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# An Invisibility Cloak: The Model Minority Myth and Unauthorized Asian Immigrants

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# An Invisibility Cloak: The Model Minority Myth and Unauthorized Asian Immigrants

Denny Chan\*

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## INTRODUCTION

As the contemporary debate on immigration rages on throughout all communities and our country, policymakers contemplate remedies to fix the broken immigration system and curb the unauthorized migration of many who cross our borders every day. The discourse suggests that unauthorized immigration to the United States is predominantly an issue of Latino concern. Many people conflate Latinos with the unauthorized immigrant population today. Therefore, although almost the entire legal framework on immigration is facially colorblind, the conversation has transformed into one about the Latino

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\* UC Irvine School of Law, Class of 2012. This Note was originally written for my Race and the Law class. I would like to thank my instructor Professor Trina Jones for her invaluable insight and counseling. I would also like to acknowledge the hard work of the students at the *UC Irvine Law Review* whose dedication made it possible for me to publish this Note. Finally, I would like to dedicate this Note to my immigrant parents, whose tireless labor and love continue to inspire me today.

community and its role in the creation and maintenance of a national American identity.

The framework of immigration and unauthorized immigration as an issue affecting the Latino community is mostly rational. However, the dominant discourse fails to recognize other potential and legitimate stakeholders in the immigration context. Much like how the traditional black-white paradigm on American race relations cloaks some communities with a layer of invisibility, the current conversation on immigration excludes existing groups who have deeply rooted interests in immigration policy goals and remedies and who have long been immigrants themselves. Asian Americans constitute one such group.<sup>1</sup> Asian Americans have an extensive and rich history of immigration to this nation but are largely absent from the contemporary debate. In fact, based on the framing of the conversation, one could quite reasonably conclude that unauthorized immigration does not affect Asian Americans at all.

A multitude of factors helps explain why this particular community is missing from this conversation; in this Note, I seek to explore the model minority myth phenomenon as one possible reason why Asian Americans have been absent from the discourse and why the concern of unauthorized immigration has not been classified as an Asian American issue. In Part I, I address the view that unauthorized immigration is a Latino issue. I do this through providing examples that support the claim. In Part II, I then examine traditionally cited reasons why this connection exists. These reasons include the numbers of Latinos who are present in the country in violation of current immigration laws; the geographic proximity between the United States, Mexico, and other Central American nations; and classism and colorism. In Part III, I pose the question why, given a long history of anti-Asian discrimination and the existence of some unauthorized Asian immigrants, the contemporary immigration framework does not include Asian immigrants as unauthorized people. I offer the model minority myth as a powerful explanation by tracking the chronological development of the myth as well as examining the myth's actual substance. I conclude by looking at the implications of the current unauthorized immigration paradigm on coalition building between Latinos and Asian Americans, and I discuss the importance for Asian Americans to engage in the immigration conversation.

## I. THE CASE FOR UNAUTHORIZED IMMIGRATION AS A LATINO ISSUE

Much of the conversation on immigration has focused on our country's issues with the undocumented. Indeed, almost every major immigration reform

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1. I recognize that the term "Asian American" tends to marginalize individuals in the community who are not of East Asian or Southeast Asian descent. I use the term as broadly as possible but understand its problematic implications. For a flavor of how complicated and personal terminology can be, see ROBERT S. CHANG, *DISORIENTED: ASIAN AMERICANS, LAW, AND THE NATION-STATE* (Richard Delgado & Jean Stefancic eds., 1999).

package that Congress has seriously considered in recent years includes some component designed to mitigate what many perceive as the problem of unauthorized immigration.<sup>2</sup> In walking through the evidence, I conclude that to many the identity of an unauthorized immigrant is a person of Latino descent.

#### *A. Evidence from the World Wide Web*

The analysis begins with a simple inquiry online. In an increasingly digital age, a vast amount of information is available online. With the help of a search engine, evidence for the relationship between unauthorized status and Latino identity solidifies. A quick search in Google Images with the terms “illegal immigration” results in dozens of images that relate to Latinos and individuals of Latino descent.<sup>3</sup> One image is a sign that has a graphic of a family running with the words “Caution” above and “Prohibido”<sup>4</sup> below, linking the unauthorized identity through language. Others depict a hyper-militarized border between what is most likely the United States and Mexico, with people crawling, digging tunnels, and climbing from Mexico into the United States. A substantial number show individuals of Latino descent, dark-skinned individuals or with a so-called olive complexion.

Although unscientific, brief, and simplistic, this simple Google search speaks to our country’s conscience on the issue of unauthorized immigration. It points to the construction of the unauthorized immigrant not only as someone of Latino descent generally, but much more. These images paint a so-called illegal immigrant as someone who cunningly crosses the border from Mexico with family members and generally has a darker skin complexion than white individuals. Racism and xenophobia drive some of the spirit of the image results. One can assume that unauthorized immigrants are non-English proficient, and that the Spanish language from the image of the sign effectively communicates to them in a way that English cannot, feeding into so-called perpetual foreigner beliefs. The search terms themselves are facially race neutral; “illegal immigrant” could be used to describe an individual of any race; however, unauthorized immigrants are racialized as dark-skinned, Spanish-speaking Latinos.

#### *B. Legislative Evidence*

The Google search provides appropriate context for the rest of the analysis. With increased frequency in the past two years, state legislatures have taken it

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2. See Richard Fausset, *Not Targeted but Not Safe, Young Illegal Immigrants Push for a New Policy*, L.A. TIMES (Apr. 10, 2011), <http://articles.latimes.com/2011/apr/10/nation/la-na-illegal-immigrants-20110410> (commenting on recent efforts to pass the federal DREAM Act).

3. GOOGLE IMAGES, <http://images.google.com> (search “illegal immigrant”) (last visited Mar. 18, 2013). See *infra* app.A for the images.

4. “Prohibido” is translated from Spanish to English as “prohibited,” “forbidden,” or “barred.”

upon themselves to enforce our country's immigration laws, and these statutes speak to the connection between Latino identity and unauthorized status. Beginning in Arizona, legislatures across the country have considered or are considering proposals that allow state and local officials more discretion in investigating one's immigration status. For example, SB 1070, the bill from Arizona, would make it a state misdemeanor crime to be a noncitizen without valid documents—this is in addition to the federal immigration law violation—and one of its most controversial provisions empowers police to attempt to determine one's immigration status based on “reasonable suspicion” during a lawful stop, detention, or arrest.<sup>5</sup> Since Arizona Governor Jan Brewer signed SB 1070 into law in April 2010, sixteen other states have considered adopting bills modeled after the Arizona law. They include: California, Utah, Texas, Oklahoma, Nebraska, Illinois, Indiana, Michigan, Kentucky, Tennessee, Missouri, Georgia, South Carolina, North Carolina, Florida, and Massachusetts.<sup>6</sup> This long list of states is interesting because it arguably shows a pervasively aggressive reaction from many states, including some typically not regarded as states where significant Latino communities reside.<sup>7</sup>

While it is true that these controversial bills are race neutral on their face,<sup>8</sup> they arguably are passed with discriminatory intent or will have disparate effects on Latino migrants. Indeed, the debates that SB 1070 and its counterparts have sparked are heavily focused on race. Supporters of harsh immigration measures continue to strategize around enforcement via attrition, making the lives of the undocumented so miserable that they leave on their own volition.<sup>9</sup> This strategy necessarily involves line drawing to target some people as opposed to others. Exactly how people will be determined to be potentially unauthorized is unclear. Given the popular conflation between unauthorized status and Latino racial identity, even if the purpose of these bills does not reflect intent to discriminate against Latinos, critics of these bills have quickly warned and continue to warn about racial profiling by law enforcement. They fear that the “reasonable

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5. ARIZ. REV. STAT. ANN. § 11–1051(B) (2012). The Supreme Court has held that parts of the Arizona law are unconstitutional. *Arizona v. United States*, 132 S. Ct. 2492, 2509–10 (2012).

6. Seth Freed Wessler, *Bills Modeled After Arizona's SB 1070 Spread Through States*, COLOR LINES (Mar. 2, 2011, 10:33 AM), [http://colorlines.com/archives/2011/03/sb\\_1070\\_copycat\\_bills.html](http://colorlines.com/archives/2011/03/sb_1070_copycat_bills.html).

