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Comparing Reasons for Hate Crime Reporting Using Racialized Legal Status

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Notes

Comparing Reasons for Hate Crime Reporting Using Racialized Legal Status

PAMELA HO[†]

In the past decade, Latinxs and Asians in the United States have experienced an increase in hate crime victimization. Previous research has identified correlations between hate crime reporting and race. However, few statistical studies examine the intersection of race, immigration status, and hate crime reporting. This Note explores how racialized legal status applies to Latinx and Asian communities respectively and how racialized legal status affects a hate crime victim's decision to report the crime to police. This Note then sets forth some recommendations for increasing hate crime reporting rates by Latinx and Asian victims.

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INTRODUCTION

This Note explores how racialized legal status affects the reasons why immigrants choose to report, or not report, hate crimes and how these differences among immigrant populations may be alleviated. Scholars Asad L. Asad and Matthew Clair have coined the term “racialized legal status” to describe “a discredited social position based on an ostensibly race-neutral legal classification that disproportionately impacts racial/ethnic minority groups.”¹ In this Note, “immigration status” will be used interchangeably with an individual’s “legal status.” Annual research has been conducted regarding general crime reporting rates among different races,² but few have delved into the differences in reporting between immigration statuses. In July 2016, the National Crime Victimization Survey (NCVS) added questions about citizenship status to the survey, separating respondents by born U.S. citizen, naturalized U.S. citizen, and non-U.S. citizen.³ However, the additional questions pertaining to citizenship status were removed starting with the 2020 NCVS survey, leaving only three years of data.⁴ Statistics on hate crime reporting similarly have overlooked differences among immigration statuses.⁵

This Note argues that race and legal status underlie differing rates of hate crime reporting. Part I establishes the background of recent and historical trends in hate crimes, and the reporting rates of hate crimes by immigrant populations. Part II explores why Latinx and Asian immigrants choose to not report hate crimes. Part II also analyzes how racial perceptions of immigration status act as a driving factor of hate crime reporting. Part III proposes a solution to increase reporting by Latinx and Asian immigrant groups as well as suggestions for future research.

I. BACKGROUND ON HATE CRIMES IN THE UNITED STATES

The U.S. government defines hate crime acts as offenses involving “actual or perceived race, color, religion, or national origin.”⁶ After the enactment of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, the definition of “hate crime” encompasses offenses involving gender, disability,

1. Asad L. Asad & Matthew Clair, *Racialized Legal Status as a Social Determinant of Health*, 199 *SOC. SCI. & MED.* 19, 20 (2018).

2. See RACHEL E. MORGAN & ALEXANDRA THOMPSON, U.S. DEP’T. OF JUST., OFF. OF JUST. PROGRAMS, BUREAU OF JUST. STATS., NCJ 301775, *CRIMINAL VICTIMIZATION*, 2020 20, 21(2021). The BJS has produced such reports every year since 1973.

3. RACHEL E. MORGAN & JENNIFER L. TRUMAN, U.S. DEP’T. OF JUST., OFF. OF JUST. PROGRAMS, BUREAU OF JUST. STATS., NCJ 252472, *CRIMINAL VICTIMIZATION*, 2017 10 (2018).

4. The questions were included in the 2017, 2018, and 2019 surveys. See MORGAN & THOMPSON, *supra* note 2.

5. See GRACE KENA & ALEXANDRA THOMPSON, U.S. DEP’T. OF JUST., OFF. OF JUST. PROGRAMS, BUREAU OF JUST. STATS., NCJ 300954, *HATE CRIME VICTIMIZATION, 2005–2019* (2021). The report does not include information about victims’ immigration status.

6. 18 U.S.C. § 249(a).

sexual orientation, and gender identity.⁷ The Federal Bureau of Investigation (FBI) uses a similar definition of hate crimes for the purposes of collecting statistics.⁸ The Department of Justice may investigate and prosecute hate crimes in which the State does not have jurisdiction or allows the federal government to take over jurisdiction.⁹

A. HISTORY OF HATE CRIME INCIDENTS IN THE UNITED STATES

The occurrence of COVID-19 brought a surge of hate crimes against Asians in the United States.¹⁰ Between March 19, 2020 and February 28, 2021, there were nearly 3,800 reported cases of anti-Asian discrimination across the country.¹¹ This eventually led to the passing of the COVID-19 Hate Crimes Act, a bipartisan bill that was signed into law on May 20, 2021 by President Biden.¹² The COVID-19 Hate Crimes Act had three main goals: (1) establish a system for online reporting of hate crimes, (2) collect data regarding hate crimes, and (3) expand campaigns that increase the public's awareness of hate crimes.¹³

Latinxs also reported an increase in hate crimes after the presidential election in 2016.¹⁴ Thirty-four anti-Latinx hate crimes were reported in the largest cities in the nation in the first two weeks after the election, which was a 176 percent increase over the daily average for the year.¹⁵ Furthermore, the FBI's 2018 Hate Crime Statistics report found that there was an increase of over 21 percent in anti-Latinx or Hispanic hate crimes compared to the year before.¹⁶

7. *The Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009*, U.S. DEP'T OF JUST. (May 30, 2023), <https://www.justice.gov/crt/matthew-shepard-and-james-byrd-jr-hate-crimes-prevention-act-2009-0>.

8. *Hate Crimes*, FBI, <https://www.fbi.gov/investigate/civil-rights/hate-crimes> (last visited Sept. 16, 2023) ("For the purposes of collecting statistics, the FBI has defined a hate crime as a criminal offense against a person or property motivated in whole or in part by an offender's bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.") (internal quotations omitted).

9. 18 U.S.C. § 249(b).

