
BOOK REVIEW

BEYOND BORDERS: CRIME AND IMMIGRATION

Run for the Border: Vice and Virtue in U.S.-Mexico Border Crossing by Steven W. Bender. New York University Press 2012. Pp. 224.

Governing Immigration Through Crime: A Reader edited by Julie A. Dowling and Jonathan Xavier Inda. Stanford University Press 2013. Pp. 311.

Social Death: Racialized Rightlessness and the Criminalization of the Unprotected by Lisa Marie Cacho. New York University Press 2012. Pp. 224.

*By Harvey Gee**

* Attorney, Federal Defenders of the Middle District of Georgia, Inc. The views expressed herein are not necessarily attributed to any past, present, or future employers.

INTRODUCTION

In 2011, President Obama called for comprehensive immigration reform for the 21st century.¹ Following this call, the Senate worked to pass a bill for immigration reform, but despite this progress pro-immigration reform efforts came to a halt,² after the Republicans gained the majority in the the 2014 mid-term elections, President Obama announced a series of Executive Actions on immigration, which seek to shield up to five million people from deportation, end the Secure Communities program run by U.S. Immigration and Customs Enforcement (ICE), and refocus enforcement on criminals and foreigners who pose security threats.³ However, the Executive Order has been met with heavy Congressional opposition,⁴ and as a result, the future of immigration reform remains unclear.⁵

Deportations are at a historical high; there have been more than two million during the Obama administration alone.⁶ Of those deported, 97 percent were Latino,⁷ and more than 250,000 were Asian immigrants.⁸ Aggres-

¹ THE WHITE HOUSE, BUILDING A 21ST CENTURY IMMIGRATION SYSTEM 3 (2011).

² See David Nakamura & Ed O'Keefe, *Immigration Reform Effectively Dead Until After Obama Leaves Office, Both Sides Say*, WASH. POST, June 26, 2014, http://www.washingtonpost.com/politics/immigration-reform-dead-now-unlikely-until-after-obama-leaves-office-both-sides-say/2014/06/26/945d1210bf4-8e77c63207b_story.htm.

³ See Michael D. Shear, *Obama Moves Ahead on Immigration Overhaul*, N.Y. TIMES, Nov. 21, 2014, at A1; see also Press Release, AALDEF, Statement on Immigration Executive Action (Nov. 20, 2014), available at <http://aaldef.org/press-releases/press-release/aaldef-statement-on-immigration-executive-action.htm>; Press Release, MALDEF, Statement on President Obama's Immigration Accountability Executive Actions (Nov. 20, 2014), available at http://www.maldef.org/news/release/maldef_statement_on_president_obamas_immigration_accountability_executive_action.

⁴ See Joe Klein, *Tackling Immigration Alone*, TIME, Nov. 20, 2014, <http://time.com/3596973/tackling-immigration-alone/>; Shear, *supra* note 3; Michael D. Shepard, et al., *Obama Plan May Allow Millions of Immigrants to Stay and Work in U.S.*, N.Y. TIMES, Nov. 13, 2014, http://www.nytimes.com/2014/11/14/us/obama-immigration.html?_r=0.

⁵ See Zachary A. Goldfarb & David Nakamura, *Obama Pledges to Redirect Immigration Enforcement, Conceding Defeat On Overhaul*, WASH. POST, June 30, 2014, http://www.washingtonpost.com/politics/obama-pledges-to-redirect-immigration-enforcement-conceding-defeat-on-overhaul/2014/06/30/40e69476-0083-11e4-8fd0-3a663dfa68ac_story.html?hpid=z4; Nakamura & O'Keefe, *supra* note 2; David Nakamura, *Obama Meets with Immigration Advocates*, WASH. POST, Mar. 14, 2014, http://www.washingtonpost.com/politics/obama-meets-with-immigration-advocates/2014/03/14/eed6dbcc-aba1-11e3-adbc-888c8010c799_story.html.

⁶ See Sahra Vang Nguyen, *5 Terrifying Facts About Undocumented Asian Americans*, HUFFINGTON POST (Aug. 15, 2014, 4:48 PM), http://www.huffingtonpost.com/shra-vang-nguyen/5-terrifying-facts-about-b_5670005.html; see also Adina B. Appelbaum, Note, *Challenging Crimmigration: Applying Padilla Negotiation Strategies Outside the Criminal Courtroom*, 6 GEO. J.L. & MOD. CRITICAL RACE PERSP. 217, 219 (2014) ("The Obama Administration has deported more immigrants than any previous presidential administration, with a rate double the annual average of President George W. Bush's first term.").

⁷ See Erica Person, *Latinos are Deported Disproportionately More Than Any Other Minority: Report*, N.Y. DAILY NEWS (May 6, 2014, 8:28 PM), www.nydaily.news.com/news/politics/latinos-deported-article-1782202.

sive immigration policies, such as the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)⁹ and the Anti-Terrorism and Effective Death Penalty Act (AAEPPA), make it mandatory for immigrants with lawful permanent resident status to be removed from the United States because of a prior criminal conviction.¹⁰

Scholars and activists are working to address the challenges Asian Americans face in the criminal justice system,¹¹ as there has been a distinct rise in deportations of Asian immigrants and refugees. Since 1998, the federal government has served approximately 13,000 deportation orders against residents from Cambodia, Laos, and Vietnam.¹² Many migrated to the United States as refugees after the Vietnamese War without access to social services, medical care, and employment opportunities.¹³

Facing this reality, three recent books take divergent approaches to the intimate connection between immigration and criminal law—a nexus often referred to as “crimmigration.” Collectively, the authors engage in an ongoing and necessary dialogue about the interconnectedness between race, crime, and immigration. In *Run for the Border: Vice and Virtue in U.S.-Mexico Border Crossing*,¹⁴ Steven Bender, Professor of Law at Seattle University School of Law, argues that comprehensive border reform is necessary; which requires moving away from the failed United States preoccupation with interdiction strategies. He notes that American employers must accept some blame for exploiting cheap labor.¹⁵ As an alternative, Bender focuses on the border and what he refers to as the “U.S. dehumanizing policies,” in his work he dispels the erroneous perception that immigrants lack

⁸ See Nguyen, *supra* note 6.

⁹ In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. See Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, 110 Stat. 3009-546. In doing so, Congress created several new terms of art, one of which was “removal.” See *Rojas-Reyes v. INS*, 235 F.3d 115, 120 (2d Cir. 2000). The creation of the term “removal” eliminated the previous legal distinction between deportation and exclusion proceedings, merging them into one unified procedure. See *United States v. Lopez-Gonzalez*, 183 F.3d 933, 934 (9th Cir. 1999).

¹⁰ Elizabeth R. OuYang, *Immigrants with Prior Criminal Record Risk Removal from the United States—Impact on Asian Immigrants*, 18 *ASIAN AM. L.J.* 157, 157–58 (2011).

¹¹ See Aurora de Peralta, *Panel Discusses AAPIs and Mass Incarceration*, *ASIAN FORTUNE* (June 18, 2014), <http://www.asianfortunenews.com/2014/06/panel-discusses-aapis-and-mass-incarceration/>; Kenneth Quinnell, *Shattering the Model Minority Myth: Mass Incarceration and Asian and Pacific Islanders*, AFL-CIO (May 20, 2014), <http://www.aflcio.org/Blog/Political-Action-Legislation/Shattering-the-Model-Minority-Myth-Asian-Pacific-Islanders-and-Mass-Incarceration>.