7. See Miguel Ferrer, *Census Numbers Don't Lie: Latinos Are Changing the Face of America*, HUFFPOST POL. (Apr. 11, 2011, 2:02 PM), [http://www.huffingtonpost.com/miguel-ferrer/census-numbers-dont-lie-l\\_b\\_847586.html](http://www.huffingtonpost.com/miguel-ferrer/census-numbers-dont-lie-l_b_847586.html).

8. In fact, race has expressly been a non-factor. For example, in response to charges of potential abuse and racial profiling, proponents of SB 1070 cited to a revision of the bill that expressly prohibited state and local law enforcement personnel from using race as the reason to stop someone to inquire about immigration status and only allowed for inquiry into one's status incident to a lawful stop.

9. See *Times Topics: Immigration and Emigration*, N.Y. TIMES, <http://topics.nytimes.com/top/reference/timestopics/subjects/i/immigration-and-emigration/index.html> (last visited Dec. 26, 2012).

suspicion” standard allows for officials to use race, particularly appearing of Latino descent, as an inappropriate proxy for undocumented status.<sup>10</sup> This means that the race-neutral laws may manifest themselves in a racially disparate manner as a result of individual officers’ confluences. Anti-unauthorized immigration tactics have already targeted Latinos. Sheriff Joe Arpaio of Arizona’s Maricopa County is one prominent example. Arpaio’s crackdown on unauthorized immigration has led to widespread and documented anti-Latino racial profiling measures.<sup>11</sup>

The reality of the danger for disparate racial impact is evident in the reactions of those who fear they may be labeled as unauthorized. Although it is true that many different segments of the American public expressed concern over the proposed legislation, the Latino community had a particularly adverse reaction. For example, the National Association of Latino Elected and Appointed Officials went on record calling the bill discriminatory and said, “It is politically motivated and racially biased, and must be struck down before it sees the light of day.”<sup>12</sup> It also released a subsequent statement saying that SB 1070 “violates the civil rights of all Arizonans and visitors, and subjects Arizona’s Latinos and newcomers to discrimination and racial profiling.”<sup>13</sup> Democrat Linda Sanchez, a U.S. Representative from California, commented on SB 1070 and its sibling bills, saying, “There’s a concerted effort behind promoting these kinds of laws on a state-by-state basis by people who have ties to white supremacy groups.”<sup>14</sup> The charged contentions that SB 1070 is racist and specifically anti-Latino help reinforce the general public’s linkage between the Latino community and unauthorized immigration.

Yet another example is the heightened reaction of overseas Latinos to SB 1070—type legislation. Mexican President Felipe Calderon stated that “the Mexican government condemns the approval of the law [and] the criminalization of migration,” characterizing it as a violation of human rights.<sup>15</sup> Other Mexican

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10. *About SB 1070*, ALTO ARIZONA, <http://www.altoarizona.com/sb1070.html> (last visited Mar. 17, 2012).

11. See The Editorial Bd., *The Board: America’s Worst Sheriff (Joe Arpaio)*, N.Y. TIMES (Dec. 31, 2008, 5:13 PM), <http://theboard.blogs.nytimes.com/2008/12/31/americas-worst-sheriff-joe-arpaio>.

12. *NALEO Educational Fund Applauds Federal Action Against Arizona’s Discriminatory SB 1070*, NALEO EDUC. FUND (July 6, 2010), <http://www.naleo.org/pr/pr07-06-10.html> (quoting NALEO Board President Sylvia R. Garcia).

13. *Speak Out to Ensure the Fight Against SB 1070 Goes On!*, NALEO EDUC. FUND (Aug. 5, 2010), <http://us1.campaign-archive.com/?u=c1a51befb8159efb3bbd1f2620f9e1&id=67547b8ced&e=bt7gXpS6oS>.

14. *Congresswoman: White Supremacist Groups Behind Arizona Immigration Law*, FOX NEWS (June 3, 2010), <http://www.foxnews.com/politics/2010/06/03/congresswoman-says-white-supremacist-groups-inspired-arizonas-immigration-law>.

15. Jonathan J. Cooper, *Activists Call on Obama to Fight Immigrant Law*, (April 25, 2010, 2:21 PM), <http://www.azcentral.com/news/articles/2010/04/25/20100425immig-sunday-protest-0425.html>.

government officials have made similar disparaging comments, too.<sup>16</sup> Indeed, the response was so strong that several governors of Mexican states, protesting the bill and its ethnic and cultural prejudice, boycotted the twenty-eighth binational Border Governors Conference, originally scheduled to take place in Phoenix, Arizona.<sup>17</sup> The agitated responses of Mexican government officials strengthen the claim that measures to stop or mitigate unauthorized immigration tend to be perceived as anti-Latino efforts.

One should note that SB 1070 and its sibling bills are only one form of legislation that has appeared in recent years targeting the unauthorized population. Another example appears in the voting rights context. Colorado's state legislature is currently considering a bill mandating the Colorado secretary of state to check names on voter registration lists against state and federal immigration status records.<sup>18</sup> If there were reason to believe that a certain voter is actually ineligible to vote, that individual would be given ninety days to show evidence of their eligibility.<sup>19</sup> This bill has received inadequate attention from the media compared to SB 1070, but its essence—irrational distrust of the unauthorized population—is very much the same. Its irrationality can be demonstrated by the statements of one Colorado legislator who said that she wanted more evidence that noncitizens have participated in voter fraud and until so, there was no reason to tackle a non-existent problem.<sup>20</sup> Recently, the discretion issue is of concern because reportedly eighty-eight percent of 1400 voters who were identified by the Colorado secretary of state's office as suspected noncitizens were later determined to be U.S. citizens and were eligible to vote, meaning there may be problems with the state's scheme.<sup>21</sup>

One may argue that anti-unauthorized attitudes are not the same as anti-

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16. In response to this criticism, some authors have cited to similar provisions of Mexican law that allow local and state officers comparable discretion in inquiring about an individual's immigration status. See Chris Hawley, *Activists Blast Mexico's Immigration Law*, USA TODAY (May 25, 2010, 7:53 PM), [http://usatoday30.usatoday.com/news/world/2010-05-25-mexico-migrants\\_N.htm](http://usatoday30.usatoday.com/news/world/2010-05-25-mexico-migrants_N.htm).

17. Randal C. Archibold, *Arizona Law Causes Split for Border Governors*, N.Y. TIMES, July 7, 2010, at A1.

18. See Joseph Boven, *Voting Bill Targeting Alleged Illegal Immigrant Votes Faces Outcry in Colorado*, AM. INDEP. (Mar. 10, 2011, 11:12 AM), <http://americanindependent.com/173084/voting-bill-targeting-alleged-illegal-immigrant-votes-faces-outcry-in-colorado> (discussing the views of Colorado Representative Lois Court).

19. *Id.*

20. *Id.* Some commentators have expressed that the real purpose behind voting fraud statutes is to limit access to the polls. See, e.g., Jane Mayer, *The Voter-Fraud Myth*, NEW YORKER (Oct. 29, 2012), [http://www.newyorker.com/reporting/2012/10/29/121029fa\\_fact\\_mayer](http://www.newyorker.com/reporting/2012/10/29/121029fa_fact_mayer); Editorial, *The Myth of Voter Fraud*, N.Y. TIMES, (May 13, 2008), <http://www.nytimes.com/2008/05/13/opinion/13tue1.html>. Colorado's proposed bill actually takes language from general voter fraud statutes and specifically in its plain language tailors the concern to the unauthorized community. H.B. 11-1252, 68th Gen. Assemb., Reg. Sess. (Colo. 2011).

21. Sara Burnett, *Database: 88% of Questioned People on Voter Rolls Are U.S. Citizens*, DENVER POST (Aug. 30, 2012, 12:01 AM), [http://www.denverpost.com/news/ci\\_21431279/database-88-questioned-people-voter-rolls-are-u](http://www.denverpost.com/news/ci_21431279/database-88-questioned-people-voter-rolls-are-u).

