dollars a month. We ate beans and tortillas for a very long time. I got sick. My cousins got sick. I felt the malnutrition even through the next term. I eventually moved out and went to live in a boarding house and convent. I never forgot the feelings of anger and frustration upon learning about my second cousin's plight. When my vacation came up, I told my dad all about it. I excitedly described what I had learned about the Bolanos family's plight. As I spoke, my father looked at me with what appeared to be both resignation and sadness, as he responded, "mija, n47 that's just the way it is. These things go on all the time. You just never hear about it."

I want LatCrit theory on this subject and any subject of concern to Latinas/os, to tell the stories will enlighten, scold, and maybe even change the minds of the politicians and the policy-makers who create and enforce law and policy which is tantamount to an exercise in human rights abuse.

FOOTNOTE-1:

n1 If there is an official date to the beginning of a LatCrit Legal Theory movement and discourse, it would be the gathering of Latina/o law professors at what was quickly termed "LatCrit I" in La Jolla, California on May 2-5, 1996. *See* Colloquium, 2 HARV. LATINO L. REV. (forthcoming 1997).

n2 Feminist history provides another vehicle for demonstrating this intersection and for expanding the scope of analysis on the terms and conditions of employment for workers unable to seek protection under federal laws such as Title VII of the Civil Rights Act of 1964, [42 U.S.C. §§ 2000](#) e-1 to 2000 e-17 (1982), or whose hiring is explicitly exempt from the scope of the Immigration Reform and Control Act of 1986, Pub. L. 99-603, 100 Stat. 3359 (codified in scattered sections of 8 U.S.C.) (e.g., undocumented domestic servants). *See, e.g.,* Vicki L. Ruiz, *By the Day or Week: Mexicana Domestic Servants in El Paso, Texas*, in "TO TOIL THE LIVELONG DAY" AMERICA'S WOMEN AT WORK, 1780-1980, at 269-83 (Carol Groneman & Mary Beth Norton eds., 1987).

n3 *See, e.g.,* [Murillo v. Musegades](#), 809 F. Supp. 487 (W.D. Tex. 1992) (illustrating the intersection of complex litigation, employment, immigration, constitutional torts, and human rights law). *Murillo v. Musegades* addresses the effort to certify a class of Hispanic citizens, students, and staff of a south Texas border town high school against various unknown INS Border Patrol officers who followed, harassed, beat, and otherwise targeted legal residents for

questioning about their English speaking abilities and their nationality, based solely on their brown skin color.

n4 See, e.g. Michael A. Olivas, *The Education of Latino Lawyers: An Essay on Crop Cultivation*, 14 UCLA CHICANO-LATINO L. REV. 117-138 (1994).

n5 See Colloquium, *supra* note 1.

n6 I intentionally adopt the term "queer" as an umbrella term to reflect the theorizing by lesbian and gay scholars as well the emergent discourse of bisexuals and transgenders and to reflect that such a term at all times reflects a sensitivity to diversity on the basis of other factors such as race, class, ethnicity, language, religion, ability, and age. See Francisco Valdes, *Sex and Race in Queer Legal Culture: Ruminations on Identities and Inter-Connectivities*, 5 SO. CAL. REV. L. & WOMEN'S STUD. 25 (1995).

n7 See, e.g., Elvia R. Arriola, *Gendered Inequality: Lesbians, Gays and Feminist Legal Theory*, 9 BERKELEY WOMEN'S L.J. 103 (1994); Elvia R. Arriola, *Faeries, Marimachas, Queens and Lezzies: The Construction of Homosexuality Before the 1969 Stonewall Riots*, 5 COLUM. J. GENDER & L. 33 (1995); Elvia R. Arriola, *Law and the Gendered Politics of Identity: Who Owns the Label Lesbian?*, 8 HASTINGS WOMEN'S L.J. (forthcoming 1997).

n8 I borrow the term used by Angela Harris to describe the scholar's need for sensitivity to the multiple facetedness of our identities. See Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, [42 STAN. L. REV. 581 \(1990\)](#).