¹² See Quinnell, *supra* note 11.

¹³ Quinnell, *supra* note 11.

¹⁴ STEVEN W. BENDER, *RUN FOR THE BORDER: VICE AND VIRTUE IN U.S.-MEXICO BORDER CROSSINGS* 139–45 (2012).

¹⁵ *Id.*

virtue.¹⁶ His book is grounded in reform proposals for immigration and drug policies.

Editors Julie Dowling, Assistant Professor of Latina/Latino Studies at the University of Illinois, Urbana, and Jonathan Xavier Inda, Associate Professor of Latina/Latino Studies at the University of Illinois, draw attention to the devastating impact that heavy policing has had on immigrant communities in their aptly titled anthology *Governing Immigration Through Crime: A Reader*.¹⁷ This work is a collection of important contributions to the scholarly literature on the intersection of criminal law and immigration enforcement.

In *Social Death: Racialized Rightlessness and the Criminalization of the Unprotected*, Lisa Marie Cacho, Associate Professor of Latina/Latino and Asian Americans Studies, at the University of Illinois, Urbana-Champaign, argues that the criminal justice system determines a social group's value.¹⁸ To prove her thesis, she traces the dehumanization of immigrants in the United States and focuses on the criminalization of immigrants and other groups.¹⁹ She argues prevailing stereotypes enable the practices and processes of criminalization.²⁰

The volumes deserve consideration because the works connect issues of race, crime, and immigration. This is a good starting point. However, none of the authors pinpoint precisely how to resolve the problems inherent in immigration enforcement, and more broadly, the American criminal justice system. Perhaps this highlights that there are no easy answers. The books bring these important issues to the center stage for a general audience so that readers recognize the historical and contemporary relationship between criminal and immigration law, and an ever-expanding intersection between the criminal justice system and the immigration court system.

The renewed interest in this phenomenon may have been sparked by the Supreme Court's recent decision in *Padilla v. Kentucky*, which held that constitutionally competent counsel must advise his or her client of the potential for deportation when the immigration consequences are clear.²¹ Justice Stevens emphasized the plight immigrants face in criminal prosecu-

¹⁶ *Id.*

¹⁷ GOVERNING IMMIGRATION THROUGH CRIME: A READER (Julie A. Dowling & Jonathan Xavier Inda eds., 2013).

¹⁸ LISA MARIE CACHO, SOCIAL DEATH: RACIALIZED RIGHTLESSNESS AND THE CRIMINALIZATION OF THE UNPROTECTED 60 (N.Y. Univ. Press 2012).

¹⁹ *Id.* at 5.

²⁰ *Id.* at 4–5.

²¹ *Padilla v. Kentucky*, 130 S.Ct. 1473, 1486 (2010).

tion.²² Counsel cannot remain silent, nor can they merely refer a defendant to seek advice from an immigration attorney; rather, when the immigration consequences are clear, counsel must advise his client of those consequences.²³

Against this backdrop, this book review briefly explores the common themes of the three volumes, and uses them as a foundation for a broader discussion to address the interplay between race, crime, and immigration.

I. U.S.-MEXICO BORDER CROSSINGS

Run for the Border takes a descriptive approach. Bender writes for readers already familiar with the issues, or casual readers interested in social justice. The volume is structured in a linear way and written in clear prose. Bender succeeds in offering a pragmatic framework for a comprehensive and compassionate border policy that is informed by the relationship between United States and Mexico for the past 150 years. The book is divided into four logical sections: running for the border to evade law enforcement; economic motivations for running across the border to Mexico; economic reasons for running to the United States; and a framework for comprehensive border reform.

In one of the most significant parts of *Run for the Border*, Bender presents his modest proposal for the reformation of immigration policy and calls for a more comprehensive and compassionate border policy which respects the shared economic and cultural legacy of the United States and Mexico.²⁴ According to Bender, the burden of immigration reform should be shared by both countries,²⁵ and as a first step, the reform would require abandoning the perpetuation of the false belief that Mexicans are blameworthy for all negative consequences associated with their entry to the United States.²⁶

Bender dispels the erroneous media portrayal of immigrants as dangerous threats to the United States and its resources.²⁷ As these false perceptions about immigrants affects border policy. Bender proceeds to demonstrate how this negative imagery fails to separate the virtue of immigrant

²² *Id.* at 1478.

²³ *Id.* at 1486.

²⁴ BENDER, *supra* note 14, at 139–40.

²⁵ BENDER, *supra* note 14, at 150.

²⁶ BENDER, *supra* note 14, at 144–45.

²⁷ *See* BENDER, *supra* note 14, at 142.

laborers from the murderous drug cartels,²⁸ and he points out that this conflation encourages restrictive border enforcement.²⁹ It also creates a xenophobic effect, which is exacerbated by studies about the economic costs of immigration.³⁰ These studies focus on costs for public services, such as education, and downplay economic contributions offered by families through their industriousness and entrepreneurship.³¹

Xenophobia is not a new belief. The United States has a long history of excluding and deporting the immigrant poor, as reflected in the many bars against racial minorities, political dissidents, the poor, and alleged criminals.³² Contemporary immigration issues came to light during the 1990s, when the backlash against immigrants surfaced in efforts to close the borders, and in controversies over bilingual discrimination, bilingual ballots, access to public school education, non-emergency health care from state and local government providers, and government social services. These controversies reflect a larger debate over the role of languages other than English in public life.³³ For example, California's Proposition 187 illuminated the disjuncture between racialized politics and the purported race-neutral immigration laws.³⁴ Under Proposition 187, undocumented immigrants, primarily Latinos and Asians, were denied access to public schools, in addition to virtually every other public benefit. Eventually, then Governor Gray Davis vetoed Proposition 187.³⁵ Asian and Latino immigrants are targeted through harassment, intimidation, and racial profiling, and have become the scapegoats for the United States' economic troubles.³⁶

The virtues of immigrant labor are multi-leveled. On one level, Bender argues that Mexican-migrant laborers contribute to the United States labor market. Historically, American employers have relied on low-wage immigrant workers from Mexico. In turn, better wages in the United States will

²⁸ See BENDER, *supra* note 14, at 3–4.

²⁹ BENDER, *supra* note 14, at 144.

³⁰ See BENDER, *supra* note 14, at 27–28.

³¹ See BENDER, *supra* note 14, at 27–28.

³² See KEVIN R. JOHNSON, *OPENING THE FLOODGATES: WHY AMERICA NEEDS TO RETHINK ITS BORDERS AND IMMIGRATION LAWS* 52–54 (2007).

³³ Cf. *id.* at 150 (discussing Proposition 187 as a milestone, demonstrating the volatility of Immigrant usage of public benefits).

³⁴ *Id.* at 150.

