Anatomy of a Modern-Day Lynching: The Relationship between Hate Crimes against Latina/os and the Debate over Immigration Reform

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ANATOMY OF A MODERN-DAY LYNCHING:
THE RELATIONSHIP BETWEEN HATE CRIMES AGAINST LATINA/OS AND THE DEBATE OVER IMMIGRATION REFORM

KEVIN R. JOHNSON** & JOANNA E. CUEVAS INGRAM***

Our contribution to the “Race Trials” symposium considers the protracted legal battles to bring justice to the perpetrators of the killing of a young Mexican immigrant in rural Pennsylvania. From that sensational case, we attempt to draw more general civil rights lessons. The Article specifically contends that hate crimes directed at Latina/os, which have been at consistently high levels for the entire twenty-first century, are in no small part tied to the prolonged—and overheated—national debate over immigration.

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INTRODUCTION

At the dawn of the new millennium, Latina/o migration is figuratively and literally changing the face of communities across the country. These changes have brought forth different responses that are relevant to civil rights advocates. Hate crimes against Latina/os and immigrants, in addition to a racially charged debate over immigration and the proliferation of state immigration enforcement laws, represent a troubling response to the changing racial demographics of the United States.¹

Although frequently ignored or minimized, immigration enforcement, in ways similar to ordinary criminal law enforcement,² implicates core civil rights concerns of communities of color.³ Asians

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¹ See infra Part I.
and Latinas/os, including U.S. citizens, long have complained of being unfairly targeted by federal authorities in immigration enforcement. Not surprisingly, new enforcement measures adopted by the federal and state governments have been accompanied by a corresponding increase in civil rights complaints.

For more than a decade, Congress unfortunately has been unable to pass legislation meaningfully reforming the current immigration system. For reasons that will be laid out in the following pages, we unfortunately conclude that, absent such reform as well as other measures, the United States can expect racial tensions, at times erupting in violence, to continue to sporadically grab the national headlines. Effective immigration reform might help ameliorate the civil rights costs of the current immigration enforcement scheme.

While waiting for Congress to act, the nation should take steps to ensure that the justice system effectively, efficiently, and fairly responds to civil rights deprivations, including hate crimes against Latinas/os and immigrants. Besides responding to civil rights deprivations linked directly and indirectly to the enforcement of the current immigration laws, the measures would generally help improve the justice system's responses to racially charged cases.

Our contribution to the "Race Trials" symposium considers the protracted legal battles to bring justice to the perpetrators of the killing of a young Mexican immigrant in rural Pennsylvania. From that sensational case, we attempt to draw more general civil rights lessons. The Article specifically contends that hate crimes directed at Latinas/os, which have been at consistently high levels for the entire twenty-first century, are in no small part tied to the prolonged—and overheated—national debate over immigration.

History offers lessons about today's hate violence directed against immigrants and Latino/as. As the terrorizing of African Americans by the Ku Klux Klan for the century following the Civil


War aptly demonstrates, hate violence has long been employed to maintain unequal power relationships in U.S. society, specifically racial subordination of minority groups by whites. This Article in no way suggests that the violence against Latina/os is identical to the violence directed at African Americans before and after the abolition of slavery for hundreds of years in the United States. That violence, however, serves a similar function of attempting to maintain racial hegemony in times of social ferment.

Moreover, the nation’s response to the hate violence historically directed at African Americans offers valuable lessons on what the United States must do with respect to the hate violence directed at Latina/os today. Just as it was necessary to combat and dismantle the violence that buttressed Jim Crow, strong federal intervention, including legislation, civil rights investigations, and criminal prosecutions, is necessary to halt the hate violence directed at Latina/os in the modern United States.

Part I of the Article provides background surrounding the divisive national debate over immigration reform. Part II provides the context surrounding the tragic killing of a Mexican immigrant by a group of white teenagers in rural Pennsylvania, as well as the subsequent state and federal efforts to punish the wrongdoers and local police who sought to cover up the crime and shield the teens from criminal prosecution. Although the U.S. government’s efforts yielded decidedly mixed success, they nonetheless demonstrated a meaningful, visible public commitment to bringing justice to the

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HATE CRIMES & IMMIGRATION REFORM

I. HATE CRIMES AS A COST OF THE FAILURE OF CONGRESS TO PASS COMPREHENSIVE IMMIGRATION REFORM

The last major, truly comprehensive approach to immigration reform in the United States came more than twenty-five years ago, with congressional enactment of the Immigration Reform and Control Act of 1986. In the intervening years, concern over the U.S. immigration laws has ebbed and flowed with the national economy, security worries, and population shifts. At various times, the perceived problems with immigration have resulted in angry public outbursts and unrest.

Hateful rhetoric directed at—especially, but not exclusively, Latina/o—immigrants has occasionally accompanied the national debate over immigration. The tragedy of September 11, 2001, also contributed to the adoption of strict immigration enforcement and other measures in the name of national security, combined with an initial spike in hate crimes soon after that fateful day, directed at Arab and Muslim noncitizens and citizens.

10. See infra Part II.B.
Congress, despite a great many attempts since 1986, has simply been unable to enact comprehensive immigration reform.14 This is the case even though there has long been persistent public concern with—to quote President Obama—the "broken immigration system,"15 a widely perceived need to facilitate the migration of labor needed in certain sectors of the economy (including the agriculture and service industries),16 generally shared concerns with the precarious legal status of the approximately eleven million undocumented immigrants who live and work in the United States (often leading to exploitation, labor and otherwise),17 and the

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14. See Kevin R. Johnson, Ten Guiding Principles for Truly Comprehensive Immigration Reform: A Blueprint, 55 WAYNE L. REV. 1599, 1600-02 (2009). In the absence of congressional action, the Obama administration took a variety of incremental administrative reform measures. Some focused on enhanced enforcement efforts, such as the Secure Communities program, which seeks to facilitate the removal of noncitizens who come into contact with the state criminal justice system. See Hiroshi Motomura, The Discretion that Matters: Federal Immigration Enforcement, State and Local Arrests, and the Civil-Criminal Line, 58 UCLA L. REV. 1819, 1850–52 (2011); Rachel R. Ray, Insecure Communities: Examining Local Government Participation in US Immigration and Customs Enforcement's "Secure Communities" Program, 10 SEATTLE J. SOC. JUST. 327, 331–35 (2011). Other programs pursued different goals. In June 2012, for example, the Obama administration announced that it would not seek to deport certain noncitizens brought to the United States as children. See Memorandum from Janet Napolitano, Sec'y of the Dep't of Homeland Sec., to David V. Aguilar, Acting Comm'r, U.S. Customs and Enforcement, Alejandro Mayorkas, Dir., U.S. Citizenship and Immigration Servs. & John Morton, Dir., U.S. Immigration and Customs Enforcement (June 15, 2012), http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf.


17. See JEFFREY PASKEL & D'VERA COHN, PEW HISPANIC CTR., U.S. UNAUTHORIZED IMMIGRATION FLOWS ARE DOWN SHARPLY SINCE MID-DECADE, at i
burgeoning awareness of the plight of undocumented college students.\textsuperscript{18}

The failure of Congress to pass comprehensive immigration reform has had tangible negative consequences for Latina/os. Namely, because of the disparate racial impacts of the current immigration system and its enforcement, the failure to enact reform necessarily maintains and continues those racially disparate impacts, particularly, but not exclusively, on Latina/os.\textsuperscript{19} For example, a "shadow population" of millions of undocumented Mexican immigrants live in the "shadows" of American social life.\textsuperscript{20} Barriers in access to basic identification, such as driver's licenses (with undocumented immigrants ineligible for driver's licenses in almost all of the states), disproportionately impacts Latina/o communities.\textsuperscript{21} Racial profiling in police stops,\textsuperscript{22} in combination with "Secure Communities"\textsuperscript{23} and other immigration enforcement measures that utilize the criminal justice system, disproportionately impact Latinas/os through detentions and removals—and separation from friends, family, community, and employment in the United States.


\textsuperscript{20}See George W. Bush, President of the United States, Address to the Nation on Immigration Reform, 42 WEEKLY COMP. PRES. DOC. 931, 931 (May 15, 2006) ("Illegal immigrants live in the shadows of our society. . . . The vast majority . . . are decent people who work hard, support their families, practice their faith, and lead responsible lives. They are a part of American life, but they are beyond the reach and protection of American law.").


Indeed, more than ninety-three percent of individuals arrested under Secure Communities are Latina/o. And the harsh debate over immigration reform—that has persisted for years with no end in sight—has contributed to an environment in which hate crimes occur all too often.