10. See The Associated Press, *More Than 9,000 Anti-Asian Incidents Have Been Reported Since the Pandemic Began*, NPR (Aug. 12, 2021, 6:02 PM), <https://www.npr.org/2021/08/12/1027236499/anti-asian-hate-crimes-assaults-pandemic-incidents-aapi>; Sam Cabral, *Covid 'Hate Crimes' Against Asian Americans on Rise*, BBC (May 21, 2021), <https://www.bbc.com/news/world-us-canada-56218684>; Paulina Smolinski, *New Data Shows Continued Surge in Anti-Asian Hate Crime Reports in Some Major Cities*, CBS NEWS (May 1, 2021, 7:21 AM), <https://www.cbsnews.com/news/anti-asian-hate-crime-reports-rise>.

11. COVID-19 Hate Crimes Act, Pub. L. No. 117-13, §2(2), 135 Stat. 265, 265 (2021).

12. COVID-19 Hate Crimes Act, Pub. L. No. 117-13, 135 Stat. 265, 265 (2021).

13. *Id.* § 4(a).

14. See Brendan Campbell, Angel Mendoza & Tessa Diestel, *Latinos Confront Rising Tide of Hate*, ARIZ. REPUBLIC, Oct. 13, 2018, at A9.

15. *Id.*

16. There were 671 victims of anti-Latinx or Hispanic hate crimes in 2018 compared to 552 victims in 2017. Brad Brooks, *Victims of Anti-Latino Hate Crimes Soar in U.S.: FBI Report*, REUTERS (Nov. 12, 2019, 1:27 PM), <https://www.reuters.com/article/us-hatecrimes-report-idUSKBN1XM2OQ>; see also FBI, 2018 HATE CRIME STATISTICS: TABLE 1 (2018), <https://ucr.fbi.gov/hate-crime/2018/tables/table-1.xls>; FBI, 2017 HATE CRIME STATISTICS: TABLE 1 (2017), <https://ucr.fbi.gov/hate-crime/2017/tables/table-1.xls>.

Interviews with victims and advocates mentioned that people seemed more “emboldened” to express hateful speech post-election.¹⁷

The mass genocide of indigenous peoples, violence against Blacks, burning of Chinatowns,¹⁸ and Japanese internment are a few well-known historical examples of hate crimes within the United States. These groups were stereotyped into a legal class based on their appearance. Native Americans were considered as being from “alien nations” despite their namesake.¹⁹ Similarly with Blacks, one commentator noted that “the move into mainstream America always means buying into the notion of American blacks as the real aliens.”²⁰ In 1880, California passed a law prohibiting “aliens” from fishing.²¹ A combination of xenophobia and fear that Chinese fishermen were taking away jobs from their white counterparts was likely the driving force behind the prohibition.²² During the period of Japanese internment, “all alien Japanese and persons of Japanese ancestry” were prohibited from leaving the designated camps.²³ Within a historical immigration context, the status of “alien” is equated to someone who is not a citizen of the United States.²⁴ Since 2021, that term is no longer used and has been replaced with the terms “[r]espondent, applicant, petitioner, beneficiary, migrant, noncitizen, or non-U.S. citizen.”²⁵ Thus, even early in American history, non-white residents were equated with having noncitizen status based on their appearance alone, regardless of their actual status.

B. IMMIGRANTS’ TRUST IN THE CRIMINAL JUSTICE SYSTEM IS REPORTEDLY HIGH YET NOT PLACED IN ACTION

In Europe and Australia, new immigrants are more trusting of law enforcement than their born-citizen counterparts.²⁶ This principle appears to

17. Campbell et al., *supra* note 14.

18. See generally Ahn Do, *White Residents Burned this California Chinatown to the Ground. An Apology Came 145 Years Later*, L.A. TIMES (July 26, 2021, 5:00 AM), <https://www.latimes.com/california/story/2021-07-26/antioch-chinese-apology> (“[W]hite residents burned Chinatown to the ground.”); JEAN PFAELZER, *DRIVEN OUT: THE FORGOTTEN WAR AGAINST CHINESE AMERICANS* 237 (2008) (describing arson of San Jose’s Chinatown on March 4, 1887).

19. *Elk v. Wilkins*, 112 U.S. 94, 99 (1884).

20. BELL HOOKS, *KILLING RAGE: ENDING RACISM* 198 (1995).

21. *In re Ah Chong*, 2 F. 733, 734 (C.C.D. Cal. 1880). This law was later struck down by the Circuit Court as unconstitutional. *Id.* at 740.

22. PFAELZER, *supra* note 18, at 132 (internal quotations and citation omitted). “Vigilantes were burning houses and barns leased to Chinese farmers” and “anti-Chinese clubs pushed through codes that targeted Chinese fishermen.” *Id.* at 82–83. Chinese immigrants “bore the blame for the era’s widespread hunger and homelessness.” *Id.* at 82.

23. Proclamation No. 4, 7 Fed. Reg. 2587 (Apr. 4, 1942).

24. 8 U.S.C. § 1101(a)(3).

25. Memorandum from Jean King, Acting Dir., Exec. Off. of Immigr. Rev. (EOIR) to All of EOIR 2 (July 23, 2021), <https://www.justice.gov/eoir/book/file/1415216/download>.

26. See Antje Röder & Peter Mühlau, *What Determines the Trust of Immigrants in Criminal Justice Institutions in Europe?*, 9 EUR. J. CRIMINOLOGY 370, 382 (2012) (studying crime reporting in Europe); Michael D. Pass, Natasha S. Madon, Kristina Murphy & Elise Sargeant, *To Trust or Distrust?: Unpacking Ethnic Minority Immigrants’ Trust in Police*, 60 BRIT. J. CRIMINOLOGY 1320, 1339 (2020) (studying immigrants’ trust in Australia). *But see* Stephen Egharevba & Perpetual Crensil, *Migrants’ Perception of the Police: Should It Be*

hold true in the United States too.²⁷ However, confidence tends to decrease the longer the individual resides in the new country.²⁸ The increased trust can be attributed to a variety of explanations. One theory is that immigrants who have moved to their new country of residence have already committed a “leap of faith” by the sheer act of leaving their familiar home country and going somewhere foreign to them.²⁹ Migrants assume that “they are moving to a better life” where the host country’s quality of institutions will be higher than those of their origin country.³⁰ The higher expectation in quality can extend to immigrants’ expectations of the criminal justice system as well.