³⁵ *Id.*; see Nicole E. Lucy, *Mediation of Proposition 187: Creative Solution to an Old Problem? Or Quiet Death for Initiatives?*, 1 PEPP. DISP. RESOL. L.J. 123, 124 (2001); Terri Hardy, *Davis Seeks Mediation on Prop. 187*, HIGHBEAM RESEARCH (Apr. 16, 1999), <http://www.highbeam.com/doc/1G1-83609151.html>.

³⁶ See JOHNSON, *supra* note 31, at 61; Solange Uwimana, *Laura Ingraham Finds Something Else To Blame On Immigrants*, MEDIA MATTERS FOR AM. (Nov. 7, 2014 7:34 PM), <http://mediamatters.org/mobile/blog/2013/11/07/laura-ingraham-finds-something-else-to-blame-on/196795>.

continue to serve as a tremendous lure to Mexicans and other Latinos/as immigrants, on the lower end of the economic spectrum.³⁷ He reminds readers that oftentimes poor Mexican migrants enter into the United States seeking only to survive.³⁸

Additionally, corporations need immigrants. In this regard Bender probes the economic motivations of United States corporations, which are lured by the promise of cheaper costs of living and of doing business in Mexico. Bender also surveys the economic motivations for southbound border runs by United States residents,³⁹ and this groundwork leads to an exploration of the symbiotic relationship between corporations and immigrants.⁴⁰ He cautions that a race to the bottom for wages and working conditions should be avoided.⁴¹ As an alternative to the continuing arming the borders, Bender proceeds to offer a proposal for relaxing border restrictions while maintaining vigilance on the labor front for employers that take undue advantage of fluctuations in the labor market.⁴²

True comprehensive border reform goes beyond border-security-centric proposals, Bender says. He suggests that higher walls, more border officers, and using more advanced technology are not the answers.⁴³ The continual failure of the United States' interdiction strategies is not an explanation either. As an alternative, Bender first encourages bilateral cooperation as a foundation for comprehensive border policy in the areas of fugitive crossings, terrorism, human trafficking, and drugs.⁴⁴ In particular, Bender asserts that concurrent patrolling of the border zone for drug smugglers and undocumented immigrants, along with internal United States raids on undocumented workers and drug dealers will help solve some of these issues.⁴⁵

Second, Bender asserts that these changes to immigration and drug trafficking policies would only bring the United States back to the status quo of a lack of comprehensive and cooperative border strategy.⁴⁶ Bender stresses that it is necessary to reform drug policies given the recent escalation in

³⁷ JOHNSON, *supra* note 31, at 139.

³⁸ JOHNSON, *supra* note 31, at 3.

³⁹ JOHNSON, *supra* note 31, at 137–38.

⁴⁰ JOHNSON, *supra* note 31, at 139.

⁴¹ BENDER, *supra* note 14, at 149.

⁴² BENDER, *supra* note 14, at 149.

⁴³ BENDER, *supra* note 14, at 139.

⁴⁴ BENDER, *supra* note 14, at 150–52.

⁴⁵ BENDER, *supra* note 14, at 144.

⁴⁶ BENDER, *supra* note 14, at 144.

violence and danger.⁴⁷ The escalating drug has reached Mexico and the United States and its arrival has manifested in threats of violence, impacting investment capital and tourism flowing between Mexico and the United States.⁴⁸ As a result, this violence and disarray entices Mexican families to flee across the border for safety.⁴⁹ America's insatiable appetite for drugs is at the core of the drug war, and it causes innocent people to die, while imposing serious financial costs to Mexico.⁵⁰ From Bender's perspective, an ideal drug reform proposal would couple decriminalization of certain drugs with increased regulation of addiction treatment programs.⁵¹

Third, Mexico has demonstrated a willingness to boldly legislate in the face of wrenching drug warfare by decriminalizing user amounts of drugs. However, its militarization of the drug war has failed to stop the flow of illicit drugs into the United States, and has actually spawned violence from the drug cartels.⁵²

Fourth, Mexico and the United States can realize their interconnectedness through this process. Bender claims that a mutual cross-border policy-making would reduce the demand for drugs, and a mutual drug policy and would ensure community safety on each side of the border.⁵³

Fifth, Bender, in his idealism, suggests that Americans must exercise moral abstinence as a strategy. He advocates that users of illicit drugs in the United States should be socially responsible and acknowledge the role they are playing in fueling the drug war in Mexico, and stop using drugs. However, Bender concedes that this would be a daunting task because drug supply chains are difficult to identify and Americans seem to have little regard for the fate of Mexicans killed by drug cartels.⁵⁴

In sum, *Run for the Border* does have noticeable weak areas. For example, Bender fails to include specific criminal cases. Nevertheless, the book offers probing analysis, and his arguments are well thought out and persuasive. There is something to learn from his analysis of the interconnectedness of these issues.

⁴⁷ BENDER, *supra* note 14, at 155.

⁴⁸ BENDER, *supra* note 14, at 155.

⁴⁹ BENDER, *supra* note 14, at 155.

⁵⁰ BENDER, *supra* note 14, at 155.

⁵¹ BENDER, *supra* note 14, at 150.

⁵² BENDER, *supra* note 14, at 170.

⁵³ BENDER, *supra* note 14, at 170.

⁵⁴ BENDER, *supra* note 14, at 171.

II. CRIME AND IMMIGRATION: AN UNCOMFORTABLE KINSHIP

The second book, Dowling and Inda's anthology, *Crimmigration: Governing Immigration Through Crime*, provides a diverse and rich sampling of interdisciplinary social science writings about the governing of immigration through crime.⁵⁵ Various contributors and critical theorists of immigration, drawn from anthropology, sociology, law, ethnic studies, criminology, urban planning, communication, political science, focus on how discouraging illegal border incursions while controlling "troublesome" individuals already inside the nation have been the main solutions to the "problem" of undocumented immigration to the United States. *Crimmigration* offers a descriptive approach to the issues in a style that is more academic compared to the other two books.

The reader is divided into five broad parts; each considering contrary criminalization practices. The first part discusses the criminalization of the immigration process; the second part analyzes governmental and civilian efforts to police the border; the third part covers the policing of illegal immigration within United States borders. Part Four addresses detention and deportation mechanisms, and Part Five discusses collective efforts of immigrants protesting mass deportation and immigration.

Crimmigration covers procedural and substantive law and focuses on the specific issues of deportation and inadmissibility related to criminal conduct. The work addresses topics such as mandatory detention, aggravated felonies, crimes of moral turpitude, and the Sixth Amendment right to counsel. It also discusses current federal, state and local governmental immigration policies, including workplace raids, cooperation between local law enforcement and the Department of Homeland Security and local ordinances aimed at businesses and employers.

The insightful collection of writings draws attention to the tremendous and deleterious impact that heavy policing has had on the immigrant community. Enhanced regulation of the physical border makes unauthorized crossing more difficult and sometimes causes migrant deaths.

All too often, authorized migrants have been constructed as criminal "illegal" immigrants who harm the well-being of American citizens and threaten the security of the nation.⁵⁶ Since the early 1990s, the federal government has engaged in a major boundary-control offense that shapes the

⁵⁵ GOVERNING IMMIGRATION THROUGH CRIME: A READER, *supra* note 17.