n9 Although I recognize that people often divide quite strongly on whether one should employ the term "Latina/o" or "Hispana/o" or "Hispanic," I feel that as scholars we must honor the choice of people in certain communities to self-identify in their politics or identity as "Hispanics." This issue was pressed upon the members of the Planning Committee of the Second Annual LatCrit Conference as we wrote up the tentative agenda for a program which would be attended by many people from the San Antonio, Texas region--a community which draws political strength from the oft-decried and Anglo-imposed term, "Hispanic."

n10 For an excellent example of this accomplishment, see Kevin R. Johnson, *Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender and Class*, [42 UCLA L. REV. 1509 \(1995\)](#). Kevin Johnson personally embodies the intersectional identity as a "white-looking" Latino with an Anglo last name.

n11 See, e.g., Symposium, *Picturing Justice: Images of Law and Lawyers in the Visual Media*, [30 U.S.F. L. REV. 891 \(1996\)](#).

n12 See, e.g., Jerome McCristal Culp, Jr., *Telling a Black Legal Story: Privilege, Authenticity, "Blunders," and Transformation in Outsider Narratives*, [82 VA. L. REV. 69 \(1996\)](#).

n13 See, e.g., Elvia R. Arriola, *"What's the Big Deal?" Women in the New York City Construction Industry and Sexual Harassment Law, 1970-1985*, 22 COLUM. HUM. RTS. L. REV. 21 (1990).

n14 The term "coyote" is shared by the Spanish and English languages to identify night-prowling desert canines. Thus, the term applies to men and women who assist groups of Mexican nationals across the southern U.S.-Mexico border, usually at night through the desert, at often exploitative prices. For colorful descriptions by selected interviewees in an oral history project, of repeated and successful efforts to cross the California-Mexico border on foot, see MARILYN P. DAVIS, *MEXICAN VOICES/AMERICAN DREAMS: AN ORAL HISTORY OF MEXICAN IMMIGRATION TO THE UNITED STATES* (1990).

n15 The "borderlands" as a concept signifies not only the physical topography of the region between Mexico and the United States, but also a metaphoric concept employed by scholars to represent cultural and epistemic sites of contestation. In non-legal writings, one of the first critical voices to use the "border" concept to apply to psychological, sexual and spiritual sites was Gloria Anzaldua. See GLORIA ANZALDUA, *BORDERLANDS, LA FRONTERA: THE NEW MESTIZA* (1987).

n16 The recent militarization of Border Patrol in the southwestern United States, particularly since the 1980s, is at odds with the overall history of the creation and enforcement of the border in United States and Mexico, which has generally been lacking in hostility and has been characterized by the sharing of language, resources and culture. See Margaret E. Montoya, *Border Crossings in an Age of Border Patrols: Cruzando Fronteras Metaforicas*, [26 N.M. L. REV. 1, 3-5 \(1996\)](#). See also TIMOTHY J. DUNN, *THE MILITARIZATION OF THE U.S.-MEXICO BORDER, 1978-1992* (1996).

n17 The idea of swimming to a new life by crossing the river evokes the fundamentalist Christian image of rebirth by way of full-bodied baptisms in lakes, ponds, or ritualistic pools.

n18 *Tejana/o* is a term used to define native Texans of Mexican descent.

n19 In Spanish, "mojada" is the equivalent of the American derogatory label "wetback," long used in Southwestern jargon to stereotype Mexicans, whether legal or illegal, who have crossed into the U.S. territories by swimming the Rio Grande in unpatrolled regions of the nineteen hundred mile U.S.-Mexico border.

n20 See Arriola, *Law and the Gendered Politics of Identity*, *supra* note 7.

n21 On my second viewing of *Lone Star*, a friend who accompanied me, a lifelong Texan, recognized that the film was shot on location, in and around the town of McAllen, Texas.

n22 See Eric Yamamoto, *Rethinking Alliances: Agency, Responsibility and Interracial Justice*, [3 UCLA ASIAN PAC. AM. L.J. 33 \(1995\)](#).

n23 See, e.g., Berta Hernandez-Truyol, *Women's Rights as Human Rights--Rules, Realities and the Role of Culture: A Formula for Reform*, 3 BROOK. J. INT'L L. 605 (1996).

n24 Thus, for example, a gendered perspective changes one's views of a nation which appears to comply with human rights accords, but then becomes the subject of disrepute in a request for political asylum by a female citizen trying to escape an unwanted female circumcision.