Immigrants also compare the police system in their host country to that of their origin country because “[t]he larger the difference in the quality of institutions in the host and the origin countries, . . . the higher is immigrants’ trust.”³¹ It is possible that, in comparison, the police in the United States have proven more trustworthy than the police in immigrants’ origin countries, thus leading to a higher reported confidence level compared to born Americans. For example, Daniel K. Pryce proposes that Ghanaian immigrants have greater confidence in the U.S. police than in the Ghanaian police because Ghanaian police officers are known to take bribes.³² Participants in the study believed that it would be much more difficult to bribe a U.S. police officer.³³ More importantly, despite the stated trust in law enforcement, only 50 percent of immigrants, compared to 57 percent of natives, voluntarily contact police.³⁴ For instance, some of the immigrants expressed trust in police but also felt hesitant about contacting law enforcement if they were ever in need.³⁵ Therefore, despite having reportedly greater confidence in the police, immigrants are not translating this trust into action.

a Cause for Concern in Finland, 10 EUR. J. CRIMINOLOGY 555, 558 (2013) (noting that in countries with one predominant race and well-established trust in police by the country’s citizens, such as Finland, migrants were shown to be more distrustful of police compared to their citizen counterparts.).

27. Robert C. Davis & Nicole J. Hendricks, *Immigrants and Law Enforcement: A Comparison of Native-Born and Foreign-Born Americans’ Opinions of the Police*, 14 INT’L REV. VICTIMOLOGY 81, 85–87 (2007); see also Robert C. Davis & Edna Erez, *Immigrant Populations as Victims: Toward a Multicultural Criminal Justice System*, NAT’L INST. JUST.: RES. IN BRIEF 1, 6 (1998), <https://www.ojp.gov/pdffiles/167571.pdf> (finding that “satisfaction with the criminal justice system was as great or greater among this group of immigrants than among victims at large” in the United States).

28. Röder & Mühlau, *supra* note 26, at 383.

29. Pass et al., *supra* note 26, at 1336 (citing Ben Bradford, Elise Sargeant, Kristina Murphy & Jonathan Jackson, *A Leap of Faith? Trust in the Police Among Immigrants in England and Wales*, 27 BRIT. J. CRIMINOLOGY 381, 381–401 (2017)).

30. *Id.*

31. Röder & Mühlau, *supra* note 26, at 383.

32. Daniel K. Pryce, *Ghanaian Immigrants’ Differential Trust in and Obligation to Obey the US Police and Ghana Police: Findings from a Qualitative Study*, 16 AFR. IDENTITIES 396, 407 (2018).

33. *Id.* at 406.

34. Davis & Hendricks, *supra* note 27, at 87.

35. Cecilia Menjivar & Cynthia L. Bejarano, *Latino Immigrants’ Perceptions of Crime and Police Authorities in the United States: A Case Study from the Phoenix Metropolitan Area*, 27 ETHNIC & RACIAL STUD. 120, 140 (2004).

C. REPORTING RATES OF HATE CRIME VICTIMIZATION

Because immigrant trust in police does not translate to voluntary interactions with law enforcement, the hate crime reporting rates of immigrants similarly reflect a lack of engagement. The Department of Justice's hate crime victimization study, which spanned from 2005 to 2019, found that almost 90 percent of hate crimes were in the form of violent crimes, with 62 percent consisting of simple assault.³⁶ Ten percent of hate crimes were in the form of property crimes, such as burglary, trespassing, and other theft.³⁷ Perceptions of police and certain demographic characteristics, such as age and gender, affected victims' willingness to report crime.³⁸ Hate crimes were also found to be less likely to be reported in comparison to non-bias related crimes.³⁹ In fact, a 2019 study found that a victim was 17.1 percent less likely to report a violent victimization if the crime was a hate crime compared to a general crime.⁴⁰

Due to the addition of immigration status in the NCVS in the surveys conducted from 2017 to 2019, recent studies have examined the relationship between immigration status and crime reporting.⁴¹ One recent study by the Center for Immigration Studies suggests immigrants are at least as willing, if not more willing, to report crime to police compared to U.S.-born citizens.⁴² However, it is difficult to know how many of the crimes labeled in the "All Violent" category, which includes simple assault, pertain to hate crimes rather than unbiased crimes.⁴³ Victims may become hyperaware of their legal status after a hate crime incident, particularly if there was anti-immigrant rhetoric involved. Noncitizens whose citizenship is not yet secured may be more affected by the rhetoric. A Bureau of Justice Statistics report stated that, from 2007 to 2011, only 35 percent of hate crimes were reported to police.⁴⁴ In comparison, almost 75 percent of noncitizens and 63 percent of U.S.-born citizens reported violent crimes.⁴⁵

Additionally, the Center for Immigration Studies found that 58 percent of Hispanic immigrants (citizen and noncitizen) reported all violent crimes versus

36. KENA & THOMPSON, *supra* note 5, at 4.

37. *Id.*

38. Susann Wiedlitzka, Lorraine Mazerolle, Suzanna Fay-Ramirez & Toby Miles-Johnson, *Perceptions of Police Legitimacy and Citizen Decisions to Report Hate Crime Incidents in Australia*, 7 INT'L J. FOR CRIME, JUST. & SOC. DEMOCRACY 91, 100 (2018).