⁵⁶ GOVERNING IMMIGRATION THROUGH CRIME: A READER, *supra* note 17, at 7.

conduct of illegal immigrants in order to deter them from entering the country.⁵⁷ Federal authorities expanded border enforcement to manage the undocumented immigrant “problem.” The editors suggest that federal authorities construe the undocumented migrants as instruments of harm to the well-being of American citizens and employ measures to govern them that have become extremely exclusionary and punitive.⁵⁸ Crime and police measures increasingly regulate unauthorized migrants; crime and punishment have become the preferred means for governing the undocumented.⁵⁹ Meanwhile, there is little being done to police the working conditions of undocumented migrants.⁶⁰

Among the highlights are the essays by Jules Stumpf, Jennifer Chacon, David Hernandez, and Rogelio Saenz. In “*The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*,” Jules Stumpf examines the nature of the laws designed to manage the “threat” of immigrants to demonstrate how much the growing merger of immigration and criminal law results in a stark resemblance of criminal law enforcement.

The government increasingly addresses previously handled immigration violations and civil matters as criminal matters.⁶¹ Misdemeanors could result in mandatory deportation. The civil immigration process has evolved and now mirrors the criminal process. At the root of this issue is the sense that membership in American society is divided between insiders and outsiders.⁶² Stumpf’s thesis is straightforward: the crimmigration merger has helped to create a society in which noncitizens, identifiable by “race and class are physically, politically and socially cast out of the mainstream community.” Stumpf argues that “[c]riminal law and immigration law primarily regulate the relationship between the state and the individual,”⁶³ thereby determining who belongs, and who is excludable.⁶⁴ Working in tandem, criminal exclusion creates societal segregation, while immigration

⁵⁷ GOVERNING IMMIGRATION THROUGH CRIME: A READER, *supra* note 17, at 7.

⁵⁸ GOVERNING IMMIGRATION THROUGH CRIME: A READER, *supra* note 17, at 7.

⁵⁹ Jonathan Xavier Inda & Julie A. Dowling, *Introduction* to GOVERNING IMMIGRATION THROUGH CRIME: A READER 1, 26 (Julie A. Dowling & Jonathan Xavier Inda eds., 2013).

⁶⁰ *Id.*

⁶¹ Juliet P. Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, in GOVERNING IMMIGRATION THROUGH CRIME: A READER 59, 60 (Julie A. Dowling & Jonathan Xavier Inda eds., 2013).

⁶² *Id.*

⁶³ Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, in GOVERNING IMMIGRATION THROUGH CRIME: A READER, *supra* note 59, at 61.

⁶⁴ Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, in GOVERNING IMMIGRATION THROUGH CRIME: A READER, *supra* note 59, at 67.

policies exclude the unwanted from the national territory⁶⁵ According to Stumpf, “[t]he role of membership theory in shaping the convergence of immigration and criminal law seems likely to lead to a downward spiral of protections for non-members and a significant constriction of the definition of who is a member.”⁶⁶

Building on Stumpf’s contribution, in *The Security Myth: Punishing Immigrants in the Name of National Security*, Jennifer Chacon’s focuses on the reconfiguration of immigration law in the post 9/11 context, and argues that policing the border has become conflated with the “war on terror,” which provides the primary justification for immigration law making and enforcement since the 9/11 attacks.⁶⁷ During the intervening the period, a perception has emerged concerning foreigners seeking entrance to the United States to commit acts of terrorism, and how the Department of Homeland Security must guard against the threat of terrorism.⁶⁸

Chacon suggests that during periods of national crisis, the federal government has historically mass incarcerated or removed large numbers of foreign nationals or “foreign” groups based on their national, racial, ethnic, or religious background.⁶⁹ Consequently, civil liberties are narrowed in the name of national security. Sweeping changes in immigration policy allow the government to target Middle Eastern immigrants and Muslims, causing them to be fearful of deportation and prosecution. Non-citizens are routinely detained for violations of immigration laws or criminal conduct.⁷⁰ Chacon warns against a two-tier system of criminal justice administration, one that does not interpret immigration policy and security policy as the same.⁷¹ She argues that a new approach is necessary.⁷²

David Hernandez in *Pursuant to Deportation: Latinos and Immigrant Detention*, echoes these sentiments in his work exploring the contemporary

⁶⁵ Stumpf, *The Cimmigration Crisis: Immigrants, Crime, and Sovereign Power*, in GOVERNING IMMIGRATION THROUGH CRIME: A READER, *supra* note 59, at 67.

⁶⁶ Stumpf, *The Cimmigration Crisis: Immigrants, Crime, and Sovereign Power*, in GOVERNING IMMIGRATION THROUGH CRIME: A READER, *supra* note 59, at 75.

⁶⁷ Jennifer M. Chacon, *The Security Myth: Punishing Immigrants in the Name of National Security*, in GOVERNING IMMIGRATION THROUGH CRIME: A READER 77, 77–78 (Julie A. Dowling & Jonathan Xavier Inda eds., 2013).

⁶⁸ *Id.* at 78.

⁶⁹ *Id.* at 77.

⁷⁰ *Id.* at 91–92.

⁷¹ *Id.* at 93.

⁷² *Id.*

terrain of Latino immigrants detention after September 11th.⁷³ In doing so, Hernandez highlights the racialized features of immigrant detention, especially the lasting effects on Latino noncitizens and citizens. Due to racialization, America-Latino citizens also became linked to Latino immigrants via their historical criminalization as “illegals.”⁷⁴

As a result of the 9/11 “War on Terror,” additional legal and administrative changes have directly affected United States immigration policy.⁷⁵ Hernandez considers the detention of noncitizens in the United States, and their entrapment in a variety of racialized groups in distinct political and social contexts.⁷⁶ He illustrates the convergence of national security, race and non-citizenship, and how this has created systematic arrangements and allowed the institutionalization of racism in detention policy.⁷⁷

Next, Rogelio Saenz, in *Arizona’s SB 1070: Setting Conditions For Violations of Human Rights Here*, examines the passage of stringent state voter identification laws that prevent many minorities and immigrants from accessing the ballot box, and state immigration laws designed to apprehend and deport undocumented immigrants. For example, he examined Arizona’s S.B. 1070, which implicated human rights violations in the state.⁷⁸

Governor Jan Brewer signed S.B. 1070 on April 23, 2010 in an attempt to encourage her state to cooperate with federal immigration agencies in enforcing federal law. As originally drafted, the law made it unlawful to transport an “alien” in Arizona, and subjected the means of transportation to immobilization or impounding. The bill also granted law enforcement agents the ability to verify a person’s immigration status in the course of “lawful contact” when “practicable,” if there is “reasonable suspicion” that the person is an undocumented immigrant.⁷⁹ Opponents of the law argued that the passage of this law would result in increased racial profiling and

⁷³ David Manuel Hernandez, *Pursuant to Deportation: Latinos and Immigrant Detention*, in GOVERNING IMMIGRATION THROUGH CRIME: A READER 199, 199 (Julie A. Dowling & Jonathan Xavier Inda eds., 2013).

⁷⁴ *Id.* at 201.

⁷⁵ *Id.*

⁷⁶ *Id.* at 210–11.

⁷⁷ *Id.* at 210–11.