Latino ones. However, similar to the SB 1070–style legislation, this anti-authorized sentiment can quickly manifest itself as anti-Latino. The Colorado bill is inherently vague as to how the secretary of state will have sufficient reason to believe that someone is not eligible to vote. For example, it is entirely conceivable but problematic that a potential factor is the name of the voter. Using the name of the voter as evidence the voter is not eligible to vote exposes voters with surnames of Latino origin to increased scrutiny. Alternatively, another factor is skin color; dark brown skinned voters might appear undocumented to some people and then trigger the provision that requires them to prove their qualifications within ninety days. As it stands now, the bill does not give sufficient criteria to election officers on how to determine one’s status, and it might give too much discretion such that Latinos are unfairly targeted.

### C. Public Commentary

These pieces of legislation<sup>22</sup> constitute one broader example—instances of popular will expressed through legislative acts—of the implied connection between unauthorized immigration and the Latino community. This connection also has other manifestations, such as in the comments of public officials. One of the most recent and prominent cases of this connection is the Connie O’Brien incident. Ms. O’Brien is a Republican state legislator in Kansas whose testimony before a legislative committee on a bill to repeal in-state tuition for students with unauthorized status sparked controversy. During her testimony in February 2011, Ms. O’Brien stated that when she went to a local community college’s financial aid office, she could tell one of the students waiting in line was not originally from the United States. When one of the representatives asked her how she could tell the student was illegal, she said, “Well she wasn’t black, she wasn’t Asian, and she had the olive complexion.”<sup>23</sup> She further expressed frustration because her son did not qualify for financial aid after completing the Free Application for Federal Student Aid form and yet this woman with “olive complexion” was still eligible for aid.<sup>24</sup> It is clear Ms. O’Brien conflated Latino identity and unauthorized status.

Kansas again became the hotbed of controversy when Representative Virgil

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22. For another type of legislation aimed at the undocumented, see Marc Lacey, *Birthright Citizenship Looms as Next Immigration Battle*, N.Y. TIMES, Jan. 5, 2011, at A1.

23. See Zaid Jilani, *KS GOP Rep. Connie O’Brien Says She Can Tell Who Is ‘Illegal’ Because They Have ‘The Olive Complexion’*, THINKPROGRESS, (Feb. 15, 2011, 10:00 AM), <http://thinkprogress.org/politics/2011/02/15/144218/ks-gop-rep-obrien>.

24. Representative O’Brien has since apologized since her testimony. She said, “I understand how [my statements] could have been misconstrued. I misspoke and apologize to those who I offended. I have learned from this situation and will be more careful with my choice of words in the future.” Scott Rothschild, *Statehouse Live: Rep. Connie O’Brien Issues Apology for ‘Olive Complexion’ Remark*, LAWRENCE J.-WORLD (Feb. 16, 2011, 12:08 PM), <http://www2.ljworld.com/news/2011/feb/16/statehouse-live-obrien-issues-apology-olive-comple>. However, she continues to maintain that the student was in the country illegally. *Id.*

Peck said unauthorized individuals should be shot from helicopters.<sup>25</sup> One immediate question that Representative Peck's comment raises is how can we tell who is unauthorized simply by viewing them from above in a helicopter. He did not clarify what physical features he was referencing, but given the conflation between Latino identity and unauthorized status, some might think Peck's suggestion is to shoot individuals who appear of Latino ancestry. Again, the reaction of those likely to be viewed as unauthorized confirms the unauthorized-Latino connection. Some local leaders said Peck's comments offended all Latinos and stigmatized immigrants in general.<sup>26</sup>

## II. REASONS WHY LATINOS AND THE UNAUTHORIZED ARE CONFLATED

Now that the case for a Latino face to unauthorized immigration has been stated, the next step is to examine reasons for why this conflation exists. First, none of the reasons explored in this Note are necessarily sufficient alone to explain the Latino face of unauthorized immigration, nor is it meant to be exhaustive. Taken in the aggregate, they help describe the present phenomena of linking unauthorized immigration to Latinos. These factors include the proportion of unauthorized immigrants who are Latino, the geographical proximity of the United States to high-sending Latino countries, and economic factors. Other factors include colorism and classism.

### *A. Powerful Numbers and Rapid Growth*

The first factor that explains why unauthorized immigrants are assumed to be Latino is that many unauthorized immigrants are in fact of Latino descent. There are a number of estimates conducted by different entities counting the unauthorized population in the United States. According to population estimates released by the Department of Homeland Security's Office of Immigration Statistics in 2009, unauthorized immigrants from Mexico accounted for 62% (approximately 6,650,000) of all unauthorized immigrants currently in the United States.<sup>27</sup> The other top sending nations include El Salvador (5%, 530,000), Guatemala (4%, 480,000), and Honduras (3%, 480,000).<sup>28</sup> These figures mean that these four countries account for nearly 75% of all unauthorized individuals. Five of the top ten sending countries are in Central or South America (El Salvador, Guatemala, Honduras, Ecuador, and Brazil).<sup>29</sup> Therefore, normative assumptions

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25. Kevin Murphy, *Kansas Lawmaker Suggests Immigrants Be Shot Like Hogs*, REUTERS (Mar. 25, 2011, 6:36 PM), <http://www.reuters.com/article/2011/03/25/us-immigration-kansas-idUSTRE72O71H20110325>.

26. ALEJANDRO PORTES & RUBÉN G. RUMBAUT, *IMMIGRANT AMERICA* 346 (3d ed. 2006).

27. MICHAEL HOFER ET AL., U.S. DEP'T OF HOMELAND SEC., *ESTIMATES OF THE UNAUTHORIZED IMMIGRANT POPULATION RESIDING IN THE UNITED STATES: JANUARY 2009* 4 tbl.3 (2010).

28. *Id.*

29. *Id.*

of who is unauthorized track the empirical reality that many unauthorized immigrants are in fact Latino.<sup>30</sup>

Numbers not only help explain the Latino face of unauthorized immigration, they also contribute to our contextual understanding of why anti-immigrant and anti-Latino sentiments have been so pronounced in recent times. In Alejandro Portes and Rubén G. Rumbaut's *Immigrant America*, the authors propose that increased numbers of foreign-born populations increase nativist sentiments. They write:

The public view is guided instead by surface impressions. When foreign accents and faces are few, they are ignored. However, when they grow in number and concentrate in visible spaces, they trigger increasing apprehension. Natives are put on the defensive, fearing that their way of life and their control of the levers of political and economic power will be lost to the newcomers.<sup>31</sup>

Rapid growth, in conjunction with high numbers, amplifies this fear. As mentioned before, Arizona's SB 1070 stands as a sign of anti-Latino animus, and it is no coincidence that 2010 census data shows an increase in the Arizona Latino population from twenty-five percent in 2000 to around thirty percent in 2010.<sup>32</sup> Even the rate at which the Latino community grew was significant at forty-six percent.<sup>33</sup> Earlier census data from the American Community Survey reveals that the U.S. Latino population grew nearly twenty-nine percent from 2000 to 2009 and is now at a current population of about 45.5 million people, with large gains in Nevada, Arizona, Texas, North Carolina, Florida, Colorado, Washington, New Mexico, Oregon, and California.<sup>34</sup> Assuming Portes and Rumbaut's proposition is valid, this rapid growth and its heightened attention in the media help explain why people perceive Latinos as unauthorized and as a threat. Such fear has manifested itself across the country. These demographic trends are even more significant

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30. One of the questions raised by these studies is how one's immigration status is determined. Arguably, immigration status is distinct from other immutable characteristics in that it is not physically obvious. The U.S. census does not ask individuals to report their immigration status. However, my point about the connection between Latinos and immigration being partially explained by numbers remains valid even without distinction based on legality of status (unauthorized versus authorized). See, e.g., ELIZABETH M. GRIECO & EDWARD N. TREVELYAN, U.S. CENSUS BUREAU, PLACE OF BIRTH OF THE FOREIGN-BORN POPULATION: 2009 2 tbl.1 (2010) (reporting that 53.1% of all foreign-born individuals in the United States are from Latin American countries).

31. PORTES & RUMBAUT, *supra* note 26, at 346.

32. Marc Lacey, *Hispanics Are Surging in Arizona*, N.Y. TIMES, Mar. 11, 2011, at A1. For Arizona census information for 2000 and 2010, see <http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk> and <http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>, respectively.