39. *Id.*

40. Frank S. Pezzella, Matthew D. Fetzer & Tyler Keller, *The Dark Figure of Hate Crime Underreporting*, AM. BEHAV. SCIENTIST 1, 15 (2019).

41. *See supra* Introduction.

42. *See* Jessica M. Vaughan, Steven A. Camarota & Karen Zeigler, *Are Immigrants Less Willing to Report Crime? Data from the National Crime Victimization Survey Says "No."*, CTR. FOR IMMIGR. STUD. 1 (Oct. 2021), https://cis.org/sites/default/files/2021-10/crime-report-21_0.pdf.

43. *Id.* at 8.

44. NATHAN SANDHOLTZ, LYNN LANGTON & MICHAEL PLANTY, U.S. DEP'T. OF JUST., OFF. OF JUST. PROGRAMS, BUREAU OF JUST. STATS., NCJ 241291, HATE CRIME VICTIMIZATION, 2003–2011 1 (2013).

45. Vaughan et al., *supra* note 42, at 8.

52 percent of all immigrants.⁴⁶ Further, Latinx populations are experiencing an increase in victimization of hate crimes.⁴⁷ Combining the increase of hate crimes against Latinx communities with the common practice of underreporting of hate crimes, it seems unlikely that Latinx immigrants would have the same reporting rates for hate crimes as general crimes. Thus, the study cannot be applied as a blanket statement to hate crime reporting rates. Other studies have documented the paradox that victims of color and victims living below the poverty line are equally or more likely than their non-poor and white counterparts to report their victimizations to the police.⁴⁸ However, these studies do not address immigration status as a distinct factor. In addition, they study general crime reporting rates, rather than hate crime reporting rates, which have perceivable differences. Due to the gaps in research, reporting rates for general crimes should not be applied to hate crime reporting and few statistical studies examine the intersection of race, legal status, and hate crime reporting rates.

II. AN ANALYSIS OF LATINX IMMIGRANTS' AND ASIAN IMMIGRANTS' REASONS FOR NOT REPORTING HATE CRIME VICTIMIZATION

This Note separately examines Latinx and Asian immigrant populations because the two groups were noted by police chiefs, prosecutors, and court administrators as the least likely to report crime victimization.⁴⁹ Part II explores the perceived immigration status imposed on Latinx and Asian immigrant groups and analyzes how their respective racialized legal status affects the groups' thought process behind choosing not to report crime victimization.

A. CONCEPT OF RACIALIZED LEGAL STATUS

Racialized legal status, the concept of associating a specific immigration status with a certain race, can explain why some immigrant victims do not contact police. Although legal status appears to be race-neutral, the concept of racialized legal status disproportionately affects minority groups.⁵⁰ Typically, nonwhite individuals experience assumptions of their immigration status and bear the burden of stigmatization, whereas white-passing individuals are generally assumed to be American citizens. For example, immigration enforcement's association between "illegality" and being Latinx undermines that community's sense of belonging, regardless of their immigration status.⁵¹ A side effect of this racialized legal status is that noncitizen Latinx people become eager to naturalize and become citizens, hoping to avoid discrimination once

46. *Id.* at 7.

47. *See supra* Part I.A.

48. Lee Ann Slocum, *The Effect of Prior Police Contact on Victimization Reporting: Results from the Police–Public Contact and National Crime Victimization Surveys*, 34 J. QUANTITATIVE CRIMINOLOGY 535, 564 (2018).

49. Davis & Erez, *supra* note 27, at 2.

50. Cecilia Menjivar, *The Racialization of "Illegality"*, 150 DAEDALUS 91, 96 (2021).

51. *Id.*

they have official papers.⁵² On the other hand, immigrants who appear white and do not have noticeable accents, such as individuals from Canada and Europe, do not feel a pressure to naturalize and become U.S. citizens.⁵³ The White-looking immigrants are assumed by American society to be citizens, despite being noncitizens, and do not experience discrimination in the same way as their fellow nonwhite immigrants.⁵⁴ As a result of racialized legal status, a person's appearance establishes their perceived immigration status by others and thus affects the way the individual acts in society, especially when interacting with law enforcement.

B. LATINXS SEEN AS “ILLEGAL” IMMIGRANTS

First, I will examine the Latinx immigrant community. According to the 2020 Census, 18.7 percent of the American population consists of the Hispanic or Latinx population.⁵⁵ Current research on hate crime reporting uses the term “Latinx” as an overarching term to categorize individuals from Latin America. However, the term “Latinx” is a pan-ethnic term that encompasses an assortment of ethnicities and races.⁵⁶ For example, in the 1970s, Mexican Americans, Cuban Americans, and Puerto Ricans each established their own communities and had separate political agendas.⁵⁷ Additionally, Colombian, Mexican, Nicaraguan, Puerto Rican, Salvadoran, Guatemalan, and Honduran adolescents reported

52. MING HSU CHEN, *PURSUING CITIZENSHIP IN THE ENFORCEMENT ERA* 72 (2020) (“Immigrants with skin colors or accents that made evident their foreign national origins noted belonging and protection as important motivations for naturalizing. The trend seemed especially prevalent for Latin[x] immigrants, who have felt targeted by immigration enforcement policies for a long time.”).

53. *Id.* (“Several of the Canadian and European green card holders [who had been interviewed for the book]—who came through family sponsorship or employment-based visas and were now eligible to naturalize—said they had long felt that they were American. Becoming a citizen was mostly a formality for them.”).