⁷⁸ See Rogelio Saenz et al., *Arizona’s SB 1070: Setting Conditions for Violations of Human Rights Here and Beyond*, in GOVERNING IMMIGRATION THROUGH CRIME: A READER 165, 169–70 (Julie A. Dowling & Jonathan Xavier Inda eds., 2013); see also Denny Chan, Note, *An Invisibility Cloak: The Model Minority Myth and Unauthorized Asian Immigrants*, 3 U.C. IRVINE L. REV. 1281, 1284 (2013) (arguing SB 1070 is an example of a legislative bill that is race neutral on its face but passed with discriminatory intent or will create disparate effects on Latino migrants).

⁷⁹ Saenz et al., *Arizona’s SB 1070: Setting Conditions for Violations of Human Rights Here and Beyond*, in GOVERNING IMMIGRATION THROUGH CRIME: A READER, *supra* note 77, at 168–70.

harassment because it gave border control agents the authority to question individuals as part of a “lawful stop” about their immigration status.⁸⁰

Litigation followed, and the Supreme Court eventually invalidated most of S.B. 1070.⁸¹ Still, Saenz suggests that “the ‘long arm’ of S.B. 1070 reaches beyond the confines of Arizona, and warns that S.B.1070 will not be the last effort to criminalize the presence and activities of undocumented immigrants in other states.”⁸²

The rise of anti-immigrant sentiment is coupled with an increase of enforcement. Saenz humanizes the issues when he talks about how the already marginalized and distressed undocumented immigrants suffer increased strain when the numbers of raids and deportations increase. The present heightened enforcement climate has resulted in massive detention, incarceration and deportation of immigrants.⁸³ But immigrants are pushing back. The undocumented individuals refuse to accept the status quo, and steadfastly contest the criminalization and exclusion of undocumented migrants.⁸⁴ Migrants and their allies have engaged in efforts to actively resist and have forcefully pushed back against the expanded boundaries of enforcement.⁸⁵ They also brought legal challenges to halt such practices as the charging of undocumented workers with identity theft, and workers have taken to the streets.⁸⁶

Like *Run to the Border*, the anthology has its shortcomings. Noticeably, it lacks a section analyzing the Secure Communities program run by U.S. Immigration and Customs Enforcement (ICE), which requires the fingerprints of all individuals booked into local jails to be sent to the Federal Bureau of Investigation and the Department of Homeland Security.⁸⁷ This issue may not be moot depending on the outcome of the likely battle between the White House and Congress over immigration reform. Although it mentions the topic in passing, the anthology could have covered the continuing

⁸⁰ See *Arizona v. United States*, 132 S. Ct. 2492, 2515 (2012).

⁸¹ *Id.*

⁸² Saenz et al., *Arizona's SB 1070: Setting Conditions for Violations of Human Rights Here and Beyond*, in *GOVERNING IMMIGRATION THROUGH CRIME: A READER*, *supra* note 77, at 169.

⁸³ Saenz et al., *Arizona's SB 1070: Setting Conditions for Violations of Human Rights Here and Beyond*, in *GOVERNING IMMIGRATION THROUGH CRIME: A READER*, *supra* note 77, at 195.

⁸⁴ Inda & Dowling, *Introduction* to *GOVERNING IMMIGRATION THROUGH CRIME: A READER*, *supra* note 57, at 3.

⁸⁵ Inda & Dowling, *Introduction* to *GOVERNING IMMIGRATION THROUGH CRIME: A READER*, *supra* note 57, at 24.

⁸⁶ Inda & Dowling, *Introduction* to *GOVERNING IMMIGRATION THROUGH CRIME: A READER*, *supra* note 57, at 24–26.

⁸⁷ See *Secure Communities*, U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, <http://www.ice.gov/secure-communities> (last visited Apr. 18, 2015).

issue of racial profiling in-depth because it is inextricably intertwined with immigration enforcement.⁸⁸ Police often target Latinos and others non-whites by racial profiling on the roadways.⁸⁹ With that in mind, the anthology is not as comprehensive and timely as one might expect given its title and the many scholarly contributions on crimmigration.

III. RACIALIZED CRIMINALIZATION

Social Death is part of New York University Press' Immigration and History as American History series. It takes a socio-historical-legal contextual approach, interwoven with personal anecdotal discussions. Cacho writes for a general audience and presents her ideas orderly. She successfully challenges the status quo of developing a criminalized population of color, to offer an understanding of personhood. The book is divided into four sections covering white entitlement; racialized gay violence; the conflation of terrorists and illegal immigrants; and the tensions between immigrant rights and civil rights. Amongst the strengths of *Social Death* is its ability to consider and reimagine analytical frames for immigration, race and crime.

More so than the other two volumes, Cacho's work analyzes racial stereotyping beyond the traditional black/white racial scheme. For example, *Social Death* discusses Asian Americans in the context of the immigration dialogue. This is an important inclusion because, until the past decade or so, similar to the affirmative action debate, the conversation about immigration excluded Asian Americans because of the model minority myth. This myth has created a stereotype of Asian Americans as one monolithic ethnic group that has achieved success through education and hard work without the assistance of governmental benefits. The myth masks the reality that Asian Americans are still affected by discrimination.⁹⁰

Along similar lines, the consideration of Asian Americans in *Social Death* demonstrates that the immigration detention has never been a white/brown issue; even through mainstream America may tend think of

⁸⁸ See Roger G. Dunham & George Wilson, *Prejudice and Police Profiling*, in CRITICAL RACE REALISM: INTERSECTIONS OF PSYCHOLOGY, RACE, AND LAW 246 (Gregory S. Parks et al. eds., 2008) (explaining the practice of police officers relying on race inappropriately as a criterion in professional decision-making).

⁸⁹ See Kevin R. Johnson, *How Racial Profiling in America Became the Law of the Land: United States v. Brignoni-Ponce and Whren v. United States and the Need for Truly Rebellious Lawyering*, 98 GEO. L.J. 1005, 1009 (2010).

⁹⁰ See Harvey Gee, *Changing Landscapes: The Need for Asian Americans to be Included in the Affirmative Action Debate*, 32 GONZ. L. REV. 621, 638-39 (1997).

immigration issues as only affecting Latino/a immigrants.⁹¹ To the contrary, immigration has influenced the multicultural nature of the United States and shaped the national civil rights agenda. In fact, African and Haitians seeking to come to the United States, for example, historically have been subject to particularly harsh treatment by the federal government.

Like Latino/a immigrants, Asian immigrants face challenges in the labor force: language barriers, exploitative working conditions, immigration status vulnerabilities, and restrictions in access to public services and benefits. They hold jobs in the restaurant, garment, domestic work, and construction industries.⁹² Undocumented Latino/as and Asians work in the United States in an underground economy often for low wages.⁹³ Non-citizens face disparate treatment in pretrial proceedings and adjudication because of their immigration status.