A. States Take Immigration Enforcement into Their Own Hands

In a relatively recent development in U.S. history, state and local governments have acted aggressively to remedy what some observers contend is the failure of the U.S. government to enforce the immigration laws. The settlement of immigrants in states in the South, such as Alabama, Georgia, and South Carolina, all which historically had seen relatively little immigration from Mexico, Mexican immigrants also have increasingly settled in the Midwest in recent years. See Sylvia R. Lazos Vargas, “Latina/o-ization” of the Midwest: Cambio de Colores (Change of Colors) as Agromáquinas Expand into the Heartland, 13 LA RAZA L.J. 343, 343–45 (2002); Laura Rothstein, Introduction to the Symposium Issue on Immigration in the Heartland, 40 BRANDEIS L.J. 849, 850 (2002); see also Guadalupe T. Luna, Immigrants, Cops, and Slumlords in the Midwest, 29 S. ILL. U. L.J. 61, 63 (2004) (“Latinas/os have long resided in the Midwest arriving from Texas, or other states, or from undocumented entry. The recent influx of immigrant Mexicans into the Midwest, nonetheless, differs from past historical trends on the basis of geographical designations.”). See generally ROBERT APONTE & MARCELO SILES, JULIAN SAMORA RESEARCH INST., LATINOS IN THE HEARTLAND: THE BROWNING OF THE MIDWEST (1994), http://www.jsri.msu.edu/pdfs/tr/tr05.pdf (documenting the growth and distribution of Latina/os throughout Midwestern states). Illustrative of that fact, a large immigration raid in May 2008 at a meat processing plant in Postville, Iowa, made national headlines. See Kevin R. Johnson, The Intersection of Race and Class in U.S. Immigration Law and Enforcement, LAW & CONTEMP. PROBS., Fall 2009, at 1, 30–34 [hereinafter Johnson, Race and Class].
fueled political pressure for the enactment of tough state immigration enforcement measures. Each of those states saw their Hispanic populations increase dramatically, with Georgia’s increasing by 96%, Alabama’s by 145%, and South Carolina’s by 148%, from 2000 to 2010.29

At the same historic moment, political leaders and pundits have directed increasingly shrill rhetoric at “illegal aliens,” a de-humanizing referent to people living in our communities, and “anchor babies,” a pejorative term used to refer to U.S. citizen children of


undocumented parents. Use of such terms often betrays a bias of the speaker toward greater immigration enforcement and adoption of more restrictive immigration and nationality laws. Advocates of the regulation of hate speech, which some consider terms like "illegal aliens" and "anchor babies" to be, contend that such speech demonizes groups of people of color and, by doing so, encourages figurative and literal violence against them.\(^3\)

Hate speech or not, dehumanizing characterizations of people make it easier to justify their harsh treatment, including the thousands of deportations and detentions of noncitizens under color of law, with devastating impacts on noncitizens, their families, and entire communities.\(^4\) Not coincidentally, year in and year out, the vast majority of those deported from the United States are immigrants of color from the developing world.\(^5\) This fact is not lost on the general public, which understands but seems generally unconcerned that certain communities are disparately affected by heightened immigration enforcement, or the minority communities directly affected.\(^6\)

B. Hate Crimes Directed at Latina/os

Similar in certain respect to the treatment of African Americans, Latina/os historically have been subject to social segregation and discrimination, as well as racial violence, in the United States,


32. For analysis of the use of racial code in the contemporary debate over immigration enforcement in the United States, see Kevin R. Johnson, Immigration and Civil Rights: Is the "New Birmingham" the Same as the "Old Birmingham?", 21 WM. & MARY BILL RTS. J. 367, 378–81 (2012).


34. See supra text accompanying notes 12–25.


36. See Johnson, supra note 19, at 317–20 (contending that opponents of comprehensive immigration reform advance colorblind arguments without concern for disproportionate impacts on Latino/as).
especially but not exclusively in the American Southwest. Although not widely known, Anglos occasionally lynched Latina/os, particularly those of Mexican ancestry, as a form of social control in the eighteenth and early nineteenth centuries. Latina/os often were systematically excluded from jury service in certain regions of the country until the middle of the twentieth century.

The Internet has created new avenues for the spread of hateful

37. For scholarship documenting the history of discrimination against persons of Mexican ancestry in the United States, see generally RODOLFO ACUNA, OCCUPIED AMERICA: A HISTORY OF CHICANOS (3d ed. 1988) (recounting the history of discrimination against Chicanos in the United States); TOMÁS ALMAGUER, RACIAL FAULT LINES: THE HISTORICAL ORIGINS OF WHITE SUPREMACY IN CALIFORNIA (1994) (exploring the manner in which race, racialization, and white supremacy became central organizing principles of social life in California); MARIO BARRERA, RACE AND CLASS IN THE SOUTHWEST: A THEORY OF RACIAL INEQUALITY (1979) (examining the role of structural discrimination, class dynamics, and colonialism in creating a system of racial inequality in the Southwest); DAVID MONTEJANO, ANGLOS AND MEXICANS IN THE MAKING OF TEXAS, 1836-1986 (1987) (analyzing the history of discrimination against Mexicans by Anglos in Texas). Persons of Asian ancestry have also been the target of hate crimes throughout U.S. history. See Robert S. Chang, Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space, 81 CAL. L. REV. 1243, 1251-58 (1993) (reviewing various incidents of anti-Asian violence in the United States); see also Terri Yuh-lin Chen, Hate Violence as Border Patrol: An American Theory of Hate Violence, 7 ASIAN L.J. 69, 71 (2000) ("Violence has been an integral part of the histories and experiences of Asian Americans in the United States from our arrival in this nation to the present. Anti-Asian violence can occur at any given moment, but it is especially prevalent during periods of anti-immigrant sentiment." (footnote omitted)). In a similar vein, violence against Muslims, Arabs, and South Asians plagued the nation after September 11, 2001. See sources cited infra note 203. Hate incidents continue to occur in the United States against individuals of various racial groups. In August 2012, for example, a white man in a white supremacist rock band killed six people after opening gunfire in a Sikh temple in Wisconsin. See Erica Goode & Serge F. Kovaleski, A Killer Who Fed and Was Fueled by Hate, N.Y. TIMES, Aug. 7, 2012, at Al.


39. See infra notes 150-57 and accompanying text.

speech about Latina/os, immigrants, and other "discrete and insular minorities." Such messages no doubt have contributed to the overheated debate over immigration, as well as to the persistent incidence of hate crimes directed at Latina/os.

Hate crimes unfortunately have long been a general problem in American society, which the nation has only begun to address in earnest in recent years. In response to two highly publicized hate murders, Congress in 2009 passed the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, which broadened the federal definition of a hate crime subject to prosecution. In hearings on the bill, witnesses, including U.S. Attorney General Eric Holder, testified before Congress that hate crimes against Latina/os helped justify the law. Indeed, the first conviction after trial under the law was in a case involving a group of white men who drove a group of Hispanic

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41. United States v. Carolene Prods. Co., 304 U.S. 144, 152 n.4 (1938) ("[P]rejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry.").

42. See LEADERSHIP CONFERENCE ON CIVIL RIGHTS EDUC. FUND, CAUSE FOR CONCERN: HATE CRIMES IN AMERICA, 2004 UPDATE 16-19 (2004) (noting that, "[i]n California and throughout the Southwest, long-existing antagonisms against Hispanics have been aggravated by the furor over immigration," causing high rates of hate crimes against Hispanics).

43. See generally JACK LEVIN & JACK McDEVITT, HATE CRIMES: THE RISING TIDE OF BIGOTRY AND BLOODESH (1993) (recognizing the escalating numbers of hate crimes and the difficulty in addressing such crimes when the bigotry that motivates them comes from the very mainstream of society).