54. *Id.* at 53 (“Other immigrants expressed skepticism that formal status would safeguard them from racial discrimination because US citizens assume all brown-skinned individuals are noncitizens. The responses of white immigrants from Canada and Europe and Latin American immigrants suggest that race and class cleave the experience of being a semi-citizen, and that enforcement realities have heightened the exclusion for disfavored racial minorities more than for white immigrants.”); see also Thierry Devos & Mahzarin R. Banaji, *American = White?*, 88 *J. PERSONALITY & SOC. PSYCH.* 447, 463 (finding that study participants equated being American with being White); Jonas R. Kunst, John F. Dovidio & Ron Dotsch, *White Look-Alikes: Mainstream Culture Adoption Makes Immigrants “Look” Phenotypically White*, 44 *PERSONALITY & SOC. PSYCH. BULLETIN* 265, 279 (finding that belief that someone wants to become “more American” led to the individual being visualized as phenotypically more White).

55. Nicholas Jones, Rachel Marks, Roberto Ramirez & Merarys Ríos-Vargas, *2020 Census Illuminates Racial and Ethnic Composition of the Country*, U.S. CENSUS BUREAU (Aug. 12, 2021), <https://www.census.gov/library/stories/2021/08/improved-race-ethnicity-measures-reveal-united-states-population-much-more-multiracial.html>.

56. There is also a lack of consensus with usage of the term “Latinx” to describe individuals who identify as Hispanic or Latino. Luis Noe-Bustamante, Lauren Mora & Mark Hugo Lopez, *About One-in-Four U.S. Hispanics Have Heard of Latinx, But Just 3% Use It*, PEW RSCH. CTR. 5 (Aug. 11, 2020), https://www.pewresearch.org/hispanic/wp-content/uploads/sites/5/2020/08/PHGMD_2020.08.11_Latinx_FINAL.pdf.

57. G. CHRISTINA MORA, *MAKING HISPANICS: HOW ACTIVISTS, BUREAUCRATS & MEDIA CONSTRUCTED A NEW AMERICAN* 4–5 (2014).

varying ethnic identities in a study conducted in 2001.⁵⁸ The cultural differences and distinct immigrant experiences between each group remain underexplored in current research efforts. For the purposes of this Note, I will use the term “Latinx” to describe individuals from Mexico, Cuba, Puerto Rico, El Salvador, Guatemala, and Honduras. This Subpart first establishes Latinxs’ racialized legal status.

1. *Latinxs Assumed to be Undocumented*

The Latinx community is associated with the stereotype of being an undocumented immigrant. After experiencing an incident of racial discrimination, Sergio Reyes stated, “It doesn’t matter if I become an American citizen. If your skin color is not white and your English is not perfect, you don’t blend. Bottom line.”⁵⁹ Many others feel similarly to Sergio. Julissa Arce, who immigrated from Mexico as a child and is now a citizen, wrote that the anti-immigration policies touted during the Trump presidency were not about legality, the economy, or being born in the United States.⁶⁰ It was always about having “brown skin in America.”⁶¹ As one hate-crime scholar described, “the discussion of illegal immigration has become racialized.”⁶²

Racialized legal status not only affects Latinx noncitizens, but Latinx citizens as well. Studies have shown that Latinx U.S. citizens as a group are experiencing an increase in fear of deportation.⁶³ And even in households where all members are Latinx U.S. citizens, this fear remains due to concerns of being misrecognized as deportable.⁶⁴ Although U.S. citizens cannot be deported, Latinx U.S. citizens’ fear of deportation is legitimate. Between 2002 and 2020, Immigration and Customs Enforcement (ICE) mistakenly identified at least 2,840 U.S. citizens as deportable.⁶⁵ At least 214 of these individuals were detained.⁶⁶ This incident was not the first time that citizens within the Latinx community have been deported. During the Mexican Repatriation Program of the 1930s, in California alone, approximately 400,000 citizens and legal

58. Adriana J. Umaña-Taylor & Mark A. Fine, *Methodological Implications of Grouping Latino Adolescents Into One Collective Ethnic Group*, 23 HISPANIC J. BEHAV. SCI. 347, 359–60 (2001).

59. Campbell et al., *supra* note 14.

60. Julissa Arce, *Trump’s Anti-Immigrant Rhetoric Was Never About Legality — It Was About Our Brown Skin*, TIME (Aug. 6, 2019, 4:47 PM), <https://time.com/5645501/trump-anti-immigration-rhetoric-racism>.

61. *Id.*

62. María Pabón López, *An Essay Examining the Murder of Luis Ramírez and the Emergence of Hate Crimes Against Latino Immigrants in the United States*, 44 ARIZ. ST. L.J. 155, 166 (2012) (internal citations omitted).

63. Asad L. Asad, *Latinos’ Deportation Fears by Citizenship and Legal Status, 2007 to 2018*, 117 PROCS. NAT’L ACAD. SCI. 8836, 8838 (2020), <https://www.pnas.org/content/pnas/117/16/8836.full.pdf>.

64. *Id.* at 8841.

65. L.J. Wolfgang Keppley, *Mistaken Detention, Racial Profiling, and Discrimination: How ICE Fails to Protect Communities*, NISKANEN CTR. (Dec. 14, 2020), <https://www.niskanencenter.org/mistaken-detainment-racial-profiling-and-discrimination-how-ice-fails-to-protect-communities>.