The thrust of *Social Death* is found in its illustration of how Southeast Asian refugee youth from lower economic backgrounds, who grew up in the United States, are especially vulnerable to draconian immigration policies.⁹⁴ Central to analysis is the case of the indefinite detention of Kim Ho Ma for his participation in a gang-related murder.⁹⁵ Cacho suggests that the criminalizing of Vietnamese as criminal aliens is embodied in Cambodian refugees. Ma's case exemplifies the lingering effects of the Vietnamese refugee resettlement in neighborhoods with high unemployment and poverty rates along with high incarceration rates during the 1980s.⁹⁶

Ma arrived in the United States with his family in 1985 as a state-sponsored refugee member when he was 7 years old.⁹⁷ Leaving Cambodia's killing fields as a young child, the Cambodian language and culture were not familiar to Ma.⁹⁸

Members of the Asian Boyz gang in Seattle, Washington ambushed and murdered twenty year-old Qun Roo Chay, a drug dealer. Ma was among four young adults arrested for his murder, and he was tried as an adult under Washington law. As Cacho explains, Ma was criminalized as a member of

⁹¹ See Chan, *supra* note 77, at 1281 (arguing that Asian Americans are excluded from the current conversation on immigration).

⁹² See Chan, *supra* note 77, at 1296.

⁹³ See Chan, *supra* note 77, at 1296.

⁹⁴ See CACHO, *supra* note 18, at 65.

⁹⁵ CACHO, *supra* note 18, at 29.

⁹⁶ See *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095 (9th Cir. 2001).

⁹⁷ See CACHO, *supra* note 18, at 66.

⁹⁸ Bill Ong Hing, *Detention to Deportation – Rethinking the Removal of Cambodian Refugees*, 38 U.C. DAVIS L. REV. 891, 893 (2005).

the Local Asian Boyz, and one of two shooters. Even though Ma did not actually shoot and kill Chay, the jury found him culpable for the victim's death. Ma received a gang enhancement and sentenced to thirty-eight months in person. He was released in 1997 after serving twenty-six months.⁹⁹

Unfortunately for Ma, he was convicted in 1996 and his crime was considered an "aggravated felony" under AEDEPA and IIRIRA, because he was a noncitizen and his sentence was longer than one year.¹⁰⁰ Cacho suggests that the mainstream perceived Ma's status and identity as a noncitizen, as one "who already gave up any right to citizenship by breaking the 'rule of law.'"¹⁰¹ She argues that people use Ma and others like him—criminal alien-U.S. gang member-Cambodian refugees—in securing support for more punitive immigration laws.¹⁰²

To Ma's dismay, he was never released because Cambodia would not take him. Without a repatriation agreement with the United States at the time he was convicted, he had no chance.¹⁰³ In limbo, Ma had no release date, and was held indefinitely along with a few thousand other immigrants who were issued orders of removal but who could not be removed to another country.¹⁰⁴ At issue was the legality of his indefinite detention and the Cambodian government's refusal to take deportees back.¹⁰⁵ Ma litigated against the Immigration and Naturalization Service (INS) for years, and his case eventually reached the Supreme Court. In the consolidated case of *Zadvydas v. Davis, et al.*, and *Ashcroft v. Ma*,¹⁰⁶ the Court held that INS could not detain immigrants indefinitely under an order of deportation whom no other country will accept. No detainees could be held for longer than six months unless deportation was in the foreseeable future, or there were special circumstances that warranted a longer detention.¹⁰⁷ However, this victory was short-lived because in March 2002, Cambodia signed a

⁹⁹ CACHO, *supra* note 18, at 61, 66.

¹⁰⁰ CACHO, *supra* note 18, at 62.

¹⁰¹ CACHO, *supra* note 18, at 92.

¹⁰² See CACHO, *supra* note 18, at 62; see also STEVEN W. BENDER, GREASERS AND GRINGOS: LATINOS, LAW, AND THE AMERICAN IMAGINATION 78 (2003) (analyzing the Proposition 187 campaign and its potential devastating effects on Latinos).

¹⁰³ See CACHO, *supra* note 18, at 62.

¹⁰⁴ CACHO, *supra* note 18, at 62.

¹⁰⁵ *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095 (9th Cir. 2001).

¹⁰⁶ 533 U.S. 678 (2001).

¹⁰⁷ *Id.*

reparation agreement with the United States, and Ma was deported later that year.¹⁰⁸

Next, Cacho breaks down the racial hierarchy that exists in the United States to raise the question of why persons ineligible for personhood are always people of color. She suggests the obvious answer: whiteness has benefits. Compared to persons of color, whites are advantaged. This advantage is apparent when white defendants commit crimes because they are more likely to be judged individually on the basis of their conduct and perceived degree of culpability, than as a member of a racial group. Whites are decriminalized because courts treat them more favorably than non-whites. In fact, the predominate social norms make it difficult for the criminal justice system to recognize young white men as criminals and recognize racially motivated anti-immigrant violence as a crime deserving of criminal punishment.¹⁰⁹

People constantly compare racial groups against each other. Referring to interracial conflict, Cacho observes that narratives of castration, emasculation and impotence articulate the so-called conflict between African American and Latina/os. Cacho explains that there are misconceptions about the interaction between these two groups in the service industry; undocumented Latina/os are not directly displacing blacks in the service industry. As such, it is erroneous to think that Latina/os are, “elbowing aside” young African Americans and have a stronger work ethic than African Americans. In this narrative, Cacho notes that Latina/o immigrants function as the “model minority” of the working poor, putting family first, and working hard, while impoverished African American young men are depicted as wayward, unmotivated drifters relying on governmental assistance.¹¹⁰

Cacho’s work fails to mention the comparisons drawn between African Americans and foreign-born blacks. Elsewhere, political scientist Christina Greer considers the racial and ethnic identities of foreign-born blacks in the United States in an attempt to understand the politics of Black ethnic diversity. She discusses the nuanced political profiles of African Americans, Afro-Caribbean immigrants, and African immigrants.¹¹¹ There is differing treatment of foreign-born Blacks and native-born Blacks, and Greer explains that Whites perceive foreign-born Blacks as hardworking and more

¹⁰⁸ CACHO, *supra* note 18, at 62.

¹⁰⁹ CACHO, *supra* note 18, at 23, 26.

¹¹⁰ CACHO, *supra* note 18, at 132–34.

¹¹¹ See CHRISTINA M. GREER, BLACK ETHNICITY: RACE, IMMIGRATION, AND THE PURSUIT OF THE AMERICAN DREAM 1–10 (2013).

productive citizens than their black American counterparts.¹¹² Her work cites to the historically tenuous relationship between blacks and whites, which one cannot assume automatically extends to immigrant populations.¹¹³

Greer further notes African and Afro Caribbean immigrants do not have the same “perpetual foreigner” identity that society applies to Asian Americans. This is because most Asian Americans try to remain foreign and resist assimilating, while African and Afro Caribbean immigrants assimilate in order to feel more included in American society.¹¹⁴ Greer contends that although black immigrants are not considered model citizens in the same ways as their white and Asian counterparts are; white and nonwhite individuals consider them to be above African Americans.¹¹⁵

Cacho holds a viewpoint similar to Greer’s on these issues; she explains that Asians are often compared to other racial groups in this country’s racial narrative.¹¹⁶ These two scholars are not alone in this observation. Kevin Johnson also argues that Asian Americans and Latinos have shared the foreigner experience because these two groups have historically been associated as having a different culture and speaking a foreign language.¹¹⁷ Individuals from both groups are often subjected to the perpetual foreigner stereotype.¹¹⁸ They are treated as foreigners despite their birthplace or how long their families have been in this country.¹¹⁹ Thus, it becomes easier to think of Asian Americans and Latinos as not fully American.¹²⁰

A notable strength of *Social Death* is its discussion of immigrant rights. Cacho argues that federal and state laws cannot offer redress to socially “dead to other” populations. Here, Cacho is skeptical. She acknowledges that the racial population in power has the power to determine whether marginalized groups deserve the rights, recognition or resources their members are requesting.¹²¹

¹¹² *Id.* at 7.