victims off the road in rural Arkansas.\textsuperscript{46}

The 2010 hate crime statistics issued by the Federal Bureau of Investigation “reported that 66.6\% of victims of ethnically motivated hate crimes in 2010 were ‘targeted because of an anti-Hispanic bias’—the highest percentage of such victims in at least the past decade.”\textsuperscript{47} As the table below illustrates, Latina/os have suffered hate crimes at consistently high levels for more than a decade.\textsuperscript{48}

\begin{table}[h]
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\caption{Number of Hate Crimes Against Latina/os from 1999–2010\textsuperscript{49}}
\begin{tabular}{|c|c|c|c|}
\hline
Year & Number of Crimes & \% of Total \tabularnewline \hline
1999 & 46 & \% \tabularnewline 2000 & 52 & \% \tabularnewline 2001 & 58 & \% \tabularnewline 2002 & 64 & \% \tabularnewline 2003 & 70 & \% \tabularnewline 2004 & 76 & \% \tabularnewline 2005 & 82 & \% \tabularnewline 2006 & 88 & \% \tabularnewline 2007 & 94 & \% \tabularnewline 2008 & 100 & \% \tabularnewline 2009 & 106 & \% \tabularnewline 2010 & 112 & \% \tabularnewline \hline
\end{tabular}
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\textsuperscript{47} \textit{FBI Hate Crime Statistics Report Finds Higher Percentages of Anti-Latino Hate Crimes in 2010}, \textit{HUFFINGTON POST} (Nov. 14, 2011, 2:25 PM), http://www.huffingtonpost.com/2011/11/14/fbi-report-says-67-of-eth_n_1092976.html. In 2012, the Southern Poverty Law Center released a report showing an increase in the number of hate groups, despite a decrease in nativist extremist groups that it explained was in part due to “the co-optation of the immigration issue by state legislatures around the country passing draconian nativist laws like Alabama’s H.B. 56.” Mark Potok, \textit{The Year in Hate \\& Extremism}, \textit{INTELLIGENCE REP.}, Spring 2012, at 39–40; see also Kim Severson, \textit{Number of U.S. Hate Groups Is Rising, Report Says}, \textit{N.Y. TIMES}, Mar. 8, 2012, at A17 (reporting the results of the Southern Poverty Law Center report). For analysis of the Alabama immigration enforcement law (H.B. 56), whose sponsors bragged that it was the toughest of all the state immigration enforcement laws, see Johnson, supra note 32, at 368. For sustained analysis of the role of police in classifying and investigating hate crimes, see generally \textit{JEANNINE BELL, POLICING HATRED: LAW ENFORCEMENT, CIVIL RIGHTS, AND HATE CRIME} (2002).

\textsuperscript{48} See Iturralde, supra note 40, at 417–18; see also Thomas E. Perez, Asst. Att’y Gen., U.S. Dep’t of Justice, Civil Rights Div., Civil Rights in 2011 and Beyond, Clarence Clyde Ferguson, Jr. Annual Lecture to Howard Law School (Jan. 20, 2011), in 54 HOW. L.J. 425, 430 (“Hate crimes, the result of intolerance and misplaced fear, remain all too prevalent in communities across the country.”); Jenny Rivera, \textit{The Continuum of Violence Against Latinas and Latinos}, 12 N.Y. CITY L. REV 399, 402 (2009) (“The rhetoric and language of anti-immigrant hate has inflamed and divided communities. Violent actions and hate speech targeting Latinos have increased at the same time. The rhetoric has continued to depend on images that construct Latinos as noncitizens who take jobs from ‘real Americans’ and are a drain on local economies.” (footnotes omitted)).

<table>
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<th>Year</th>
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<td>2000</td>
<td>557</td>
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<td>1999</td>
<td>588</td>
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Sociologist Mary Romero contends that “[l]ocal, state, and national government participation in alarmist immigration rhetoric and laws embracing ‘alien immigrant,’ ‘criminal,’ and ‘terrorist’ as one in the same, lend legitimacy to a range of anti-immigration activities by civilians.” Mass detentions and deportations, along with an unprecedented allocation of resources to immigration and border enforcement, increased with tough immigration reforms in 1996.  

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Along with a drum-beat of advocacy for increasingly more aggressive military-style measures to deport "criminal aliens" and "terrorists" by the highest levels of the U.S. government, these strict measures cement in the national imagination the conception of immigrants as a social evil that must be confronted with—and indeed deserve—harsh measures. Violent rhetoric, combined with punitive governmental treatment of immigrants under color of law, contributes to a tense, often hostile, environment ripe for nativist violence.

The fact that most "illegal aliens" are stereotyped as Mexican by immigration authorities influences the public consciousness and, in turn, impacts U.S. government policy toward immigration. Sanctioned by the Supreme Court, immigration officers routinely consider physical appearance—specifically stereotypical "Mexican" or "Hispanic appearance"—in questioning a person about his immigration status. Not coincidentally, a majority of the noncitizens arrested, detained, and removed by the U.S. immigration authorities are persons of color, with a large segment of this group comprised of natives of Mexico. These facts in combination reinforce in the mind of the general public the propriety of race-based distinctions in immigration enforcement directed at persons of Mexican ancestry.


54. See supra text accompanying notes 26–36.

55. See supra text accompanying notes 26–36. Roughly sixty percent of all undocumented immigrants are from Mexico. See PASSEL & COHN, supra note 17, at 4.


57. See supra notes 19–25 and accompanying text.
In sum, immigration enforcement under color of law that is by outward appearances based on race implicitly encourages race-based discrimination by private individuals against Latina/os and immigrants in American social life. Private citizens thus often support governmental reliance on race and, as a corollary, believe it permissible to rely on racial cues in private and social life.58

C. Hazleton: One Anti-Immigrant Outburst in Rural Pennsylvania

The heated nature of the debate over immigration is exemplified by events in Hazleton, Pennsylvania, a hardscrabble rural town that in 2006 enacted a tough municipal immigration enforcement ordinance that generated national controversy.59 The ordinance would have, among other things, barred landlords from renting housing to undocumented tenants. Informed observers feared that the law would increase housing discrimination against Latina/os, including U.S. citizens and lawful immigrants.60

The following description of a political rally in Hazleton provides a sense of the raw emotion surrounding immigration existing in the community:

58. See supra notes 37–57 and accompanying text.

59. See Lozano v. City of Hazleton, 620 F.3d 170, 206 (3d Cir. 2010) (striking down a local immigration ordinance on grounds that it was preempted by federal immigration law), vacated, 131 S. Ct. 2958 (2011); see also Keller v. City of Fremont, 853 F. Supp. 2d 959, 973 (D. Neb. 2012) (enjoining enforcement of Fremont, Nebraska, ordinance that purported, among other things, to deny access to rental and other housing to undocumented immigrants). For analysis of the constitutionality of the Hazleton ordinance, see generally Ashleigh Bausch Varley & Mary C. Snow, Don’t You Dare Live Here: The Constitutionality of the Anti-Immigrant Employment and Housing Ordinances at Issue in Keller v. City of Fremont, 45 CREIGHTON L. REV. 503 (2012) (analyzing constitutionality of immigration enforcement laws enacted in Fremont, Nebraska, which are similar to Hazleton’s); Mark S. Grube, Note, Preemption of Local Regulations Beyond Lozano v. City of Hazleton: Reconciling Local Enforcement with Federal Immigration Policy, 95 CORNELL L. REV. 391 (2010); Eric L’Heireux Issadore, Note, Is Immigration Still Exclusively a Federal Power? A Preemption Analysis on Legislation by Hazleton, Pennsylvania Regulating Illegal Immigration, 52 VILL. L. REV. 331 (2007); Maria Marulanda, Note, Preemption, Patchwork Immigration Laws, and the Potential for Brown Sundown Towns, 79 FORDHAM L. REV. 321 (2011). There has been sustained debate over the extent to which state and local governments should be involved in immigration enforcement. See infra Part III.B.

60. See Rigel C. Oliveri, Between a Rock and a Hard Place: Landlords, Latinos, Anti-Illegal Immigrant Ordinances, and Housing Discrimination, 62 VAND. L. REV. 55, 98–110 (2009) (analyzing local ordinances like Hazleton’s that prohibit the rental of housing to undocumented immigrants and concluding that such laws are likely to increase unlawful housing discrimination); Tom I. Romero, II, No Brown Towns: Anti-Immigrant Ordinances and Equality of Educational Opportunity for Latina/os, 12 J. GENDER RACE & JUST. 13, 17–34 (2008) (viewing local ordinances like Hazleton’s as a form of racial exclusion).
The anger displayed at the rally—held in support of Hazleton’s anti-immigration mayor, Lou Barletta—was enough to give anyone with a soul a serious case of the chills... About 700 people attended the rally, where some in attendance tried to link illegal Mexican immigrants with the 9/11 attacks. Other speakers accused illegal immigrants of carrying infectious diseases, increasing crime and lowering property values. If Alabama’s late segregationist Gov. George Wallace had been present, he would have wondered who hired away his speechwriters. 61

In allowing “Doe” (anonymous) plaintiffs to challenge the constitutionality of the Hazleton ordinance, the district court observed that “the intense public interest in the ordinance[] at times led to harassment and intimidation that created fear even among those with a more secure social and legal status than the anonymous plaintiffs.” 62 A local activist advocating repeal of the Hazleton immigration ordinance received racist hate mail. 63 The district court concluded that the “record of hostility to the plaintiffs in the lawsuit and the climate of fear and hostility surrounding the debate over the [law]” justified keeping the plaintiffs’ identities anonymous, 64 an extraordinary measure that unfortunately represented a sign of the racial divide over immigration.

II. ANATOMY OF A MODERN-DAY LYNCHING

The average American probably would not consider the Pennsylvania countryside a place where many Mexican immigrants live, much less a hotbed of anti-immigrant, anti-Mexican sentiment. The events in Hazleton, Pennsylvania, however, reveal an underside to the local responses to an emerging Mexican immigrant population. Unfortunately, the hate killing of a young Mexican immigrant

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63. See Lozano, 496 F. Supp. 2d at 509. One letter included a clipping from a newspaper describing the negative effects of undocumented immigration with the note “[s]ubhuman spic scum” and “[i]f it is brown, flush it down.” Id. at 510 (emphasis added) (citations omitted).