33. *Arizona's Latino Population Up a Whopping 46%, Says Census*, FOX NEWS LATINO (Mar. 10, 2011), <http://archive.is/H6vGL>.

34. See Gerald Helguero, *Census 2010 Results to Show U.S. Latino Growth*, INT'L BUS. TIMES (Dec. 21, 2010, 8:24 PM), <http://www.ibtimes.com/census-2010-results-show-us-latino-growth-251413>.

because growth in the Latino population has occurred not only in states generally thought of as Latino-concentrated areas. States like Colorado, Washington, North Carolina, and Oregon are experiencing dramatic shifts in the appearance of their local communities; these shifts trigger increased apprehension and xenophobic sentiment.

### B. Geographic Proximity

There is no doubt that Mexico and Central America's proximity to the southern United States border also reinforces the notion that the unauthorized immigrant is Latino. First, the reality is that for individuals living in popular sending countries, like Mexico and those in Central America, immigration to the United States is obviously easier, especially compared to individuals wishing to immigrate from African and Asian countries. Second, there exists a long history of fluid migration between Mexico and the United States, which has only recently become so hotly contentious.<sup>35</sup> The geographical proximity and the long history of the movement and exchange of peoples along the border also attracts immigrants because families are separated in two different countries, and its increasing militarization and long wait times for authorized immigration incentivize unauthorized routes into the United States.<sup>36</sup> The proximity of top-sending countries to the United States exacerbates fears of the hordes.

### C. Economic Factors

Related to the geographical proximity factor are the inherent needs of the U.S. economy. Many researchers have discussed the economic reasons why immigrants choose to come to the United States, analyzing both push (country of origin) factors as well as pull (United States) factors.<sup>37</sup> In addition, the contemporary debate around unauthorized immigration has highlighted economic concerns that unauthorized laborers are taking jobs that equally qualified U.S. laborers want, thereby leaving the innocent, unsuspecting American unemployed and suffering. Sometimes the claim that unauthorized individuals are working jobs that Americans deserve has been used to justify anti-immigration legislation.<sup>38</sup>

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35. For a brief history of U.S.-Mexico migration and the border, see *Uneasy Neighbors: A Brief History of Mexican-U.S. Migration*, HARVARD MAGAZINE, <http://harvardmagazine.com/2007/05/uneasy-neighbors-a-brief-html> (last visited Jan. 13, 2013).

36. See *New Report Shows that Family Reunification is One of the Driving Forces of Illegal Immigration*, LATINA LISTA (June 10, 2008), [http://latinalista.com/2008/06/new\\_report\\_shows\\_that\\_family\\_reunificati](http://latinalista.com/2008/06/new_report_shows_that_family_reunificati).

37. See e.g., Thomas Faist, *Migration*, WILEY-BLACKWELL ENCYCLOPEDIA OF GLOBALIZATION, <http://onlinelibrary.wiley.com/doi/10.1002/9780470670590.wbeog388/abstract> (last visited Mar. 16, 2013).

38. For example, Alabama is considering SB 1070-like legislation. One of the state legislators, Scott Beason, justified the legislation, saying, "Race has nothing to do with it. It's a jobs issue to start. It's a rule of law issue second." Kim Chandler, *Alabama House Expected to Vote Today on Bill Targeting*

Some activists have even directly linked unemployment and general economic concerns with the issue of unauthorized immigration. For example, in Georgia, where a bill similar to Arizona's SB 1070 passed, Tea Party member Denise Ognio said "We are concerned about losing American jobs because illegal immigrants are taking jobs illegally."<sup>39</sup>

Of course, one can debate the validity of assertions that the unauthorized are displacing U.S. workers from viable employment, and many groups, including economists, have demonstrated that unauthorized immigrants typically work in jobs that U.S. laborers do not want to or are unable to fill.<sup>40</sup> There has also been some suggestion that unauthorized immigrants constitute such a crucial role in our country's economy that if they were to suddenly stop working, Americans would see significant effects in their everyday lives.<sup>41</sup> The important point is that economics help motivate Latinos to immigrate, sometimes in unauthorized ways, to the United States, reinforcing everyday notions of unauthorized immigrants being Latino.

In recent times of economic recession, the sentiment that unauthorized laborers are taking away job opportunities from Americans is only exacerbated. When Americans struggle to remain employed and put food on the table, the perception that hordes of individuals are flooding past our insecure borders to work jobs that everyday Americans could occupy scares many. Economic desperation sharpens the perceived threat that the unauthorized reduce economic opportunity for deserving Americans. The thought amplifies existing xenophobic, nationalistic, and racist sentiments.

#### D. Classism and Colorism

Related to economics, the impact of classism must be noted. The unauthorized status of these laborers, as well as American classism, makes this population particularly vulnerable. Classist attitudes are reflected in the Google images search where many images associated unauthorized status people dressed

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*Illegal Immigrants*, BIRMINGHAM NEWS (April 5, 2011, 8:47 AM), [http://blog.al.com/spotnews/2011/04/alabama\\_house\\_expected\\_to\\_vote.html](http://blog.al.com/spotnews/2011/04/alabama_house_expected_to_vote.html); see also Ed Anderson, *Bill in Louisiana Legislature Targets Illegal Immigrants*, TIMES-PICAYUNE (Mar. 31, 2011, 10:00 PM), [http://www.nola.com/politics/index.ssf/2011/03/bill\\_in\\_louisiana\\_legislature.html](http://www.nola.com/politics/index.ssf/2011/03/bill_in_louisiana_legislature.html).

39. Jeremy Redmon, *House Passes Arizona-Style Bill Aimed at Illegal Immigration*, ATLANTA JOURNAL-CONSTITUTION (Mar. 3, 2011, 8:02 PM), <http://www.ajc.com/news/news/local-govt-politics/house-passes-arizona-style-bill-aimed-at-illegal-i/nQrDW>.

40. Charles Herman, *Illegals: Will They Be Taking Jobs Away from U.S. Citizens?*, ABC NEWS (May 18, 2007), <http://abcnews.go.com/Business/IndustryInfo/story?id=3189288>; see also Tyler Cowen, *How Immigrants Create More Jobs*, N.Y. TIMES, Oct. 30, 2010, at BU6.

41. One example is the restaurant industry, which is notorious for employing unauthorized individuals. For an interesting commentary on the effects of hiring only Americans and those eligible to work in the U.S. restaurant industry, see Sarah Kershaw, *What If Restaurants Stopped Hiring Illegal Immigrants?*, DINER'S JOURNAL (Sept. 7, 2010, 10:57 PM), <http://dinersjournal.blogs.nytimes.com/2010/09/07/what-if-restaurants-stopped-hiring-illegal-immigrants>.

in tattered clothing, looking unkempt. In addition because many unauthorized immigrants tend to take low-paying and low-skilled jobs, they may be more susceptible to manipulative employers who threaten to report their immigration status to Department of Homeland Security officials.<sup>42</sup> Conceivably, anti-immigrant activists would be less vocal about their concerns if these individuals were highly skilled workers who, in their view, meaningfully contributed to the U.S. economy. Unfortunately, the inferior bargaining position of unauthorized immigrants and general classist attitudes give reason for many to dislike them, coloring their perceptions that these laborers are lazy, easily irreplaceable, of low social value, unable to assimilate, and take valuable jobs away from qualified and unemployed Americans.

Colorism<sup>43</sup>—the discrimination against people based on their physiognomy and the preference for lighter skin over darker skin—also helps explain the targeting of Latinos. It is no coincidence that the popular image of the unauthorized Latino is not a light skinned individual of Latino ancestry. As the Google images and other evidence demonstrated, the racialization of unauthorized Latinos as dark-skinned individuals is consistent with a concurrent dislike of them. The construction of unauthorized status as dark skinned appeals to colorist attitudes because the darker unauthorized immigrants are, the easier it becomes to label them as different and to separate them from the prototypical white American. This colorism element combines with racist, xenophobic, and classist sentiment to prioritize unauthorized immigration of Latinos as an urgent threat in the national consciousness.