66. *Id.*

residents were forced to “return” to Mexico.⁶⁷ They were characterized as “illegal aliens” based on how they looked, despite being citizens or having immigration status.⁶⁸ Well into the 2000s, the federal government refused to acknowledge incidents in which American citizens were deported.⁶⁹

Documented immigrants also share the fear of being deported due, in part, to policy changes throughout the 1990s and 2000s that made maintenance of status more difficult by requiring immigrants to renew on a more frequent basis and pay increasing legal fees.⁷⁰ Between 2007 and 2018, over 50 percent of Latinx individuals reported fears of deportation, with fear levels remaining steady throughout the study period.⁷¹ Among the study participants, about 73 percent of Latinx noncitizens had deportation fears, and this percentage remained the same throughout the study period.⁷² For Latinx U.S. citizens, about 33 percent reported deportation fears in 2013 but by 2018 about 47 percent reported deportation fears.⁷³ The increase in fear of deportation, both for their community members and themselves, was likely caused by the anti-immigrant rhetoric post-2016.⁷⁴

People with Latinx-appearing features are viewed as undocumented by law enforcement. Immigration officers have been frequently found to practice racial profiling, targeting individuals who look to have Latin American ancestry and who are overheard speaking Spanish.⁷⁵ There are countless stories of routine traffic stops resulting in detention of Latinx U.S. citizens because of their race.⁷⁶ In fact, first- and second-generation immigrants were more likely to be profiled for citizenship, indicating that immigrants and their children are most heavily affected.⁷⁷ Second-generation Latinx, despite being citizens, are also

67. CAL. GOV'T CODE § 8721 (2005).

68. Michael Neal, *Return of the New Mexican-American Diaspora*, 32 BERKELEY LA RAZA L.J. 47, 66–67 (2022).

69. Jacqueline Stevens, *U.S. Government Unlawfully Detaining and Deporting U.S. Citizens as Aliens*, 18 VA. J. SOC. POL'Y & L. 606, 618–19 (2011).

70. Asad L. Asad, *On the Radar: System Embeddedness and Latin American Immigrants' Perceived Risk of Deportation*, 54 L. & SOC'Y REV. 133, 138 (2020).

71. Asad, *supra* note 63, at 8837.

72. *Id.*

73. *Id.*

74. See Mark Hugo Lopez, Ana Gonzales-Barrera & Jens Manuel Krogstad, *More Latinos Have Serious Concerns About Their Place in America Under Trump*, PEW RSCH. CTR. 5 (Oct. 25, 2018), https://www.pewresearch.org/hispanic/wp-content/uploads/sites/5/2018/10/Pew-Research-Center_Latinos-have-Serious-Concerns-About-Their-Place-in-America_2018-10-25.pdf.

75. Nicole Acevedo, *Michigan Border Patrol Agents Accused of 'Routine Racial Profiling' of Latinos*, NBC NEWS (Aug. 11, 2021, 4:21 AM), <https://www.nbcnews.com/news/latino/michigan-border-patrol-agents-accused-routine-racial-profiling-latinos-rcna1642>.

76. See Paul Reyes, *U.S. Citizens Caught in Immigration Net*, USA TODAY, Apr. 24, 2009, at 13A; *Melendres v. Arpaio*, 989 F. Supp. 2d 822, 899–905 (D. Ariz. 2013), *aff'd in relevant part*, 784 F.3d 1254 (9th Cir. 2015) (finding that Maricopa County Sheriff's Office policy and practice of racially profiling Latinx drivers and passengers during traffic stops was in violation of the Equal Protection Clause of the Constitution).

77. Maria Cristina Morales, Denise Delgado & Theodore Curry, *Variations in Citizenship Profiling by Generational Status: Individual and Neighborhood Characteristics of Latina/os Questioned by Law Enforcement About Their Legal Status*, 10 RACE & SOC. PROBS. 293, 300 (2018).

disproportionately questioned about their citizenship status by law enforcement.⁷⁸ Thirty-seven percent of Latinx adults have experienced being stopped by authorities as a result of their race.⁷⁹ Consequently, Latinx individuals are overrepresented among immigrants who are detained and deported by ICE.⁸⁰ Ninety percent of ICE removals are from Mexico, Guatemala, Honduras, and El Salvador, and yet immigrants from these countries account for only 70 percent of the undocumented population.⁸¹ And although undocumented Latinx immigrants remain the most fearful of deportation, research has shown that 66 percent of legal permanent residents and 33 percent of American-born citizens within the Latinx community “worry about their own deportation or that of a family member.”⁸² Latinx immigrants are unable to avoid the stigma of racialized legal status, even after gaining citizenship, and their American-born children likewise are unable to avoid the stereotype, despite having citizenship as a birthright.

Latinxs are also more susceptible to hate crimes. In fact, “[t]he majority of anti-Latin[x] hate crimes are . . . directed against people *thought* to be undocumented immigrants.”⁸³ The reality is that 68 percent of the Latinx population are born in the United States⁸⁴ and 81 percent are U.S. citizens.⁸⁵ In 2016, a Puerto Rican family’s car was vandalized with the words “go home” in West Springfield, Massachusetts.⁸⁶ The father and mother were U.S. citizens, and the father was also a veteran.⁸⁷ But they were the only minority on their street,⁸⁸ and the perpetrators likely assumed their immigration status. Undocumented immigrants may be particularly vulnerable if they are too afraid or lack the language skills or knowledge to report crimes to law enforcement.⁸⁹ Undocumented workers also tend to have more cash on their person on payday or stored at home because they may be unable to open bank accounts due to a lack of government-issued identification.⁹⁰ The lower likelihood to report crimes

78. *Id.*

79. Drew DeSilver, Michael Lipka & Dahlia Fahmy, *10 Things We Know About Race and Policing in the US*, PEW RSCH. CTR. (June 3, 2020), <https://www.pewresearch.org/short-reads/2020/06/03/10-things-we-know-about-race-and-policing-in-the-u-s>.

80. Menjivar, *supra* note 50, at 91.

81. *Id.*

82. *Id.* at 96.

83. López, *supra* note 62, at 165 (emphasis added).

84. Mohamad Moslimani & Luis Noe-Bustamante, *Facts on Latinos in the US*, PEW RSCH. CTR. (Aug. 16, 2023), <https://www.pewresearch.org/hispanic/fact-sheet/latinos-in-the-us-fact-sheet>.

85. Rachel Treisman, *Key Facts About the U.S. Latino Population to Kick Off Hispanic Heritage Month*, NPR (Sept. 15, 2021, 12:47 PM), <https://www.npr.org/2021/09/15/1037358346/us-latino-population-demographic-figures-pew-center-hispanic-heritage-month>.