64. Id.
occurred in a small town near Hazleton not long after it entered the national immigration fray.

A. The Beating of Luis Ramirez

Over the last decade or so, jobs and relatively inexpensive housing had attracted an influx of Latina/o immigrants to Shenandoah, Pennsylvania, a small, working-class coal mining town within twenty miles of Hazelton. Looking for work, Luis Ramirez moved to Shenandoah from Mexico. One Saturday night in July 2008, a group of Shenandoah Valley High School football players beat Ramirez to death on the streets of that small town.

Early in the evening, the teens spent several hours drinking malt liquor near a creek in Shenandoah. They later were asked to leave a neighborhood Polish American block party when one of the teens got into an argument and had to be physically restrained by his friends.

At trial, testimony showed that the youth had previously frequently voiced their displeasure with the growing number of Latina/os in Shenandoah. They said things like, “Get them out of here,” or “[I]t’s not good for our [t]own.” One of the boys was known to wear a “Border Patrol” t-shirt and drove around town blasting “The White Man Marches On”—a white supremacist song that glorifies violence against minorities.

After getting thrown out of the block party, the group walked through a park and ran into Luis Ramirez, who was with Roxanne

65. See Iturralde, supra note 40, at 418 (noting “correlation between those localities that have been embroiled in debates focusing on local immigration enforcement policies and incidents of hate crimes against Latinos” (footnote omitted)).
68. Piekarsky, 687 F.3d at 135.
69. Id.
Rector, a white woman.\textsuperscript{70} One of the teens told Rector that it was too late for her to be out.\textsuperscript{71} Ramirez responded in Spanish.\textsuperscript{72} The teen yelled back: “This is Shenandoah. This is America. Go back to Mexico.”\textsuperscript{73} Another called Ramirez a “Spic.”\textsuperscript{74} Still another youth told Ramirez to “[g]et the fuck out of here.”\textsuperscript{75}

The teens ran after Ramirez.\textsuperscript{76} One of the football players started fighting with Ramirez, throwing him to the ground.\textsuperscript{77} Another teen repeatedly punched Ramirez in the face, calling him a “fucking Spic.”\textsuperscript{78} While Ramirez was on the ground, the four teens kicked him repeatedly.\textsuperscript{79} One of the teens later stated that “everybody else was kicking him in the upper part, in his head and his chest and his upper body.”\textsuperscript{80}

A friend of Ramirez arrived and the beating ended.\textsuperscript{81} While the group began to walk away, a teen screamed, “Fucking Mexican.”\textsuperscript{82} One of the teens threw a few more punches at Ramirez.\textsuperscript{83} Another said, “Fuck you Spic.”\textsuperscript{84} Another teen chimed in defensively, “This isn’t racial.”\textsuperscript{85}

At this point, one of the teens turned and said, “Go home, you Mexican motherfucker.”\textsuperscript{86} Apparently provoked by these comments, Ramirez charged at him.\textsuperscript{87} While the two fought, another teen punched Ramirez in the face, causing him to fall “like a brick” and hit his head on the concrete ground.\textsuperscript{88}

\textsuperscript{70.} Id. at 137. It is possible that the fact that Ramirez was accompanied by a white woman contributed to the hostility of the interaction between Ramirez and the white teenagers, just as interracial relationships often inflamed anti-black hostility in the Jim Crow South. See infra note 105 and accompanying text (observing that lynching was a tool employed by whites to discourage intimate interracial relationships between African-American men and white women).
\textsuperscript{71.} Piekarsky, 687 F.3d at 137.
\textsuperscript{72.} Id.
\textsuperscript{73.} Id.
\textsuperscript{74.} Id.
\textsuperscript{75.} Id.
\textsuperscript{76.} Id.
\textsuperscript{77.} Id.
\textsuperscript{78.} Id.
\textsuperscript{79.} Id.
\textsuperscript{80.} Id.
\textsuperscript{81.} Id.
\textsuperscript{82.} Id.
\textsuperscript{83.} Id.
\textsuperscript{84.} Id.
\textsuperscript{85.} Id.
\textsuperscript{86.} Id.
\textsuperscript{87.} Id.
\textsuperscript{88.} Id.
As Ramirez lay motionless, one of the teens kicked Ramirez in the head. A loud “crack” could be heard. The kick to Ramirez’s head caused him to go into convulsions. As the teens fled, one of them yelled, “Tell your fucking Mexican friends to get the fuck out of Shenandoah or you’re going to be fucking laying next to him.” Two days later, Luis Ramirez died.

The horror of the Ramirez killing by four upstanding youths attracted national attention. Several news stories equated the killing to a “lynching,” invoking the sordid memories of the violent “lynch law” that helped subordinate African Americans in the Jim Crow South.

B. The Legal Fallout

1. The State Prosecution

The Ramirez killing spawned multiple criminal prosecutions. First, an all-white jury in Pennsylvania state court acquitted the white defendants of third-degree murder, aggravated assault, and related charges. Apparently swayed by the defense’s characterization of the encounter as “a street fight that ended tragically,” the jury found the defendants guilty of the least serious criminal charge, simple assault, even though the brutal beating resulted in Luis Ramirez’s death.

The racial composition of the jury arguably affected the verdict in the state criminal prosecution. It appears that no Latina/os—and no people of color—served on the jury in a trial about the hate killing

89. Id. at 138.
90. Id.
91. Id.
92. Id.
93. Id.
of an immigrant from Mexico. One potential juror with a Spanish surname had been dismissed from the jury.\textsuperscript{98}

After the conclusion of the trial, the foreman of the jury went public to claim that the all-white jury was more sympathetic toward the young white defendants than to the Mexican immigrant victim. Indeed, he stated unequivocally that "some of the people on the jury were racist . . . [and] had their minds made up before the first day of the trial."\textsuperscript{99}

2. The Federal Prosecutions

Recognizing that justice had not been done in the state prosecution, the U.S. Department of Justice intervened and brought a criminal civil rights prosecution against the perpetrators in federal court. After a trial, the jury found that two of the defendants violated Luis Ramirez's civil rights; the judge sentenced them to nine years in prison, many years more than they had been sentenced on the state assault conviction.\textsuperscript{100}

The U.S. government next brought a criminal prosecution based on an alleged cover-up of the Ramirez killing by the former Shenandoah police chief and two officers, who sought to "protect" whom they apparently thought to be innocent teens.\textsuperscript{101} The jury acquitted the defendants of conspiracy to obstruct a federal investigation, but found the chief of police guilty of falsifying a police report.\textsuperscript{102} The jury also found one officer guilty of lying to the Federal Bureau of Investigation but acquitted him on other counts. Another police officer was cleared of all charges.\textsuperscript{103}

\begin{footnotes}
\footnotetext{101}{See Rubinkam, supra note 66.}
\footnotetext{102}{See Sabrina Tavernise, \textit{Former Police Chief Is Sentenced for Cover-Up in Mexican’s Death}, N.Y. TIMES, June 2, 2011, at A18.}
\end{footnotes}
The episode surrounding the killing of Luis Ramirez sounds eerily reminiscent of the violence directed at African Americans in the South during the height of Jim Crow. During that era, violence was used to maintain the subordination of Blacks, and sympathetic state court juries refused to punish the white perpetrators of the violence. Local police sought to protect the white perpetrators of brutality.

The similarities do not end there. The federal civil rights prosecution brought by the U.S. government resembled the prosecutions brought to combat violence against African Americans and civil rights workers in the South in the 1950s and 1960s. The aim was to remedy the problem of all-white juries reflexively acquitting white defendants accused of violence in state courts.

Nor does it appear to be mere coincidence that the tragic killing of Luis Ramirez came at a time of a prolonged, heated national debate over immigration—and a rapid proliferation of state and local immigration enforcement legislation passed after considerable


acrimony in the region as well as the nation. National agitation about immigration, and frequent allegations about the destruction of U.S. society by immigrants, including in nearby Hazleton, almost unquestionably influenced the young men who told Luis Ramirez to "go back to Mexico" before kicking him to death.

As the need for this symposium attests, the killing of a young Mexican immigrant in Shenandoah, Pennsylvania unfortunately is not all that extraordinary. In 2008, white teens in Patchogue, New York engaged in what they characterized as the "sport" of "beaner hopping" and brutally killed an Ecuadoran immigrant. In 2010, racial tensions led to violence against Mexican immigrants in Staten Island, New York. In 2011, two anti-immigrant extremists were sentenced to death for the murder of a father and his young daughter, both of Mexican ancestry, in a home invasion in Arizona. These cases are the tip of the iceberg of hundreds of hate incidents annually.