To summarize, all of these factors: Latinos comprising the majority of the unauthorized population in the United States; the geographical proximity between the United States and Mexico; economic factors; and classism and colorism help explain why unauthorized immigrants are typically thought of as of Latino descent. The prominence of the unauthorized Latino conceptualization raises interesting questions regarding the role of Asian Americans in the immigration conversation as well as coalition building between Latinos and Asian Americans

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42. For more information on unauthorized immigrants and the workplace, see Adam Davidson, *Q&A: Illegal Immigrants and the U.S. Economy*, NPR (Mar. 30, 2006, 9:42 PM), <http://www.npr.org/templates/story/story.php?storyId=5312900>. For recent incidents where employers have threatened deportation, see Abbott Koloff, *Legislation Targets Employers Who Shortchange Illegal Immigrants*, DAILY RECORD (Mar. 27, 2011), <http://www.dailyrecord.com/article/20110327/NJNEWS/103280301/legislation-targets-employers-who-shortchange-illegal-immigrants> (on file with author). Finally, for an example of how workers are taken advantage of by employers, see Steve Alexander, *Chipotle Fires Hundreds in Minnesota After Immigration Probe*, AZCENTRAL (Jan. 21, 2011, 12:56 PM), <http://www.azcentral.com/news/articles/2011/01/21/20110121chipotle-fires-illegal-workers.html>.

43. See Angela P. Harris, *From Color Line to Color Chart?: Racism and Colorism in the New Century*, 10 BERKELEY J. AFR.-AM. L. & POL'Y 52, 52–69 (2008). See generally Trina Jones, *Shades of Brown: The Law of Skin Color*, 49 DUKE L.J. 1487, 1487–1557 (2000).

on issues of common interest. These are the topics discussed in the subsequent sections.

### III. ASIAN AMERICANS AND UNAUTHORIZED IMMIGRATION

The impact of a Latino paradigm to issues of unauthorized immigration continues to leave Asian and Asian American voices out of the conversation. Why Asian Americans are not present in the unauthorized immigration conversation is a potentially confusing question. Asian immigrants and Asian Americans have experienced an extensive history of past and current discrimination, and some Asian immigrants have unauthorized status. I proffer that the model minority myth is a convincing factor that explains the invisibility of Asian immigrants from the unauthorized immigration framework.

#### *A. Discrimination Against Asian Americans and Asian Immigrants*

America has practiced a long and extensive history of discrimination against Asian immigrants. Interestingly enough, many parallels can be drawn between the anti-Asian animus at the turn of the twentieth century and present day anti-Latino sentiment.

When Asian immigrants, predominantly Chinese and Japanese laborers, first arrived in the United States in the 1800s, they were met with hatred and resentment. Often occupying menial labor jobs that employers could not find others to do, Asian laborers, predominantly men, were subject to a host of discriminatory practices. California passed a tax on all foreign miners in 1850, but the Chinese community felt the impact greatest. The California Supreme Court upheld a law that banned Chinese people from testifying for or against whites in courts in *People v. Hall*.<sup>44</sup> San Francisco segregated schools for Chinese students in 1857, and a year later barred entry for any “Chinese” or “Mongolian” pupil.<sup>45</sup>

Scores of incidents of anti-Asian violence plagued the Chinese immigrant community. Mobs and riots were reported across the country, including in Los Angeles and in the Pacific Northwest. Gary Okihiro summarizes early anti-Asian violence in his book *The Columbia Guide to Asian American History*:

In Los Angeles in 1871, whites descended on the Chinese quarters and hanged, shot, and burned twenty-one Chinese, and in 1880 a mob destroyed most of the buildings in Denver’s Chinatown and kicked and beat to death a laundryman, Sing Lee. In 1885 in Rock Springs, Wyoming, whites hunted, shot, burned, and killed 28 of the 331 Chinese who had been brought in by the Union Pacific Railroad ten years earlier to break a strike in the coal mines. And throughout the 1880s, whites

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44. *People v. Hall*, 4 Cal. 399 (Cal. 1854).

45. GARY Y. OKIHIRO, *THE COLUMBIA GUIDE TO ASIAN AMERICAN HISTORY* 13–14 (2001).

shot, lynched, and expelled Chinese from urban and rural areas like Seattle, Tacoma, Portland, Humboldt County in California, Pierce City in Idaho, and the Hell's Canyon gorge in Oregon, where a white gang robbed, murdered, and mutilated the bodies of thirty-one Chinese miners.<sup>46</sup>

Although long and graphic, Okihiro's explanation illustrates the extent to which Chinese immigrants were not welcome in this country.<sup>47</sup> Often times, these anti-Asian mob violence events were fueled by feelings among white Americans that Chinese laborers took American jobs at lower wages, were perpetual foreigners who spoke little or no English, and were unnaturally industrious and clannish. Some of these same themes reoccur now, although the targeted group has shifted to the Latino community, and the resentment, especially regarding jobs, remains the same.

Another similarity exists through the lens of the law. Laws regulating laundries enacted in San Francisco in the late 1800s, although facially neutral, had a disparate impact on Chinese-owned laundries.<sup>48</sup> In addition, as mentioned earlier, case law from California prohibited Chinese testimony in court in matters relating to white people. The U.S. Supreme Court decisions in *Ozawa v. United States* and *United States v. Thind* established that Asians were non-whites and therefore could not naturalize; following that, Congress passed the 1924 Immigration Act, which prohibited immigration by those ineligible for citizenship.<sup>49</sup> Actually, the 1924 Act was only one of a series of steps that Congress took to systematically block all immigration from Asia, beginning with the Chinese Exclusion Act of 1888.<sup>50</sup> In the early 1990s, states across the nation passed Alien Land Laws, banning land ownership by those ineligible for citizenship with an underlying purpose of targeting Japanese immigrant communities.<sup>51</sup> Okihiro observes, "Although these laws targeted Asian immigrants as the only racial group ineligible for citizenship, they were written in race-neutral

46. *Id.* at 15–16.

47. *Id.* at 13. For detailed accounts of anti-Chinese violence in Washington and in Denver, see David H. Stratton, *The Snake River Massacre of Chinese Miners, 1887*, in CHINESE ON THE AMERICAN FRONTIER 215 (Arif Dirlik ed., 2001), and Roy T. Wortman, *Denver's Anti-Chinese Riot, 1880*, in CHINESE ON THE AMERICAN FRONTIER, *supra*, at 323.

48. See David E. Bernstein, Lochner, Parity, and the Chinese Laundry Cases, 41 WM. & MARY L. REV. 211 (1999).

49. CHANG, *supra* note 1, at 11–12.

50. See generally Jan C. Ting, "Other Than a Chinaman": How U.S. Immigration Law Resulted From and Still Reflects a Policy of Excluding and Restricting Asian Immigration, 4 TEMP. POL. & CIV. RTS. L. REV. 301 (1995). The Supreme Court affirmed the Exclusion Act in *Lem Moon Sing v. United States*, 158 U.S. 538 (1895), and *United States v. Ju Toy*, 198 U.S. 253 (1905). Also telling of the exclusion from citizenship is Justice Harlan's dissent in *Plessy v. Ferguson*, 163 U.S. 537, 561 (1896) (Harlan, J., dissenting) ("There is a race so different from our own that we do not permit those belonging to it to become citizens of United States. I allude to the Chinese race.")

51. ANGELO N. ANCHETA, RACE, RIGHTS, AND THE ASIAN AMERICAN EXPERIENCE 84–85 (1998).

terms and thus survived constitutional challenge.”<sup>52</sup> Okiihiro’s observations parallel similar contemporary concerns behind SB 1070 and other state-level legislation, that these bills, although facially neutral, target Latinos community.

In contemporary times, one of the struggles Asian Americans face is the perpetual foreigner identity. This concept is illustrated through common day examples like Asian Americans frequently asked where they are from as a proxy for what their countries of origin are, or remarks that Asian Americans speak English so well. These comments and questions are motivated by the perpetual foreigner realm, such that many people assume that individuals of Asian descent—even if they are born in the United States and are third, fourth, or fifth generation Americans—are newly assimilated immigrants. One of the most emotionally charged reminders in our nation’s jurisprudence of the perpetual foreigner is the internment of Japanese Americans—including individuals born in the United States of Japanese ancestry—during World War II that ultimately resulted in the landmark Supreme Court decision *Korematsu v. United States*.<sup>53</sup> *Korematsu*, a decision that garnered much criticism, upheld the constitutionality of Japanese internment, and justified it based on national security interests.<sup>54</sup> It remains an unpleasant reminder of how the perpetual foreigner assumption can severely disadvantage Asian Americans.