86. Holly Yan, Kristina Sgueglia & Kylie Walker, *‘Make America White Again’: Hate Speech and Crimes Post-Election*, CNN (Dec. 22, 2016, 4:24 PM), <https://www.cnn.com/2016/11/10/us/post-election-hate-crimes-and-fears-trnd/index.html>.

87. *Id.*

88. *Id.*

89. López, *supra* note 62, at 166.

90. *Id.*

and higher likelihood of possessing cash causes Latinx individuals to be “more visually identifiable and better targets of opportunity.”⁹¹ The “undocumented” stereotype affects how Latinxs are treated by societal actors, such as hate crime perpetrators and law enforcement, which in turn affects the way Latinxs seek help after crime victimization. They are discriminated against by both the people who instigate the harm and by the people who are meant to solve the harm.

2. *Racialized Legal Status Deters Latinxs from Seeking Social Services and Creates Division Among the Latinx Community*

The subjection to race-based immigration enforcement naturally reduces the community’s sense of national belonging and sense of identity.⁹² The ability to be perceived as “legal” is so crucial that once someone is able to “project a valid legal identity to others,” they can access resources without fear of consequences.⁹³ When access to resources is compromised, immigrants are vulnerable to structural and legal violence that hinders long-term assimilation and economic success in the host country. Additionally, because of the importance of legal status, documentation can be used more insidiously, acting as a tool of surveillance and social control.⁹⁴

The racialization of illegality also has negative impacts on subgroups within the Latinx ethno-racial class. For example, Maya Guatemalans targeted by ICE raids are isolated by other Latinxs in the community in hopes of avoiding being noticed by ICE through association with the Guatemalans.⁹⁵ The apprehension creates a social hierarchy within the Latinx community, and further divides the group.⁹⁶

3. *Why Latinxs Do Not Report*

Considering Latinxs’ awareness of the racialized legal status of being “undocumented” impressed on their race and appearance, they may choose to not report hate crime victimization for fear of being deported, regardless of whether they are a citizen or not. For newer Latinx immigrants who may not be as familiar with or have exposure to the racialized legal status, they may analogize the American criminal justice system with the system of their home country, which would also deter them from reporting.

91. *Id.* (internal quotations omitted) (quoting Peter Katel, *Hate Groups*, 19 CQ RESEARCHER 421, 428 (2009)).

92. Leisy J. Abrego & Sarah M. Lakhani, *Incomplete Inclusion: Legal Violence and Immigrants in Liminal Legal Statuses*, 37 L. & POL’Y 265, 269 (2015).

93. *Id.*

94. *Id.*

95. Menjivar, *supra* note 50, at 97.

96. *Id.*

a. *Fear of Deportation*

Fear of deportation is well-documented within the Latinx community across the board— among undocumented immigrants, those in liminal statuses (somewhere in between undocumented and naturalized status), and born citizens.⁹⁷ Although fear of deportation exists among all immigrants, Latinx immigrants have a heightened fear, likely due to immigration enforcement targeting their communities.⁹⁸ Latinxs are also more susceptible to higher rates of deportation fears due to lived experiences, with one survey finding that 42 percent of Latinx immigrants knew someone who had been deported, compared to only 13 percent of Asian immigrants.⁹⁹ This fear deters Latinxs from contacting police, even if they are a victim of a crime. “[P]olice-initiated and unjust encounters” negatively impact demographic groups who are more likely to have police contact.¹⁰⁰ Invasive encounters with police, such as criminal investigations and encounters that resulted in arrest, had a negative effect on the reporting of personal crimes.¹⁰¹ Individuals with experiences involving invasive encounters were also less likely to notify police in the future due to “fear of reprisal.”¹⁰² And even if the individual has a status that is considered “legal,” the fear of reprisal may be extended towards the deportation of a family member whose status may not be so secure.

Many commentators have cited fear of deportation as a large reason that discourages Latinx immigrants from reporting crimes to the police.¹⁰³ The chilling effect also applies to immigrants accessing other sources of assistance, such as healthcare.¹⁰⁴ The fears are particularly noticeable in areas where police

97. See *supra* Part II.B.1.

98. See generally Tany Golash-Boza & Pierrette Hondagneu-Sotelo, *Latino Immigrant Men and the Deportation Crisis: A Gendered Racial Removal Program*, 11 *LATINO STUD.* 271 (2013) (noting that deportations between 1997 and 2012 disproportionately affected Latino men).

99. Elaiza Torralba, *In UCLA Survey, Most California Latino, Asian Immigrants Perceive Racial Discrimination at Work*, *UCLA: NEWSROOM* (Nov. 8, 2021), <https://newsroom.ucla.edu/releases/california-latino-asian-immigrant-experience>.

100. Slocum, *supra* note 48, at 563.

101. *Id.*

102. *Id.*

103. See Alexandra Ricks, *Latinx Immigrant Crime Victims Fear Seeking Help*, *URB. INST.: URB. WIRE* (Sept. 25, 2017), <https://www.urban.org/urban-wire/latinx-immigrant-crime-victims-fear-seeking-help> (“Evidence suggests that Latinx immigrant victims may avoid reporting crimes against them and seeking services because they fear deportation.”); Orde F. Kittrie, *Federalism, Deportation, and Crime Victims Afraid to Call the Police*, 91 *IOWA L. REV.* 1449, 1450 (2006) (arguing that “when unauthorized aliens either know or fear that turning to the justice system for protection would result in their deportation,” the immigrants’ Constitutional rights are reduced to be irrelevant); Gabriela Del Valle, *Undocumented, Abused, and Silenced: Victims of Domestic Violence Are Suffering in New Ways Under Trump’s Immigration Policies.*, *THE OUTLINE* (Mar. 6, 2017, 11:38 AM), <https://theoutline.com/post/1195/undocumented-victims-of-domestic-violence-less-likely-to-report-abuse-under-trump-immigration> (reporting that “fear of deportation prevents many undocumented victims of domestic violence from coming forward about their abuse”).