107. See supra Part I.A.
108. For popular books in this genre, see PETER BRIMELOW, ALIEN NATION: COMMON SENSE ABOUT AMERICA'S IMMIGRATION DISASTER (1995); VICTOR DAVIS HANSON, MEXIFORNIA: A STATE OF BECOMING (2003); SAMUEL P. HUNTINGTON, WHO ARE WE?: THE CHALLENGES TO AMERICA'S NATIONAL IDENTITY (2004); MICHELLE MALKIN, INVASION: HOW AMERICA STILL WELCOMES TERRORISTS, CRIMINALS, AND OTHER FOREIGN MENACES TO OUR SHORES (2002).
109. See supra Part II.A.
111. See Cara Buckley, Teenagers' Violent "Sport" Led to Killing on Long Island, Officials Say, N.Y. TIMES, Nov. 21, 2008, at A26; see also S. POVERTY LAW CTR., CLIMATE OF FEAR: LATINO IMMIGRANTS IN SUFFOLK COUNTY, N.Y. 5 (2009) (noting that the killing of an Ecuadoran immigrant in Patchogue by "a gang of teenagers who called themselves the Caucasian Crew ... highlighted a growing national problem—violent hatred directed at all suspected undocumented immigrants, Latinos in particular"). In Suffolk County, where Patchogue is located, local officials arguably had not done enough to calm racial tensions—and may have inflamed them—before and after the killing. See López, supra note 66, at 167–68.
III. ADDRESSING HATE CRIMES DIRECTED AT LATINA/OS AND IMMIGRANTS

The trials involving the killing of Luis Ramirez, similar to many trials implicating issues of race, necessarily reflect deeper issues of racism in the modern United States. This is true whether it is the black defendant in a criminal case, such as the famous O.J. Simpson murder trial,115 or white defendants charged with hate crimes. Unfortunately, anti-immigrant, as well as anti-Latina/o, sentiment has plagued the United States throughout its history.116 Because race shapes all aspects of American social life, one can expect it to influence acts of racial hatred as well as how the justice system responds to such acts.

One important first step toward reducing hate crimes against Latina/os and immigrants is to frankly acknowledge that the public responses to the race of today's immigrants—and racism—contribute to formation of anti-immigrant sentiment and the commission of hate crimes.117 Unfortunately, even when presented with the racially disparate impacts of immigration enforcement, many advocates of ever-more aggressive immigration enforcement measures fervently deny that race has anything to do with the debate over immigration. Rather, they generally justify efforts to combat "illegal" immigration on the superficially appealing desire to enforce the rule of law.118

It is impossible to deny, however, that the enforcement of the immigration laws has racially disparate impacts on communities of color; the fact that many of today's immigrants are from Mexico unquestionably intensifies and complicates the debate over state

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114. See supra Part I.B.
118. See Johnson, supra note 19, at 315.
immigration laws.119 Such racial dimensions to immigration and immigration enforcement merit the nation’s collective attention.

If the legitimate civil rights grievances of Latina/os and immigrants with the racially disparate impacts of immigration enforcement in the United States are not acknowledged, much less meaningfully addressed, one can expect that at some point the affected communities will respond.

In 2006, thousands of people in cities across the United States peacefully marched in protest of proposed punitive immigration reform legislation.120 This represents one of many possible responses to the nation’s failure to address the civil rights concerns of immigrants and Latina/o citizens. Alternatively, civil unrest, even violence like that following the May 1992 acquittal of the police officers who were caught on videotape beating African American Rodney King, which included large numbers of Latina/o immigrants as well as blacks, offers an example of a very different possible response, albeit a much less socially desirable one.121

A. Enacting Comprehensive Immigration Reform

Polls consistently show that a majority of Americans, as well as President Obama, believe that the current American immigration system is nothing less than “broken.”122 Nonetheless, despite numerous efforts over many years, Congress has failed to enact comprehensive immigration reform.123 Such reform can move the nation beyond blaming immigrants for the nation’s problems and can begin to address the underlying issues influencing undocumented

119. See supra text accompanying notes 15–25.
123. See supra note 14 and accompanying text.
immigration, such as the widely held view that the current immigration laws are out of sync with the modern needs of the U.S. labor market.\textsuperscript{124} Meaningful immigration reform would do much to dampen the rhetorical and actual violence regularly directed at Latina/os and immigrants in the United States.\textsuperscript{125}

Although economic insecurity often plays into fears about Latina/o and immigrant workers, hate crimes have been consistently high for at least the last decade, even before the recession.\textsuperscript{126} The global economic downturn over the last few years did not result in much of a change in the number of hate crimes against Hispanics. However, national security fears, and the emphasis on controlling undocumented immigration as part of the “war on terror” after September 11, 2001, heightened social tensions.\textsuperscript{127}

Even if the recession may not appear to have led to an increase in hate crimes, the poor economy at the end of the first decade of the new millennium almost assuredly hampered the ability of the nation to engage in a rational public dialogue on the subject of immigration reform. Such a dialogue obviously is a precursor to meaningful reform. An overhaul of the U.S. immigration laws, in turn, holds the promise of transforming the mean-spirited national cacophony over immigration and refocusing energies on laws and policies that directly address economic development, public safety, and other important national priorities.\textsuperscript{128}

After the reelection of President Obama in 2012, there was renewed talk of the possibility of comprehensive immigration reform—in part spurred by the overwhelming support of Latina/o voters for the President.\textsuperscript{129} Many political leaders and pundits blamed the aggressive positions taken on immigration enforcement by Republican candidates for alienating Latina/o voters.\textsuperscript{130}

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\item [124.] See Johnson, supra note 16, at 131–67.
\item [125.] See Bill Ong Hing, \textit{Reason over Hysteria}, 12 \textit{LOY. J. PUB. INT. L.} 275, 276 (2011) (“We should gather ourselves and use [our] collective wisdom to address immigration policy and the need for reform in a thoughtful, reasonable manner.”); Leadership Conference on Civil Rights Educ. Fund, \textit{Confronting the New Faces of Hate: Hate Crimes in America} 36 (2009), available at http://www.civilrights.org/publications/hatecrimes (calling for political leaders to set a civil tone for a “civil national discourse” on comprehensive immigration reform).
\item [126.] See supra text accompanying note 48–49.
\item [127.] See Johnson & Trujillo, supra note 53, at 1376–87.
\item [128.] See supra Part I.
Consequently, the time might be right politically for comprehensive immigration reform.

History suggests that congressional action can help to facilitate civil rights improvements in immigration. The end of Jim Crow America, for example, culminated with the passage of the Civil Rights Act of 1964\(^\text{131}\) and a plethora of other laws designed to bring about equality for African Americans and minorities generally. In a similar way, comprehensive immigration reform can begin to move the nation forward toward eliminating the racial caste system created and enforced by the U.S. immigration laws, a system that contributes to an environment in which hate crimes flourish.

B. Federal Preemption of State and Local Immigration Enforcement Measures

The conventional wisdom, as often expressed by the Supreme Court,\(^\text{132}\) has been that the U.S. government should be near-exclusively responsible for the regulation of immigration laws. In *De Canas v. Bica*,\(^\text{133}\) for example, the Court in 1976 unequivocally stated that the “[p]ower to regulate immigration is unquestionably exclusively a federal power.”\(^\text{134}\) At the same time, however, the Court rejected a federal preemption challenge to a California law imposing fines on employers of undocumented immigrants.\(^\text{135}\) More recently, in *Arizona v. United States*,\(^\text{136}\) the Court invalidated three of four provisions of Arizona’s immigration enforcement law as preempted by federal law, emphasizing the unquestioned federal power over

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and a number of U.S. senators renewed the call for immigration reform. See Goldfarb & Helderman, *supra* note 6, at A1.


132. See infra text accompanying notes 133–34.


134. Id. at 354. In *Chamber of Commerce v. Whiting*, 131 S. Ct. 1968 (2011), the Court quoted this language from *De Canas* while omitting the word “exclusively”—“In *De Canas*, we recognized that the “[p]ower to regulate immigration is unquestionably . . . a federal power”’ (omission in original)—and upheld an Arizona law that allowed the state to strip the business license of an employer found to have repeatedly hired undocumented immigrants. *Whiting*, 131 S. Ct. at 1974 (citation omitted).


immigration, while at the same time recognizing that there was room for regulation by the states. Together, the decisions leave unclear the limits of what a state can do when it comes to regulating immigration.

At least since the late nineteenth century, the federal government has comprehensively regulated immigration and, until recent years, remained the primary enforcer of the U.S. immigration laws, which makes sense given the national and international impacts of immigration policy and its enforcement. Importantly, immigration laws and policies can have important foreign policy consequences for the nation, which the federal government can most appropriately consider and balance against other national concerns.