#### B. Asian Immigrants with Unauthorized Status

In light of the long and pervasive history of discrimination against Asian immigrants and the power of the unauthorized-Latino conflation, one might be surprised to learn that unauthorized immigration affects Asian Americans, too. Some Asian immigrants are themselves of unauthorized status. Unfortunately, the dominant narrative on immigration has excluded these individuals from the national consciousness.

One of the most prominent examples of unauthorized Asian immigration, probably due to its egregious nature, is the Golden Venture incident. In June 1993, the Golden Venture, a steamer ship, landed on the shores of New York City in the middle of the night. The 286 Chinese nationals aboard the vessel—already struggling from poor living conditions and a 112 day outing—panicked, and many tried jumping ship to swim ashore.<sup>55</sup> These unauthorized immigrants paid up to

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52. OKIHIRO, *supra* note 45, at 36.

53. *Korematsu v. United States*, 323 U.S. 214 (1944).

54. *Korematsu* is in some ways an outlier in our Supreme Court jurisprudence. It is one of few instances when a state-sanctioned racial classification, triggering strict scrutiny, has been found to meet the level of review. *Id.* at 216, 223. It has been deemed one of the biggest mistakes in Supreme Court history. See Carol J Williams, *Legal Scholars Examine the U.S. High Court’s ‘Supreme Mistakes,’* L.A. TIMES (Apr. 2, 2011), <http://articles.latimes.com/2011/apr/02/local/la-me-scotus-scandals-20110402>.

55. Robert D. McFadden, *Smuggled to New York: The Overview—7 Die as Crowded Immigrant Ship Grounds Off Queens; Chinese Aboard Are Seized for Illegal Entry*, N.Y. TIMES (June 7, 1993), <http://www>

thirty-five thousand dollars per head for their rickety journey to the United States, and although many of them originated from China's Fujian province, some of them boarded during stops in parts of Southeast Asia.<sup>56</sup> A large, complex network of Chinese smugglers with operations in China, Taiwan, and Hong Kong, Southeast Asia, and New York City facilitated their unauthorized entry using fake documents, subsequently channeling many of these individuals into labor in Chinese restaurants across the country, sometimes as far and as remote as Arkansas.<sup>57</sup> The Golden Venture is not the exception to the rule, either. Beginning in the 1980s, a substantial influx of unauthorized Chinese immigrants began arriving to the United States, and although smuggling incidents have not been as obvious as the smugglers' methods have become increasingly sophisticated and stealthy, and there is no evidence that the numbers have declined.<sup>58</sup>

Outside of the legal and academic realms, the issue of unauthorized immigration from China remains an unexplored topic in the general discussion, even though some officials estimate that one hundred thousand unauthorized Chinese immigrants are smuggled into the United States every year.<sup>59</sup> The entire process of human smuggling is ridden with problematic junctures. There are inherent dangers with human smuggling; for example, six immigrants died during the course of the Golden Venture fiasco,<sup>60</sup> and fifty-eight Chinese nationals died in the back of a truck en route to Great Britain in 2000.<sup>61</sup> Commentators have also discussed at length the potential and reality of rights violations for unauthorized Chinese laborers caught in a network of Chinese restaurants and sweatshops, living in sub-standard housing, and working unfortunate hours to repay debts incurred because of their unauthorized journey.<sup>62</sup> The unauthorized status of these individuals casts them in an even more vulnerable light.

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.nytimes.com/1993/06/07/nyregion/smuggled-new-york-overview-7-die-crowded-immigrant-ship-grounds-off-queens.html.

56. *Id.*

57. For a follow up on the lives of some of the Golden Venture survivors who remained in the United States, see Nina Bernstein, *Making It Ashore, but Still Chasing U.S. Dream*, N.Y. TIMES (April 6, 2006), [http://www.nytimes.com/2006/04/09/nyregion/09venture.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2006/04/09/nyregion/09venture.html?pagewanted=all&_r=0).

58. Zai Liang & Wenzhen Ye, *From Fujian to New York: Understanding the New Chinese Immigration*, in GLOBAL HUMAN SMUGGLING: COMPARATIVE PERSPECTIVES 187, 187 (David Kyle and Rey Koslowski eds., 2001). Recent reports have indicated that Chinese are now crossing the U.S.-Mexican border in increasing numbers. See Stephen Ceasar, *In Arizona, a Stream of Illegal Immigrants From China*, N.Y. TIMES, Jan. 22, 2010, at A11.

59. John Z. Wang, *Illegal Chinese Immigration into the United States: A Preliminary Factor Analysis*, 45 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 345, 355 (2001).

60. Editorial, *The Golden Venture, Plus 100,000*, N.Y. TIMES (June 9, 1993), <http://www.nytimes.com/1993/06/09/opinion/the-golden-venture-plus-100000.html>.

61. *Smuggled Immigrants 'Promised Flights'*, BBC NEWS (Mar. 2, 2001), [http://news.bbc.co.uk/2/hi/uk\\_news/1198593.stm](http://news.bbc.co.uk/2/hi/uk_news/1198593.stm).

62. PETER KWONG, FORBIDDEN WORKERS: ILLEGAL CHINESE IMMIGRANTS AND AMERICAN LABOR (1999); Peter Kwong, *Forbidden Workers and the U.S. Labor Movement: Fuzhounese in New York City*, 34 CRITICAL ASIAN STUD. 69, 69 (2002).

In addition to the phenomena of Fujianese smuggling operations, Asian immigrants actually comprise a significant number of unauthorized immigrants who enter the United States every year. Earlier I examined how the large numbers of Mexican and Central American immigrants from the top ten sending countries helps explain why the national conceptualization of the unauthorized immigrant is Latino. The flip side of the same coin is the remaining top ten sending countries. Many of them are in Asia. Leading among them are the Philippines (accounting for two percent of unauthorized immigrants, India (two percent), Korea (two percent), and China (one percent).<sup>63</sup> First, these statistics amplify the point that the entire pan-Asian Pacific region is sending unauthorized immigrants to the United States, positioning the issue as more than just Chinese Fujianese smuggling operations. More importantly, these rough estimates signal the legitimate existence of unauthorized Asian immigrants in the United States, accounting for roughly seven percent of the entire unauthorized population in 2009.

Most recently the “coming out”—a term popularly used by lesbian, gay, and bisexual people to mean revealing or announcing one’s sexual orientation is now also used to describe when undocumented individuals announce their unauthorized status—of Jose Antonio Vargas gave an Asian American face to unauthorized immigration. Vargas, a Pulitzer-winning journalist, wrote an article in the *New York Times Magazine* revealing his immigration status, the circumstances by which he learned of it, and the steps he took to hide it.<sup>64</sup> His story became a rallying point for activism around the DREAM Act,<sup>65</sup> which unearthed more faces of unauthorized Asian immigrant students facing deportation or already deported based on their status.

Statistics indicate that Asian Americans compose approximately forty to forty-four percent of the undocumented student population in the University of California system alone.<sup>66</sup> Several Asian American students received publicity for being would-be DREAM Act beneficiaries, including David Cho, a UCLA honors undergrad student, and Tam Tran, a doctoral student at Brown University.<sup>67</sup> Some

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63. HOEFER ET AL., *supra* note 27, at 4.

64. Jose Antonio Vargas, *My Life as an Undocumented Immigrant*, N.Y. TIMES (June 22, 2011), <http://www.nytimes.com/2011/06/26/magazine/my-life-as-an-undocumented-immigrant>.

65. The DREAM Act, short for “Development, Relief, and Education for Alien Minors,” was introduced in Congress in 2001. It would authorize, among other things, the federal government to cancel removal proceedings against unauthorized minors who met certain conditions and grant them lawful permanent residence status. S. 1291, 107th Cong. (2001). Both California and Illinois have passed state-specific versions of the DREAM Act, and in 2012 President Obama announced that his administration would stop deporting youths who met the DREAM Act criteria. Tom Cohen, *Obama Administration to Stop Deporting Some Young Illegal Immigrants*, CNN (June 16, 2012), <http://www.cnn.com/2012/06/15/politics/immigration/index.html>.