¹¹³ *Id.* at 25.

¹¹⁴ *Id.* at 26.

¹¹⁵ GREER, *supra* note 123, at 26–27.

¹¹⁶ See CACHO, *supra* note 18, at 77.

¹¹⁷ See Kevin R. Johnson, *Racial Hierarchy: Asian Americans and Latinos as “Foreigners,” and Social Change: Is Law the Way to Go?*, 76 OR. L. REV. 347, 355 (1997).

¹¹⁸ *See id.* at 355.

¹¹⁹ *See id.* at 355.

¹²⁰ CACHO, *supra* note 18, at 22.

¹²¹ *See* CACHO, *supra* note 18, at 22.

Cacho declares that unemployment and illegal status leave individuals legally vulnerable because it is practically legal to discriminate against both groups, and certain laws ensure that there will always be a population of color rendered permanently rightless in the United States.¹²²

Further, *Social Death* addresses the issue of interracial coalitions. Cacho warns that the news media oversimplifies the building of interracial coalition building by offering only facile analysis and commonsense explanations such as having a “common ground” or “similar struggles.” The reality is that the black and Latina/o working poor are interdependent and linked because they all struggle, but they do so on different levels. Cacho contends that there is a false impression that increasing political power for immigrants would decrease the political power of African Americans.¹²³

There is a distinct possibility that African Americans, Latinos and Asian Americans could build a coalition, despite the cultural and class differences and the potential conflicts and impediments that could arise.¹²⁴ For example, African Americans have been concerned with the negative impact of immigration in their community, and poor and working-class African Americans worry about competition for low-skilled jobs.

In higher education, Asian Americans might believe that they compete against African Americans and Latinos for admission slots. Yet collectively, African Americans, Latinos and Asians are all targets for racial profiling and subjects of the criminal justice system.

African Americans, Asian Americans, and Latina/os share common ground in seeking social and economic justice in the form of wage and labor protections in the workplace, affordable housing and equal educational opportunities.¹²⁵ Because racial justice is a universal cause, lessons can be learned from the litigation in other civil rights cases. African American, Latino and Asian American civil rights groups have joined together to preserve affirmative action in regards to marriage equality and immigration issues.

¹²² CACHO, *supra* note 18, at 22–23.

¹²³ CACHO, *supra* note 18, at 135.

¹²⁴ See Chan, *supra* note 77, 1301–02 (2013) (exploring opportunities for coalition building between Latinos and Asian Americans); Johnson, *supra* note 129, at 366 (“Latinos and Asian Americans may be able to build coalitions to fight such things as restrictive immigration laws designed to keep Latinos and Asians out of this country”).

¹²⁵ See Kevin R. Johnson & Bill Ong Hing, *The Immigrant Rights Marches of 2006 and the Prospects for a New Civil Rights Movement*, 42 HARV. C.R.-C.L. L. REV. 99, 136 (2007); Kevin R. Johnson, *The Keyes to the Nation's Educational Future: The Latina/os Struggle For Educational Equity*, 90 DENV. U. L. REV. 1231, 1248 (2013) (suggesting that latina/o undocumented immigrants disproportionately face educational equity and access issues).

There are examples of successful collaborative advocacy. Community action groups, including the Mexican American Legal Defense and Educational Fund and Asian American Justice Center, collaboratively advocated in filing an amicus brief in the case against S.B. 1070.¹²⁶ Another example is how the National Asian Pacific American Bar Association has taken a strong stance on the issue of crimmigration; it brought attention to the enforcement of immigration law and policy, in particular AEDPA and IIRIRA, and the negative impacts on Asian American refugee groups, especially Cambodian residents and their families.¹²⁷

The constant misrepresentation of African Americans and Latina/os stuck in conflict provided the explanatory framework for news stories that debated whether the immigrant rights movement could be likened to the Civil Rights Movement.¹²⁸ From Cacho's perspective, framing the immigration debate in the context of the Civil Rights Movement explains how the relationship between African Americans and Latina/os is one of debt and gratitude, more about respect than rights.¹²⁹

Finally, Cacho claims that United States indigent and indigenous populations of color are literally made into criminals. American society perceives the poor as criminals in denying them not only rights, but also compassion. Agents of the government increasingly target the poor for deportation, regulation and incarceration, while they are stuck working jobs in the black-market economy of selling prescription street drugs.¹³⁰

Cacho uses stereotypes to examine how human value is made intelligible through racialized, sexualized, spatialized and state-sanctioned violence. She asserts that gang members are criminalized because they have a difficult relationship to criminal law and the United States Justice System; they face regulation other people do not have to follow, with harsher and longer sentences because of gang enhancement charges.¹³¹

Like most current contemporary analyses, Cacho's debunks the incarceration myth and explains that increasing incarceration rates in the United

¹²⁶ See Brief Amici Curiae of the American Civil Liberties Union, et al. in Support of Respondent at 1, *Arizona v. United States*, 132 S.Ct. 2492 (2012) (No. 11-182), 2012 WL 1044371.

¹²⁷ See NAT'L ASIAN PACIFIC AM. BAR ASS'N, STATEMENT OF SUPPORT FOR EFFORTS TO ASSIST SOUTHEAST ASIAN AMERICANS IN DANGER OF DEPORTATION (Mar. 2013); see also Gary Kar-Chuen Chow, Note, *Exiled Once Again: Consequences of the Congressional Expansion of Deportable Offenses on the Southeast Asian Refugee Community*, 12 ASIAN L. J. 103, 123-27 (2005) (examining the impact that Congressional changes in deportation law had on the Southeast Asian refugee community).

¹²⁸ See CACHO, *supra* note 18, at 137.

¹²⁹ CACHO, *supra* note 18, at 137-38.

¹³⁰ CACHO, *supra* note 18, at 119.

¹³¹ CACHO, *supra* note 18, at 2, 4.

States do not necessarily indicate that more crimes are being committed. Instead, the increase often results from the fact that more and more criminals are either repackaged as more dangerous than comparable suburban delinquencies or redefined as illegal. She stresses that the vast majority of criminal laws criminalize the recreational activities of the poor of color, or other vulnerable populations, by targeting specific street drugs or calling for sentencing enhancements. Whites are decriminalized because they are treated more favorable than non-whites. In fact, the predominate narrative makes it difficult for the criminal justice system to recognize young white men as criminals and to recognize racially motivated anti-immigrant violence as a crime deserving of criminal punishment.¹³²

Cacho could have provided additional strength to her arguments by referencing the practical application of theories. In particular, there are a number of parts of the book where she could have offered a discussion of cultural competency. She could have broadened her discussion of the decision in the *Ma* case to include references to the strategies employed by criminal defense attorneys who represent immigrants in criminal proceedings. Overall, her analysis contributes novel thoughts and new ideas to the dialogue concerning crimmigration.