As recent judicial decisions demonstrate, the Supreme Court and Congress have not been entirely clear about the boundaries of power between the federal and state governments on immigration enforcement. This lack of jurisdictional clarity, fueled by the failure of Congress to pass comprehensive immigration reform, partisan politics, and changing immigration patterns, has allowed, if not encouraged, the recent spate of state and local immigration enforcement laws.

In a controversial move, the Obama administration challenged a number of state immigration enforcement laws, including laws passed by Alabama, Arizona, and South Carolina, contending that they are


138. See, e.g., United States v. Arizona, 641 F.3d 339, 353–54 (9th Cir. 2011) (summarizing negative U.S. foreign policy consequences of Arizona’s S.B. 1070 and the fact that the governments of many nations condemned the law), aff’d in part, rev’d in part on other grounds, 132 S. Ct. 2492 (2012); see also Arizona v. United States, 132 S. Ct. at 2498 (“It is fundamental that foreign countries concerned about the status, safety, and security of their nationals in the United States must be able to confer and communicate on this subject with one national sovereign, not 50 separate states.”). See generally Mary Fan, Rebellious State Crimmigration Enforcement and the Foreign Affairs Power, 89 Wash. U. L. Rev. 1269 (2012) (contending that state immigration enforcement laws can undermine federal foreign relations prerogatives).

139. See supra text accompanying notes 134–36; see also Gabriel J. Chin & Marc L. Miller, The Unconstitutionality of State Regulation of Immigration Through Criminal Law, 61 Duke L.J. 251, 265–78 (2011) (reviewing case law establishing conventional view that federal government has exclusive power to regulate immigration).
preempted by federal law.\textsuperscript{140} Although couched in terms of state infringement of federal regulatory power, challenges like these, if successful, may limit civil rights abuses of Latinas/os and immigrants by state and local governments.\textsuperscript{141}

Discriminatory animus can also be seen at times in the divisive campaigns for state immigration enforcement laws. Anglos and Latina/os are frequently polarized along racial lines with respect to their perspectives on the laws.\textsuperscript{142} For example, in enjoining Alabama’s immigration enforcement law as applied to the state’s mobile home statute, a district court found that “there is evidence that the legislative debate on H.B. 56 was laced with derogatory comments about Hispanics. This evidence reinforces the contention that the term illegal immigrants (the purported target of H.B. 56) was just racially discriminatory code for Hispanics.”\textsuperscript{143} In another case, a federal court struck down a Farmers Branch, Texas, ordinance prohibiting the rental of housing to undocumented immigrants, “conclud[ing] that the ordinance’s sole purpose is not to regulate housing but to exclude undocumented aliens, specifically Latinos, from the City of Farmers Branch.”\textsuperscript{144}

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\item[141.] See generally Mary D. Fan, Post-Racial Proxies: Resurgent State and Local Anti-“Alien” Laws and Unity-Rebuilding Frames for Antidiscrimination Values, 32 CARDOZO L. REV. 905 (2011) (contending that challenges to state and local immigration enforcement laws on federal preemption grounds can further anti-discrimination principles).

\item[142.] Anti-Mexican, anti-immigrant sentiment has often contributed to the passage of state immigration enforcement laws in the past. For example, after a 1994 campaign marred by such sentiment, California voters in a racially polarized vote overwhelmingly passed Proposition 187, an immigration enforcement initiative that was barred from going into effect by an injunction issued by a federal court. See League of United Latin Am. Citizens v. Wilson, 908 F. Supp. 755, 786-87 (C.D. Cal. 1995); see also Kevin R. Johnson, An Essay on Immigration Politics, Popular Democracy, and California’s Proposition 187: The Political Relevance and Legal Irrelevance of Race, 70 WASH. L. REV. 629, 650-61 (1995) (arguing that race played a role in the passage of the proposition).


\item[144.] Villas at Parkside Partners v. City of Farmers Branch, 675 F.3d 802, 804 (5th Cir.), rehearing en banc granted, 688 F.3d 801 (5th Cir. 2012); see Iturralde, supra note 40, at 419 (“Stereotypes and negative images of the Latino immigrant are often associated with the term ‘illegal alien.’ Targeting the undocumented is usually a pretext for anti-Latino motives . . . .”); see also Leticia Saucedo, Mexicans, Immigrants, Cultural Narratives, and National Origin, 44 ARIZ. ST. L.J. 305, 314–24 (2012) (summarizing cultural narratives of Mexican immigrant workers in the United States); supra text accompanying notes 31-36.
Moreover, state and local government involvement in enforcement of the U.S. immigration laws might hamper the ability of those governments to effectively pursue peculiarly state and local public safety and other goals, namely ordinary criminal law enforcement. Specifically, as a number of local governments have concluded, fears of deportation may chill the reporting of crimes by immigrants, as well as cooperation in investigations and prosecutions with local police, which in turn undermines effective policing.\textsuperscript{145}

The Supreme Court had the opportunity to provide clearer guidance about the limits of state immigration enforcement power in addressing the constitutionality of Arizona's S.B. 1070, an immigration landmark of the twenty-first century.\textsuperscript{146} Although the Court reaffirmed federal primacy over immigration enforcement, it let stand a provision of the Arizona law that critics vigorously claimed would permit, if not encourage, racial profiling by state and local police.\textsuperscript{147} Once again, the Court demonstrated a degree of ambivalence about the role of the states in immigration enforcement, with that lack of decisiveness possibly being read as inviting further state action in this area.

Again, there is historical precedent for a clear ruling from the Supreme Court to help expand and protect the civil rights for

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\item[(145)] See Bill Ong Hing, Immigration Sanctuary Policies: Constitutional and Representative of Good Policing and Good Public Policy, 1 U.C. IRVINE L. REV. 247, 253, 303 (2012) (noting that public safety is the purpose of many municipal "sanctuary" policies with the basic hope of "creat[ing] good relations and trust with immigrant communities").
\item[(147)] See Arizona, 132 S. Ct. at 2498–2500, 2507–10 (refusing to disturb section 2(B) of Arizona's S.B. 1070); Kevin R. Johnson, Online Symposium: The Debate over Immigration Reform Is Not Over Until It's Over, SCOTUSBLOG (June 25, 2012, 8:14 PM), http://www.scotusblog.com/2012/06/online-symposium-the-debate-over-immigration-reform-is-not-over-until-its-over.
\end{enumerate}
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minorities. A unanimous Court in *Brown v. Board of Education*\(^{148}\) emphatically invalidated the "separate but equal" doctrine that buttressed Jim Crow and helped move the civil rights movement forward. By clarifying federal primacy over immigration, the Court could help begin to address the negative civil rights consequences of state involvement in immigration enforcement.

**C. Reforms to Ensure More Diverse Juries**

The remaining proposals in Part III are designed to promote more effective enforcement of the prohibition of hate crimes as well as to improve the operation of the justice system.\(^ {149}\)

In courtrooms across the United States today, Latina/os, as well as African Americans, are severely underrepresented on juries,\(^ {150}\) a fact that undercuts the ideal of the jury as a fundamental characteristic of the nation's commitment to democracy.\(^ {151}\) This flaw is exemplified by the fact that an all-white jury acquitted the white defendants of the most serious charges in the state court prosecution of the individuals who beat Luis Ramirez to death.\(^ {152}\)

Historically, more heterogeneous juries are perceived as being less likely than all-white juries to strive to protect, rather than punish, white defendants accused of hate crimes.\(^ {153}\) This may have been a problem with regard to the all-white jury in the state criminal prosecution of the white teens in the Luis Ramirez case.\(^ {154}\)

Diverse juries are more likely to afford an impartial trial to minority defendants in criminal cases.\(^ {155}\) For similar reasons, the


\(^{151}\) See Thiel v. S. Pac. Co., 328 U.S. 217, 220 (1946) (emphasizing that "[t]he American tradition of trial by jury . . . necessarily contemplates an impartial jury drawn from a cross-section of the community").

\(^{152}\) See supra text accompanying notes 96–99.


\(^{154}\) See supra text accompanying notes 96–99.

decisions of representative juries are more likely to be accepted by
the public at large, especially minority communities, as more
legitimate than those of less representative juries. 156

Just as it has been for African Americans, the exclusion of
Latina/os from jury service has been a longstanding problem in the
United States. In the 1954 case of Hernandez v. Texas, 157 the Supreme
Court held that U.S. citizens of Mexican ancestry could not be
intentionally excluded from jury service on account of race and
national origin. 158 However, Latina/os today are disproportionately
excluded from jury service through more subtle mechanisms.