66. ROBERTO G. GONZALES, *YOUNG LIVES ON HOLD: THE COLLEGE DREAMS OF UNDOCUMENTED STUDENTS* 10 (2009).

67. Deepa Bharath & Cindy Carcamo, *Woman Killed in Crash Yearned for National Identity*, ORANGE COUNTY REG. (May 17, 2010, 10:20 PM), <http://www.ocregister.com/articles/maine>

unauthorized students are already caught in the immigration system and are awaiting deportation proceedings, like Elizabeth Lee in San Francisco who was about to begin her studies at UC Berkeley, and Steve Li, a San Francisco City College student now held at an Arizona detention center.<sup>68</sup> Often times, these students come to the United States with their parents at a young age and are not aware of their unauthorized status until Immigration and Customs Enforcement agents knock on their door to initiate deportation proceedings. From Fujianese immigrants to Asian American students, the unauthorized label cuts across many Asian immigrants.

### C. *The Model Minority Myth at Work*

If Asian immigrants have encountered similar discrimination to current anti-Latino animus, and if some Asian immigrants are unauthorized, one might wonder why it is that Asian Americans are largely missing from the unauthorized immigration paradigm. One less cited reason is the model minority myth. This myth proffers that Asian Americans are successful, hardworking, and not subject to the same discriminatory barriers as other people of color groups. Like all of the other factors, the model minority myth standing alone is an insufficient explanation for the Latino face to unauthorized immigration. However, in dissecting what the myth means, how it operates, and its development over time, the myth is a powerful explanation concurrent with other factors. Its invisible effectiveness highlights the extent to which both Asian Americans and other people have either internalized or accepted the myth as true. The unauthorized immigration context, then, is an example of the myth at work on the micro level. In order to fully understand how the model minority myth is operating in this sphere, I describe the origins of the model minority myth and then explore the myth's substantive implications. I argue that the model minority myth's timing before this wave of anti-Latino sentiment persuasively indicates the myth's operation in contemporary immigration debates. The myth also matches the colorist and classist assumptions at work in the current framework.

The model minority myth supports the contemporary inference of unauthorized immigrants being of Latino descent in two ways: the timing of the model minority myth's development supports the inference, and the actual substance of the myth helps the general public ignore Asian immigrants from the conversation on unauthorized immigration.

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-249042-state-grove.html; Miriam Jordan, *A Route to Citizenship in Defense Bill*, WALL ST. J. (Sept. 18, 2010), <http://online.wsj.com/article/SB10001424052748704858304575498072319915164.html>.

68. Erin Allday, *Student Elizabeth Lee Faces Deportation—Mom Held*, S.F. CHRON. (Jan. 7, 2011), <http://www.sfgate.com/education/article/student-elizabeth-lee-faces-deportation-mom-held-2533164.php>; Jessica Kwong, *Steve Li, City College Student, Awaits Deportation*, S.F. CHRON. (Nov. 2, 2010, 4:00 AM), <http://www.sfgate.com/news/article/steve-li-city-college-student-awaits-deportation-3168042.php>.

The model minority myth and its importance to the Asian American community began in January 1966 with a story in the *New York Times*. The article was entitled, "Success Story: Japanese American Style," and in it the author used the term "model minority" to praise Japanese Americans for their assimilation into mainstream American culture. Following suit, one year later the *U.S. News and World Report* published an article called, "Success Story of One Minority Group in the United States," lauding Chinese Americans for assimilating and being peaceful, quiet, and successful.<sup>69</sup> In the backdrop of the civil rights movement, it is clear that these "positive" attributes were in direct contrast to popularized conceptualizations of other people of color groups who were fighting for vindication of their rights and identities.

These preliminary articles built a foundation in America's consciousness that recognized Asian Americans as high achieving model minorities. This narrative was further reinforced in the 1980s, which saw reputable mainstream publications like *Newsweek*, the *New Republic*, *Fortune*, *Parade*, and *Time* all shining the spotlight on Asian American success, citing higher income levels than even white Americans as evidence of fulfilling the American dream.<sup>70</sup> Thus, by the conclusion of the 1980s, the concept of Asian Americans as model minorities had embedded itself as a legitimately held belief of many Americans. The development of the model minority myth is followed by a noticeable rise in anti-Latino and unauthorized immigrant sentiment in the country.

Many commentators have explored the substantive implications of the myth in great detail. Although not the focus of this Note, the importance of the implications makes it worth exploring to some degree. Of course, there are arguably positive implications of the myth; Asian Americans are seen as hard working, non-confrontational, and ambitious individuals who are capable of economic success. However, these positive attributes allow for equally, if not more, negative attributes.<sup>71</sup> One of the most damaging consequences of the myth is that it permits the perverse and false conclusion that Asian Americans do not face discrimination and thus ignores or glosses over concerns to the community.<sup>72</sup> It also makes the mistake of painting Asian Americans as a monolithic group.<sup>73</sup> The problem therefore is two-fold. First, the myth allows the experiences of high

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69. William Petersen, *Success Story: Japanese American Style*, N.Y. TIMES MAGAZINE, Jan. 9, 1966, at 20; *Success Story of One Minority Group in the U.S.*, U.S. NEWS & WORLD REP., Dec. 26, 1966; see also Hyeoung Kwon & Wayne Au, *Model Minority Myth*, in 1 ENCYCLOPEDIA OF ASIAN AMERICAN ISSUES TODAY 221, 221–22 (Edith Wen-Chu Chen & Grace J. Yoo eds., 2010).

70. See Kwon & Au, *supra* note 69, at 222–24.

71. Natsu Taylor Saito, *Model Minority, Yellow Peril: Functions of "Foreignness" in the Construction of Asian American Legal Identity*, 4 ASIAN L.J. 71, 72 (1997).

72. See generally Miranda Oshige McGowan & James Lindgren, *Testing the "Model Minority Myth,"* 100 NW. U. L. REV. 331 (2006).

73. For extensive exploration of Asian American heterogeneity, see Lisa Lowe, *Heterogeneity, Hybridity, Multiplicity: Marking Asian American Differences*, in A COMPANION TO ASIAN AMERICAN STUDIES 254 (Kent A. Ono ed., 2005).

achieving, economically successful, and professionally educated Asian Americans to effectively silence the voices and struggles of marginalized, often socioeconomically disadvantaged, limited English proficient Asian Americans. Second, the myth fuels perceptions that these high achievers face limited or meaningless discriminatory barriers because they have “made it.”<sup>74</sup>

History is difficult to ignore, and our country’s troubled past fraught with active discrimination against Asian immigrants speaks for itself. What is interesting is the ways in which the model minority myth comports with this history. As documented above, Asian immigrants arguably were subject to the most obvious forms of discrimination between the nineteenth and twentieth centuries, including incidents of legalized discrimination and of physical mob violence. This history is interrupted by the development of the model minority myth. Correspondingly, as the myth began to take root in America’s consciousness from the 1970s to the present, the nature of the discrimination changed. While Asian Americans and Asian immigrants face a number of different barriers today, physical violence and legal acts targeting this community have largely subsided.<sup>75</sup> The myth helps explain this trend, because the acceptance of the model minority myth as a legitimate descriptor of reality sets Asian American achievement as a standard, something to envy and work toward. Therefore, the myth allows the nation’s attention to turn from Asian American immigrants to focus on Latinos.

The role of class in the model minority myth cannot be ignored, either. The myth paints Asian Americans as economically successful. Indeed, immigration policy changes beginning in 1965 allowed for a surge in Asian professional, technical, and kindred immigrants, which consequently dramatically altered the face of Asian America.<sup>76</sup> The rise in Asian and Asian American professionals in

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74. There is a substantial amount of evidence that indicates Asian Americans are a highly diverse community and continue to face discrimination in many different forms. See JANE HYUN, *BREAKING THE BAMBOO CEILING: CAREER STRATEGIES FOR ASIANS* (2005) (detailing the difficulties for Asian Americans climbing the corporate ladder); Victor Hwang, *The Interrelationship Between Anti-Asian Violence and Asian America*, 21 *CHICANO-LATINO L. REV.* 17, 19–20 (2000) (detailing the long history of anti-Asian violence, ranging from Vincent Chin in Detroit to recent public school student fighting in South Philadelphia).