n25 Cases in which this conflation appear give rise to odd definitions of why a particular form of discrimination based on race, ethnicity, language, or nationality offend the principles of equality embodied in the U.S. Constitution and civil rights laws. See, e.g., [St. Francis College v. Al-Khazraji](#), [481 U.S. 604 \(1987\)](#) (holding that a person of Arabian ancestry is protected from racial discrimination under Section 1981. The Court drew upon confusing notions of race used in the nineteenth century, thus precluding the usefulness of other studies).

n26 See Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, [77 MINN. L. REV. 269, 278-79 \(1992\)](#).

n27 Enedelia J. Obregon, *In 2 Days, INS Arrests 900 Illegal Workers*, AUSTIN-AM. STATESMAN, Aug. 21, 1996, at A1.

n28 That would be Kevin Johnson, who has made substantial contributions to criticisms of existing immigration law and policy. See, e.g., Kevin Johnson, *Racial Restrictions on*

Naturalization: Another Example of the Intersection of Race and Gender in Immigration, 11 BERKELEY WOMEN'S L.J. 142 (1996).

n29 An occasional journalist notes the racist character of the INS raid. See Enedelia J. Obregon, *Latino Workers Feel Hassled by INS Raids*, AUSTIN-AM. STATESMAN, Aug. 27, 1996, at D1.

n30 Very oddly, one newspaper article reported that the INS determined which firms to target for a raid in Central Texas based on tips from competitors or "comments made by undocumented immigrants." George Rodriguez, *Regional Crackdown by INS Targeting Texas Companies*, DALLAS MORNING NEWS, Sept. 16, 1996, at 25A. One could query whether "comments" refers to the manner (e.g., whether the individual uses accented English or not) in which a worker responds to an INS officer's inquiry about his or her legal status or request for documentation proving he or she can work in the United States.

n31 The relevant law is the Immigration Reform and Control Act of 1986 which was designed to cut back on the hiring of undocumented workers who had either crossed the border illegally or overstayed their visas. See Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (codified in scattered sections of 8 U.S.C.).

n32 The recent reports of raids in Central Texas always refer to numbers of businesses raided and total numbers of undocumented workers arrested, the great majority of whom are from Mexico. Reports of raids in other states, which do not experience as great a number of raids or do not have as frequently targeted employers and workers, do mention names of employers. Compare George Rodriguez, *INS Raids Hundreds of Texas Businesses*, DALLAS MORNING NEWS, Sept. 6, 1996, at 6A, Teri Bailey, *3,679 Illegal Immigrants Caught by INS*, HOUSTON CHRON., Sept. 6, 1996, at A5, and Jackie Crouse, *INS Snares More than 70 Workers*, SAN ANTONIO EXPRESS-NEWS, Aug. 29, 1996, available in 1996 WL 11495168, with *200 Arrested in INS Raids*, TULSA WORLD, Sept. 7, 1995, at N6, with *Illegal Aliens Nabbed in York County*, INTELLIGENCER J. (Lancaster, PA), Feb. 11, 1995, at B4.

n33 [8 U.S.C. § 1324a](#) (a)(1) (1988) ("it is unlawful for a person or other entity to hire, or to recruit or refer for a fee, for employment in the United States-(A) an alien knowing the alien is an unauthorized alien..."). The I-9 form serves as the basis of proper identification, while the notice of intent to fine, Form I-763, is given to an employer when the INS has found a violation of Immigration Reform and Control Act. Charles C. Foster, *Immigration Law and Employer Sanctions*, HOUSTON LAW., Dec. 26, 1988, at 19.

n34 The discriminatory impact of the Immigration Reform and Control Act has been noted. See Michael Crocenzi, *IRCA-Related Discrimination: Is It Time to Repeal the Employer Sanction?*, 96 DICK. L. REV. 673 (1992).

n35 See Obregon, *supra* note 29.