1. Policing Discriminatory Peremptory Challenges

The Supreme Court's landmark decision in Batson v. Kentucky 159
bars the use of peremptory challenges to strike prospective jurors on
account of their race. After two decades of experience with various
efforts to implement the decision, a large body of scholarly
commentary has emerged concluding that Batson's application by
state and federal courts has failed to end discriminatory jury strikes. 160

PERSONALITY & SOC. PSYCHOL. 597, 606 (2006), available at
juries "deliberated longer and considered a wider range of information" than homogenous
juries); see also William J. Bowers et al., Crossing Racial Boundaries: A Closer Look at the
Roots of Racial Bias in Capital Sentencing When the Defendant Is Black and the Victim Is
involving a black defendant and a white victim, that juries with no black male jurors
imposed death sentences in more than seventy-one percent of cases, whereas when at least
one African American served on the jury, a death penalty was imposed in less than forty-
three percent of cases).

156. See Jon M. Van Dyke, Jury Selection Procedures: Our Uncertain
Commitment to Representative Panels 45 (1977) (opining that the "best way to
minimize bias is to impanel a representative cross-section of the community; without such
a cross-section, doubts about the jury's partiality will persist"); Jeffrey Abramson, Two
jury has the credentials to render a legitimate verdict acceptable to the entire
community.").

157. 347 U.S. 475 (1954). See generally "COLORED MEN" AND "HOMBRES AQUI":
Hernandez v. Texas and the Emergence of Mexican-American Lawyering
(Michael A. Olivas ed., 2006) (collecting essays critically analyzing the Supreme Court's
decision in Hernandez v. Texas).

158. Hernandez, 347 U.S. at 479.

159. 476 U.S. 76 (1986); see Edmonson v. Leesville Concrete Co., 500 U.S. 614, 631
(1991) (extending Batson to civil actions as well as criminal prosecutions).

160. See, e.g., Albert W. Alschuler, The Supreme Court and the Jury: Voir Dire,
(1989) (arguing that Batson peremptory challenges are incompatible with the Equal
Protection Clause); Symposium, Batson at Twenty-Five: Perspectives on the Landmark,
Reflections on Its Legacy, 97 Iowa L. Rev. 1393 (2012) (collecting scholarship on the
applications of Batson); Jeffrey S. Brand, The Supreme Court, Equal Protection and Jury
One obstacle to impartial prosecution of hate crimes—as well as other criminal prosecutions implicating matters of race—is the failure to establish procedures that adequately police Batson’s ban on race-based strikes of jurors. Batson requires a party who challenges a peremptory strike to first establish “that the totality of the relevant facts gives rise to an inference of discriminatory purpose.” Once a prima facie case has been established, the burden shifts to the opposing party to proffer a nondiscriminatory justification for the peremptory challenge. The court then must take into account “all relevant circumstances” and decide whether the strike was exercised with an intent to discriminate on the basis of race.

The implementation of Batson unfortunately has been hobbled by state court acceptance of peremptory strikes of prospective jurors when the prosecution’s proffered justifications are highly correlated with race. The Supreme Court at various times has intervened in an
attempt to ensure full compliance with *Batson*. For example, the
Court rejected the California standard for establishing a prima facie
case of purposeful discrimination in jury selection and held that it was
more restrictive than required by *Batson*. 166 Similarly, in *Miller-El v. Dretke*, 167 the Court found that, in a state criminal case in which a
conviction had been upheld by the Court of Criminal Appeals of
Texas, the prosecution's striking of ten of eleven African American
prospective jurors through peremptory challenges raised an inference
of impermissible racial discrimination. 168

The outright abolition of peremptory strikes is one possible
solution to the problem of discriminatory challenges. 169 The trial bar,
however, stubbornly defends the continued availability of peremptory
strikes in the hands of trial lawyers as an important tool in jury
selection. 170

Offering a less drastic alternative to abolition, Professors Jeffrey
Bellin and Junichi Semitsu opine that judges may be inhibited from
finding a *Batson* violation because to do so in effect condemns lawyers who frequently appear before them of having violated the

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166. *See Johnson v. California*, 545 U.S. 162, 173 (2005); *see also* *Snyder v. Louisiana*, 552 U.S. 472, 486 (2008) (reversing Louisiana Supreme Court's failure to find a *Batson* violation in the use of peremptory challenges to strike African American jurors).

167. 545 U.S. 231 (2005). The Court explained that factors outside "the four corners of a given case" might be weighed, including statistical analysis of the jury pool, comparison of struck and empanelled jurors, disparate questioning, and evidence of historical discrimination, in determining whether the prosecutor had violated *Batson*. *See id.* at 240.

168. *Id.* at 265–66.


U.S. Constitution. To minimize such inhibitions, they propose that courts require the attorney to rebut the inference of discriminatory motive by offering a more specific neutral and reasonable justification for a strike. Instead of requiring proof that the strike was a pretext for an intent to discriminate, the court should determine whether the strikes in their entirety, as well as voir dire selection patterns, rebut the inference of invidious discrimination.

Other proposals to help facilitate the impaneling of more representative juries are geared toward addressing unconscious racial bias by attorneys in jury selection and jurors in deciding cases. They include judicial warnings about stereotyping before jury selection; the use of questionnaires that directly address implicit juror bias; and increased time for jury selection to help avoid undue reliance by attorneys on racial stereotypes.

In total, the law and policy surrounding peremptory challenges is in dire need of reform to better achieve the promise of Batson. Improvements could help address bias in jury selection, ensure more diverse juries to allow for more impartial prosecutions of hate crimes, and generally enhance the perceived legitimacy of jury verdicts.

2. Allowing Non-English Speakers to Serve on Juries

In 2009, more than one-fifth of the U.S. population over age five spoke a language other than English in the home. As a consequence, the near-universal requirement in state and federal

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172. See id. at 1121.
173. See id. at 1122.
courts that a juror speak English\textsuperscript{177} is an important obstacle to impaneling a jury that represents a true cross-section of the community.

Language in modern American society is highly correlated with race and national origin.\textsuperscript{178} As one commentator has observed, discrimination based on language ability is “nothing less than discrimination on the basis of national origin.”\textsuperscript{179} Requiring English language proficiency for jury service often disproportionately excludes Latina/os from service and contributes to their underrepresentation on juries.\textsuperscript{180}

To make matters worse, the Supreme Court, in a criminal prosecution of a Latino defendant, found that a prosecutor who used peremptory challenges to strike Spanish-speaking jurors on the grounds that they were bilingual (i.e., spoke Spanish as well as English) and might not adhere to the official translation of Spanish into English at the trial, did not run afoul of \textit{Batson}.\textsuperscript{181} Obviously, allowing bilingual Spanish speakers to be removed from juries through peremptory challenges will likely result in fewer Latina/o jurors. Scholars, not surprisingly, have roundly criticized the decision.\textsuperscript{182}

There would, of course, be costs to allowing non-English speakers to serve on juries. Accurate and timely translations—and thus the employment of translators—would be necessary so that the jurors could understand the testimony and other evidence in the case. Using available translation technology might help to reduce costs.


\textsuperscript{178}See Bill Ong Hing, \textit{Beyond the Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of Separatism and Conflict in an Immigration-Driven Multiracial Society}, 81 CALIF. L. REV. 863, 874 (1993) (“[T]he inability to speak English coincides neatly with race.”).


Such technology is often employed in international meetings, as well as tribunals, involving participants who speak different languages. Translation of witness testimony into English is common. Any costs, however, would be outweighed by the benefits of more representative juries rendering more trusted and legitimate results, which are particularly important when deciding racially-charged matters such as hate crimes.

3. Noncitizen Jury Service

Approximately thirteen percent (forty million people) of the U.S. population is foreign-born, and fifty-six percent of this group are not U.S. citizens. In the last decade, nearly half of the largest 100 metropolitan areas in the United States saw fifty percent increases in their foreign-born populations; nine metropolitan areas experienced an increase in the immigrant population of more than 100%, including Scranton-Wilkes-Barre, Pennsylvania, where the white defendants were tried for the beating death of Luis Ramirez.

Noncitizens today cannot serve on American juries. This has not always been the rule. At one time, English law, and the law of some U.S. states, authorized juries in disputes between noncitizens to be comprised of an equal number of citizens and noncitizens. The aim was to attempt to provide for impartial adjudication of disputes involving foreigners.

In important respects, jury service, like voting, epitomizes the nation's robust commitment to democratic institutions. Until the early twentieth century, noncitizens in many states enjoyed the right to vote. Several municipalities in modern times have returned to

187. See Vikram David Amar, Jury Service as Political Participation Akin to Voting, 80 CORNELL L. REV. 203, 217–54 (1995) (arguing that jury service, like voting, is a political, rather than a civil, right).
188. See Virginia Harper-Ho, Noncitizen Voting Rights: The History, the Law and Current Prospects for Change, 18 LAW & INEQUALITY 271, 273 (2000); Jamin B. Raskin,
allowing noncitizen residents to vote in school district elections.\textsuperscript{189}

Allowing noncitizens who meet certain requirements—such as a certain duration of residency—to serve on juries would allow for juries to be far more representative of the community, which includes noncitizens, than juries currently are. More inclusive juror eligibility also would allow a larger percentage of the Latina/o population to be eligible for jury service. Better community representation also might help promote the impartiality of juries as well as improve the perceived legitimacy of their decisions,\textsuperscript{190} a particularly important matter in racially charged hate crime prosecutions.