75. This claim has some recent limitations. For example, in the wake of September 11, violence and discrimination against South Asian immigrants and South Asian Americans rose substantially. See, e.g., Charu A Chandrasekhar, *Flying While Brown: Federal Civil Rights Remedies to Post-9/11 Airline Racial Profiling of South Asians*, 10 *ASIAN L.J.* 215 (2003); Vijay Sekhon, *The Civil Rights of “Others”: Antiterrorism, The Patriot Act, and Arab and South Asian American Rights in Post-9/11 American Society*, 8 *TEX. F. ON C.L. & C.R.* 117 (2003). In addition to South Asian racial profiling concerns, the San Francisco Bay Area recently experienced several incidents of anti-Asian violence. Gerry Shih, *Attacks on Asians Highlight New Racial Tensions*, *N.Y. TIMES* (May 2, 2010), <http://www.nytimes.com/2010/05/02/us/02sfrcrime.html?pagewanted=all>.

76. John M. Liu, *The Contours of Asian Professional, Technical, and Kindred Work Immigration, 1965–1988*, 35 *SOC. PERSP.* 673, 673–74 (1992). For a general commentary on immigration policy and the face of Asian America, see BILL ONG HING, *MAKING AND REMAKING ASIAN AMERICA THROUGH IMMIGRATION POLICY, 1850–1990* (1993).

the late 1960s and 1970s substantiated the model minority myth: Asian Americans effectively achieved the American dream in terms of economic success. In a striking shift of immigration policy, Asian Americans went from strongly unwelcome and severely disliked laborers to a trophy people of color group. Classism favored high-earning Asian American professionals who “made it” over the railroad worker, fruit laborer, and laundry mat owner, occupations Asian Americans held in greater proportions at the turn of the century.<sup>77</sup> The myth allows many to make the inference that because Asian Americans are well off, they are not unauthorized. This is the flip side to the same classism that pegs Latinos as unauthorized. Because Latinos are generally regarded as more socioeconomically disadvantaged, the economic incentives are more attractive to them, while economically secure Asian immigrants have no incentive to bypass immigration laws.<sup>78</sup>

This classism discussion overlaps with other contents of the myth. Asian Americans, including Asian immigrants, are racialized as, among other things, intelligent, hardworking, quiet, and traditional. Of course, these attributes speak to the very nature of the model minority myth. This perception of Asian Americans makes it highly unlikely as a general matter that people in this community would be suspected of unauthorized immigration and violating our country’s immigration laws. Good mannered people holding traditional values are generally not thought of as rebels who have no regard for the rule of law and the system of immigration priorities already in place. A contrast to this racialization is the racialization of Latinos, a group who is seen as comprised of working class, dirty, and non-English proficient laborers.<sup>79</sup>

#### CONCLUSION: THOUGHTS ON INTERRACIAL COALITION BUILDING

The current conversation on unauthorized immigration has largely cast the issue as one affecting the Latino community. Empirically speaking, this proposition holds true for the most part, but it falls apart when acknowledging the existence of unauthorized Asian immigrants in the country, whose absence from the immigration debate is partially attributed to numbers but also partially attributed to the model minority myth. The invisibility of Asian Americans from the immigration debate poses several problems; chief among them is that the potential for rights violations of these unauthorized and highly vulnerable

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77. For an overview on Asian American labor before the 1940s, see *LABOR IMMIGRATION UNDER CAPITALISM: ASIAN WORKERS IN THE UNITED STATES BEFORE WORLD WAR II* (Lucie Cheng & Edna Bonacich eds., 1984).

78. In a parallel manner, the same colorism that paints dark skinned Latinos as unauthorized casts lighter skinned Asian immigrants as not contributing to the same problem of unauthorized immigration.

79. For a detailed discussion of Latino racialization and its complexities, see *HOW THE UNITED STATES RACIALIZES LATINOS: WHITE HEGEMONY & ITS CONSEQUENCES* (Jose A. Cobas et al. eds., 2009).

individuals, like students and limited English proficient laborers, remains ignored in the conversations on policy.

One counterargument is why when the potential for rights abuses is so high would Asian immigrants want to be included in the unauthorized immigration paradigm. This argument has some merit, but potential abuse by law enforcement is only one factor of the problem. Under our current immigration scheme, employers are penalized for knowingly employing unauthorized laborers.<sup>80</sup> If policy tracks the unauthorized-Latino conflation, employers who knowingly employ unauthorized Asian immigrants go unnoticed and undeterred. In the employment context, unauthorized immigrants are particularly vulnerable because employers can easily threaten to report them to immigration authorities. Furthermore, unauthorized immigration is an issue around which Asian immigrants and Asian Americans can build and maintain coalitions with Latinos, so the benefits of intra-people of color collaboration are great.

Instead of allowing the model minority myth to be used as a wedge<sup>81</sup> that continues to divide and alienate these two groups, commonalities should be explored. Currently, many Latinos and Asian Americans internalize the model minority myth and the dominant immigration framework, believing that unauthorized immigration does not affect Asian Americans. The reality is that a brief look into statistics and history recognizes the unauthorized as including some people of Asian ancestry.

There are a number of commonalities. I have tried to illustrate that the history of anti-Asian immigration, particularly at the turn of the twentieth century in this country, parallels in many ways the current animus against unauthorized Latinos. Asian Americans, as conscientious individuals empowered with the knowledge of history, should realize that their community was the target of discrimination only a few decades earlier, and only due to changing immigration policies and the model minority myth did attitudes toward Asian Americans shift. Furthermore, both Asian Americans and Latinos are still subject to the “perpetual foreigner” label and are non-monolithic communities with longstanding histories of immigration; as a result, both groups are often similarly affected by English-only sentiments and policies, and both are among the fastest growing populations in the United States.<sup>82</sup> These similarities present unprecedented opportunities for

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80. 8 C.F.R. § 274a.3 (2012).

81. This wedge frames the model minority myth as a divisive element between communities of color. It asks why other people of color groups have not achieved the same success as Asian Americans have. It also suggests that racism is no longer a real hurdle that people of color face because Asian Americans have “made it.” As a result, non-Asian people of color are discouraged from working with Asian Americans who are seen as not having sufficient commonalities with their experiences.

82. Nina Martin, *Census: Latino, Asian Population Soars 43 Percent Across U.S.*, NEW AM. MEDIA (Mar. 25, 2011), <http://newamericamedia.org/2011/03/census-latino-asian-population-soars-43-percent-across-us.php>. For a brief commentary on these growing communities and electoral politics, see

coalition building between similarly situated communities and should be embraced and explored.<sup>83</sup> One example is in the SB 1070 litigation, which involved a multicultural coalition of attorneys, including some from the Asian Pacific American Legal Center in Los Angeles. Another is with the DREAM Act advocacy that prominently featured non-Latino students. These examples show the importance of debunking the model minority myth and defusing heightened anti-Latino sentiment. In a racially dynamic America of the twenty-first century, working relationships among people of color groups that acknowledge empirical realities will move our nation toward progressive change.

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Timothy Egan, *Rise of the Ethnoburbs*, OPINIONATOR (Mar. 10, 2011, 9:00 PM), <http://opinionator.blogs.nytimes.com/2011/03/10/rise-of-the-ethnoburbs>. The fact that both communities are growing might suggest reactive anti-Latino and anti-Asian sentiments based on Portes and Rumbaut's numbers argument. PORTES & RUMBAUT, *supra* note 26, at 346. However, the model minority myth again, as well as the fact that the overall population of Asian Americans is much lower than Latinos, can be cited as potentially explanatory factors.

83. I do not mean to suggest that Asian Americans and Latinos face the exact same challenges. The distinctive ways in which the two groups are racialized inherently alters the equation. *See, e.g.*, Rachel Moran, *What if Latinos Really Mattered in the Public Policy Debate?*, 85 CALIF. L. REV. 1315, 1315–45 (1997) (explaining the differences between Asian American and Latino constituencies). However, meaningful coalitions around specific issues, like immigration, can be created and maintained in spite of such differences.

Appendix A: Google Images Search of “Illegal Immigrant”