n36 A rare quote captured by an Indianapolis reporter from an employer who hired many illegal immigrants suggested the unfairness of the finger pointing at the laborer: "The employer is more to blame than the alien, because if a job wasn't available here, then people wouldn't drive 1500 miles from Mexico to take it. We all come from immigrant backgrounds, so you can't blame the immigrants." Julie Goldsmith, *State Faces Growing Problem of Undocumented Workers*, INDIANAPOLIS STAR, Aug. 25, 1996, at E1. Of course, despite the official barriers, many employers know that they can hire illegals, and they will do so because quite frequently the terms they use to describe their employees are "loyal," "hard working," "fast learners," "enthusiastic," and "dependable" while many officials look the other way and make it

possible for illegals to be hired in economic sectors where they are most needed (e.g., agribusiness). See DAVIS, *supra* note 14, at 68-93.

n37 The number of employers fined for violating immigration rules has fallen to 1427 in the fiscal year 1995, from 3547 in 1989. See Rodriguez, *supra* note 30, at 25A.

n38 A good example of how the studies fail to do this, and reduce the story of the INS raid to impersonal economic or statistical data which does not discuss the impact on people's lives, is a recent study of the impact of Immigration Reform and Control Act on reducing the flow of illegal immigration or the rise in apprehensions. See Jeffrey S. Passel et al., *Undocumented Migration Since IRCA: An Overall Assessment*, in UNDOCUMENTED MIGRATION TO THE UNITED STATES: IRCA AND THE EXPERIENCE OF THE 1980S, at 251 (Frank D. Bean et al. eds., 1990).

n39 See Obregon, *supra* note 27.

n40 For the numbers used for these informal calculations, see newspapers articles *supra* notes 27, 29, and 32. Formal studies suggest that the majority of undocumented immigrants are from Mexico, although the authors suggest that the non-Mexican component should not be overlooked. Passel, *supra* note 38, at 252. Other critics of INS policy and practice urge that the INS raids only serve publicity purposes and that they are intimately connected to racial violations of civil rights. See Joseph Torres, *Rights Groups Say INS Increased Raids Merely for Publicity*, IDAHO STATESMAN, Oct. 13, 1995, at A17.

n41 "La migra" is a well-known southwestern colloquialism among Spanish-speaking Chicanas/os and Mexicanas/os referring to the INS. Mention of the term can instill tremendous fear among undocumented workers who fear losing their jobs and being sent far away from their homes. Thus, an employer who knows the impact of the term "la migra" can use it as an effective device for controlling workers' behavior and attitude about wages, terms, and conditions of employment.

n42 [8 C.F.R. § 274a.1\(h\)](#) (1995) (providing exemption for "casual employment by individuals who provide domestic service in a private home that is sporadic, irregular, or intermittent."). The irony of such terms as "sporadic" and "irregular" in the statute is that they obscure the socio-economic reality that some local economies could not survive without the dependable and regular maid service or live-in baby-sitters provided by immigrant women employed at poor wages for domestic service. See Ruiz, *supra* note 2.

n43 See Ruiz, *supra* note 2.

n44 See DAVIS, *supra* note 14.

n45 In today's symposium Kevin Johnson has analyzed the detrimental impact of the term "alien" as an operative concept to discuss problems of immigration. See Kevin R. Johnson, *"Aliens" and the U.S. Immigration Laws: The Social and Legal Construction of Nonpersons*, [28 U. MIAMI INTER-AM. L. REV. 263](#) (1996-97).

n46 The violence surrounding the risks of crossing illegally have been noted. In California, the beatings of some immigrants was captured on camera, while a study by the University of Houston revealed that more than three hundred people die annually crossing the border. See Karen Fleshman, *Public Forum: Illegal Immigrants Part of Our Society*, AUSTIN-AM. STATESMAN, May 31, 1996, at A11. The American Friends Service Committee has also recently released a study called "Migrant Deaths at the Texas-Mexico Border, 1985-1994," which details the number, causes and characteristics of the deaths of undocumented migrants who die while trying to cross the U.S.-Mexico border. See *Migrant Deaths at the Texas-Mexico*

Border, 1985-1994, AFSC NEWSLETTER (Am. Friends Serv. Comm., Texas-Arkansas-Oklahoma Headquarters, Austin, Tex.) Apr. 1996, at 6 (on file with author).

n47 "Mija" is a shortened version of "mi hija" which affectionately translates into "my daughter."