D.Federal, State, and Local Responses to Hate Crimes

1. Federal Responses

After the state prosecution failed to bring justice to the men who killed Luis Ramirez, the U.S. government stepped in to prosecute them, as well as police officers involved in an alleged cover-up.\textsuperscript{191} Although the prosecutions ultimately met with mixed success, the federal government's intervention ensured some modicum of adherence to the rule of law. It also demonstrated to the affected communities that the U.S. government was committed to prosecute the perpetrators of hate crimes.

Federal prosecutions, like those pursued in the aftermath of the failed state prosecution of Luis Ramirez,\textsuperscript{192} can help attempt to bring to justice the perpetrators of hate crimes when the states prove unable to do so. Several other contemporary federal prosecutions involving alleged police misconduct in the treatment of Latina/os drive this point home.\textsuperscript{193}


\textsuperscript{190} See supra notes 149–57 and accompanying text.

\textsuperscript{191} See supra Part II.B.

\textsuperscript{192} The U.S. government also has challenged state laws that arguably infringe on the civil rights of immigrants and minorities. See supra note 28 and accompanying text.

\textsuperscript{193} Claims of police abuse are different from hate crimes but, in certain instances, may touch on similar racially charged issues. See Daniel B. Woods, \textit{Why Anaheim, Known for Disney and the Angels, Erupted in Violence this Week}, CHRISTIAN SCI. MONITOR (July 26, 2012), http://www.csmonitor.com/USA/2012/0726/Why-Anaheim-Known-for-Disney-and-the-Angels-erupted-in-violence-this-week (analyzing protests in Anaheim, California, after fatal shooting by police of young Latino man inflamed racial tensions in the community).
In 2012, the Justice Department indicted four East Haven, Connecticut, police officers for years of systematically violating the civil rights of Latina/os and immigrants. Until recently, one might have wondered why there had not been much federal attention paid to the well-publicized civil rights abuses by the Maricopa County Sheriff’s Office in Arizona, led by the controversial Sheriff Joe Arpaio. In late 2011, the Department of Justice issued a stinging report documenting the rampant violation of civil rights of immigrants and Latina/os in Maricopa County. The report further found a “pervasive culture of discriminatory bias against Latinos [in the Maricopa County Sheriff’s Office] that reaches the highest levels of the agency.” The Justice Department ultimately filed a civil rights action against the Office and Sheriff Arpaio for an alleged pattern and practice of civil rights violations.

Scholars have recognized similarities between hate crimes and crimes against humanity, which have been subject to high-profile prosecutions in international tribunals. In both instances, the acts of violence are “made possible by group encouragement [with] each bias crime encourag[ing] further acts of violence.” Hate crimes reinforce discrimination against unpopular groups and invite broader social
acceptance of violence against the most vulnerable in society. Consistent with this view, the Supreme Court upheld a penalty enhancement for hate crimes, reasoning that the targeting of individuals on the basis of race is especially worthy of condemnation and punishment.201

Recall that defense attorneys portrayed the violence against Luis Ramirez as nothing more than a street fight gone awry with police officers accused of acting to protect the “innocent” teens charged with the homicide.202 This seemingly rational explanation of the gruesome—and deadly—beating helps legitimize nothing less than pathological violence. “[W]hen a bias-motivated crime is seen as being ‘rational’ in some way, the bias required for condemnation becomes invisible.”203

Besides increased federal prosecutions, a reinvigorated U.S. Commission on Civil Rights,204 which was created under the Civil Rights Act of 1957 as part of the efforts to protect the civil rights of minorities,205 could help to effectively address hate crimes. Increased funding for investigations by the Commission, in collaboration with

202. See supra text accompanying notes 96–99.
federal law enforcement authorities, could assist in remedying the failure of local law enforcement to effectively police and better deter hate crimes.\textsuperscript{206} In addition, making hate crimes a priority of the Commission in terms of investigations, reporting, and recommendations would do much to bring hate crimes into the national eye. Such actions by the Commission also might help foster a renewed national, state, and local community dialogue on how to provide relief in cases involving the violation of the civil rights of immigrants and Latina/os.

A reinvigorated Commission could create a standard online reporting form and database to streamline complaint and investigation management. It could also provide clear standards to help fund potential hate crime victims, and communities and local human rights commissions.\textsuperscript{207} A newly reinvigorated Commission could also hold regular review meetings with the federal, state, and local law enforcement authorities, as well as immigrant rights and civil rights advocates, to review quarterly hate crime statistics, and identify common criminal patterns where they do exist. The Commission could also fund full-scale investigations in communities with high rates of hate violence, making recommendations based on restorative justice principles.\textsuperscript{208}

2. State and Local Responses

Solutions for broader community engagement, such as local civil and human rights commissions, could also help combat hate crimes. A growing number of cities and counties have created commissions to


\textsuperscript{207} See infra Part III.D.2.

\textsuperscript{208} See generally Robert B. Coates et al., Responding to Hate Crimes Through Restorative Justice Dialogue, 9 CONTEMP. JUST. REV. 7 (2006) (reporting on a two-year study of communities that use restorative justice principles to deal with hate crimes); Theo Gavrielides, Contextualizing Restorative Justice for Hate Crime, 27 J. INTERPERSONAL VIOLENCE 3624 (2012) (analyzing the efficacy of restorative justice principles to deal with certain types of hate crimes).
investigate hate crimes.209 Such institutions raise public awareness of these crimes, help push communities to change discriminatory policies and practices, and create a space for dialogue that may facilitate the healing of communities from the social trauma caused by hate violence.

The San Francisco Human Rights Commission has a division known as the San Francisco Coalition Against Hate Violence210 that documents hate crimes.211 Eugene, Oregon’s Human Rights Commission212 launched the Human Rights City Project to address hate crimes and protect immigrant rights.213 The Los Angeles County Human Relations Commission also focuses on hate crimes.214 Its experience is illustrative. In 2010, there were fifteen hate crime reports against Latina/os and forty-five against Mexicans.215 Twenty crimes included anti-immigrant slurs, including a familiar one—“Go back to Mexico.”216 In one incident, a suspect attacked a Latino family, yelling, “I'll be right back with a strap to kill all ya'll fuckin’ wetbacks.”217 In another incident, a suspect screamed at the employees in a Taco Bell: “Fuck you, Mexicans! You're the beamer that's taking the Americans' money and their jobs. Go back to your


210. See San Francisco Coalition Against Hate Violence, supra note 209.


215. Id. at 9.

216. Id. at 21.

217. Id. at 22.
country!"218

Documentation by local human and civil rights commissions can help shed light on how hate speech often legitimizes violence against Latina/o and immigrant communities. Such commissions can also create a meaningful space for communities to attempt to grapple with hate crimes at the local level. In short, state and local, as well as federal, efforts to shed light on civil rights abuses and hate crimes of immigrants and Latina/os are necessary. Continued vigilance is essential as the tensions of race and class that give rise to hate crimes are unlikely to be remedied in the near future.

CONCLUSION

The new millennium has seen consistently high levels of hate crimes against Latina/os and immigrants.219 The killing of Luis Ramirez, an immigrant from Mexico, in the small town of Shenandoah, Pennsylvania, is just one extremely disturbing example.220 As discussed in this Article, this and other tragic killings of Latina/o immigrants have occurred as an indirect result of the volatile national debate over immigration filled with violent rhetoric, new settlement patterns of Latina/o immigrants, and the passage of immigration enforcement laws by a growing number of states.

This Article has discussed measures designed to reduce, remedy, and deter hate violence against Latina/os and immigrants.221 Many of them draw on lessons from the measures taken to dismantle Jim Crow. They include a clearer demarcation of federal versus state power over immigration regulation, criminal justice reforms that directly seek to promote more fair and impartial adjudication in "race trials," increased federal prosecutions of hate crimes, the reinvigoration of the U.S. Commission on Civil Rights, and the creation of local human rights commissions to investigate hate crimes.

More generally, congressional enactment of comprehensive immigration reform222 could help transform the national debate over immigration from one defined by rhetorical violence against Latina/os and immigrants, which creates an environment in which hate crimes thrive, to a constructive national conversation about how to create a more civil society composed of diverse peoples. Unless the United

218. Id.
219. See supra Part I.B.
220. See supra Part II.
221. See supra Part III.
222. See supra Part III.A.
States acts aggressively in a timely manner, the nation unfortunately can expect the high-pitched debate over immigration, and the multifaceted violent responses to immigrants and Latina/os, to continue.