CONCLUSION

Run for the Border, Governing Immigration Through Crime, and Social Death offer valuable contributions to the debates and discussions surrounding immigration and citizenship. They are helpful in providing the context to understand the historical and contemporary relationship between criminal and immigration law. Taken as group, a general critique may be made on two levels: (1) from an academic perspective, the issues presented in the volumes could have been considered in different ways if other jurisprudential or intellectual frameworks, such as Critical Race Theory,¹³³ Lat Crit,¹³⁴

¹³² CACHO, *supra* note 18, at 37, 121.

¹³³ Critical Race Theorists relying on storytelling and close reading of legal cases and doctrine focus on the race and racial subordination meaning of laws within their social, political, and historical context within the social hierarchy in this country. *See generally*, CRITICAL RACE THEORY: THE CUTTING EDGE (Richard Delgado ed., 1995); CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberle Crenshaw, et al. eds., 1995).

¹³⁴ *See* Kevin R. Johnson, *Race Matters: Immigration Law and Policy Scholarship, Law in the Ivory Tower, and the Legal Indifference of the Race Critique*, 2 U. ILL. L. REV. 525, 536 (2000) (describing Lat Crit as analyzing “legal issues of particular importance to the Latino/a community, has specifically engaged race and immigration law and the impact on the civil rights of Latino/a in the United States.”).

or Asian American Jurisprudence¹³⁵ were explicitly mentioned, considered, and applied; (2) from a practical perspective, the content of the books may be more grounded if the authors were practicing attorneys or clinical professors who have spent considerable time in the courtroom or in immigration court.

The analysis of the three books may be extended to apply to the broader discussion of the racial disparities in drug sentencing. A *New York Times* editorial opined that the old 100:1 crack-cocaine sentencing ratio was based on faulty science, which guided assumptions about crack cocaine and has disproportionately punished African Americans.¹³⁶

Without doubt, in the three decades since the declaration of the “War on Drugs,” crack sentencing has remained a divisive topic that has fueled the incarceration boom, culminating in approximately 2.3 million individuals confined in federal and state prisons and local jails.¹³⁷ According to the *New York Times*, “[i]n 2010, more than 7 in 100 black men ages 30 to 34 years old were behind bars. The federal system alone holds 219,000 inmates, 40 percent above its capacity”¹³⁸ In regard to the dramatic increase in incarceration for drug offenses as a result of enhanced penalties, Marc Mauer, the Executive Director of the Sentencing Project, noted that “[a]t the federal level, the most notorious of these are the penalties for crack cocaine violations . . . even though the two substances are pharmacologically identical.”¹³⁹ In a recent report documenting trends in racial disparities in the criminal justice system, Mauer calls for reforms including reducing barriers to re-entry, more alternative sentencing schemes, repealing discriminatory laws and allowing more discretion in decision-making.¹⁴⁰

¹³⁵ See Neil Gotanda, *New Directions in Asian American Jurisprudence*, 17 *ASIAN AM. L.J.* 5, 10 (2010) (“The narratives of immigration, citizenship, and racialization that have emerged within Asian American Jurisprudence are legal history as well as historical narrative. They are retelling of our coming to America through an interpretation of the legal materials. The narratives shape how we see ourselves and, by providing our own interpretations of cases, statutes and legal history, help shape how we are seen in the legal system.”).

¹³⁶ See Editorial, *Sentencing Reform Starts to Pay Off*, *N.Y. TIMES*, Aug. 2, 2013, at A20.

¹³⁷ See Kara Gotsch, *Breakthrough in U.S. Drug Sentencing Reform: The Fair Sentencing Act and the Unfinished Reform Agenda*, *WASH. OFFICE ON LATIN AM.*, 1 (2011), available at http://www.wola.org/publications/breakthrough_in_us_drug_sentencing_reform_the_fair_sentencing_act_and_the_unfinished_re.

¹³⁸ Editorial, *Smarter Sentencing*, *N.Y. TIMES*, Aug. 14, 2013, at A22.

¹³⁹ See Marc Mauer, *The Changing Racial Dynamics of the War on Drugs*, *THE SENTENCING PROJECT 1* (2009), available at http://www.sentencingproject.org/doc/dp_raceanddrugs.pdf.

¹⁴⁰ See Marc Mauer & Nazgol Ghandnoosh, *Incorporating Racial Equity Into Criminal Justice Reform*, *THE SENTENCING PROJECT 19* (2014).

This intersection of immigration and incarceration systems is separating African American and immigrant families alike. While much has been written about the phenomenon of mass incarceration and African Americans, the incarceration rates of Latina/os get little coverage. Analyses about Latino incarceration has received little attention, and where research findings exist, it tends to lump Latinos as one monolithic group.¹⁴¹ Perhaps due to the treatment of Hispanic as an ethnicity rather than a race, the statistics available regarding Latinos and sentencing is very limited.

Latinos are overrepresented as victims of crime and in the prison population.¹⁴² In 2012, Latino men were incarcerated at a rate almost 40 percent higher than whites. Latinos were more likely to be held in federal prison.¹⁴³ The incarceration rate for Latinos is 44% higher than whites for property crimes and 53% higher than whites for drug crimes.¹⁴⁴ Compared to other racial groups, mandatory minimum sentences affected Latinos at higher rates.¹⁴⁵

As a consequence of the sharp growth in illegal immigration and criminal enforcement, Latinos represent about 40% of all sentenced federal offenders.¹⁴⁶ Latinos convicted of federal offenses are also more likely than non-Latinos to be sentenced to prison.¹⁴⁷

But in the end, this extended discussion of observations does not detract from the effectiveness of the theses and analyses. Each book is deeply challenging and important. These works explore how individuals perceived to have violated a criminal offense are treated in the immigration law system, how individuals who are not citizens of the United States are uniquely affected by criminal process and substantive criminal law and how state and federal governments police criminal activity by noncitizens. Collectively the volumes explain the motivations of immigration policies and identify the criminal implications of these same policies.

¹⁴¹ See Damian J. Martinez, *Symposium on Race, Crime, and Voting: Social, Political, and Philosophical Perspectives on Felony Disenfranchisement in America: Felony Disenfranchisement and Voting Participation: Considerations in Latino Ex-Prisoner Reentry*, 36 COLUM. HUM. RTS. L. REV. 217, 223–24 (2004).

¹⁴² Californians for Safety & Justice, *Latino Voices: The Impacts of Crime and Criminal Justice Policies on Latinos* (June 2014).

¹⁴³ See Aaron Cantu, *Latinos and Mass Incarceration: The Dust Under the Rug* (Jan. 7, 2014), <http://www.latinorebels.com/2014/01/07/latinos-and-mass-incarceration-the-dust-under-the-rug/>.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ See Mark Hugo Lopez & Michael T. Light, *A Rising Share: Hispanics and Federal Crime*, PEW RESEARCH CTR. (Feb. 18, 2009), <http://www.pewhispanic.org/2009/02/18/a-rising-share-hispanics-and-federal-crime/>.

¹⁴⁷ *Id.*