104. See Abigail S. Friedman & Atheendar S. Venkataramani, *Chilling Effects: US Immigration Enforcement and Health Care Seeking Among Hispanic Adults*, 40 *HEALTH AFFS.* 1056, 1056 (2021); see also Asad, *supra* note 70, at 133 (“In this way, the punitive character of the U.S. immigration regime can overwhelm

and immigration enforcement cooperate, such as under the Immigration and Naturalization Act Section 287(g) agreements.¹⁰⁵ In 2017, three major cities experienced decreased reporting rates by Latinx victims after the 2016 election and the increase in immigration enforcement action.¹⁰⁶ Latinxs historically were less likely to report victimizations of crimes. A 2001 newspaper article reported, “[p]reying on illegal immigrants’ fear of deportation and fundamental mistrust of law enforcement authorities, gangs of Latin[x]s have been freely committing street robberies against their illegal counterparts because they know the crimes won’t be reported, officials say.”¹⁰⁷ Therefore, undocumented Latinx victims are forced to either interact with the justice system and risk exposing their deportable status or say nothing and hide under the radar to stay in the country.¹⁰⁸

b. *Assuming the American System is Similarly as Corrupt as the Latin American System*

Documented and undocumented Latinx immigrants tend to be afraid to initiate contact with the justice system because they are accustomed to governments that are repressive and unhelpful.¹⁰⁹ Public opinion of the police in Latin America tends to be quite low.¹¹⁰ As Latin America experiences high crime rates, its residents are relatedly shown to have lower trust in the local police.¹¹¹ Ninety percent of victims in Mexico did not file a police report after crime victimization.¹¹² The high rate of non-reported crimes may be due to public perception of the futility of reporting. This mindset can follow the immigrant to the United States, where despite assuming that the justice system here is “better” than that of their origin country, the victim feels that reporting to the police would not resolve their situation.

Because many immigrants’ trust in law enforcement stems from their experiences with police in their origin country,¹¹³ newer migrants may not fully

its integrative functions, chilling immigrants out of opportunities for material and social well-being through legalization and legal status.”)

105. López, *supra* note 62.

106. See Rob Arthur, *Latinos in Three Cities Are Reporting Fewer Crimes Since Trump Took Office*, FIVETHIRTYEIGHT (May 18, 2017), <https://fivethirtyeight.com/features/latinos-report-fewer-crimes-in-three-cities-amid-fears-of-deportation>.

107. Holly Edwards, *Latinos Silent Robbery Victims; Some Afraid to Be Deported*, L.A. DAILY NEWS, Apr. 1, 2001, at SC1.

108. Kittrie, *supra* note 103, at 1454.

109. Patricia Foxen, *Perspectives from the Latino Community on Policing and Body Worn Cameras*, MEDIUM (May 4, 2017), <https://medium.com/equal-future/perspectives-from-the-latino-community-on-policing-and-body-worn-cameras-47f150f71448>.

110. Lauren Villagran & Sara Miller Llana, *Latin American Police Get ‘Citizen Friendly’ to Fight Reputation*, THE CHRISTIAN SCI. MONITOR (Oct. 21, 2011), <https://www.csmonitor.com/World/Americas/2011/1021/Latin-American-police-get-citizen-friendly-to-fight-bad-reputation>.

111. Kristina Mastropasqua, *Latin America: The Link Between High Crime and Public Trust*, JOURNALIST’S RES. (Apr. 22, 2016), <https://journalistsresource.org/politics-and-government/latin-america-the-link-between-high-crime-and-community-confidence>.

112. *Id.*

113. See *supra* Part I.B.

understand the police system in the United States and therefore are unaware that they can report hate crime victimizations. For example, local sanctuary policies allow immigrants to report crimes without worrying about the risk of deportation.¹¹⁴ However, due to low publicity, lack of general awareness, and difficulty of access, individuals living within sanctuary jurisdictions often do not know about or use these policies.¹¹⁵ Thus, Latinx immigrants' assumption of corrupt law enforcement prevents them from reporting, and also prevents them from seeking more information about the American justice system.

The established racialized legal status being imputed to Latinxs in the United States is perpetual and palpably experienced throughout the community. It is not only felt by new immigrants, but by documented immigrants and citizens as well. The negative connotations of being an illegal immigrant hinder these victims of hate crimes from going to the police to seek help.

C. ASIAN IMMIGRANTS SEEN AS "FOREIGN" PEOPLES

Next, I will examine the Asian immigrant community. According to the 2020 Census, 6 percent of respondents identified as Asian alone.¹¹⁶ Respondents who identified as Asian alone or as Asian and another race group made up 7.2 percent of the total population.¹¹⁷ A recent poll found that a majority of Asian adults living in the United States preferred to use ethnic labels for their identity over the generic term "Asian."¹¹⁸ Current research categorizes individuals from Asia into one group. However, there are ethnic and cultural differences within the term "Asian" that are ignored by this grouping. For example, one study found that Chinese, Korean, Japanese, and Filipino Americans adhered to varying degrees of Asian cultural standards. Similarly, 90 percent of Asian respondents to a poll selected the statement "Asians in the [United States] have many different cultures" over the statement "Asians in the [United States] share a common culture."¹¹⁹ For the purposes of this Note, I use the term "Asian" to describe the East Asian immigrant experience, which includes the experiences of individuals from Japan, China, South Korea, Mongolia, and Taiwan. This Subpart establishes the East Asian community's racialized legal status.

I. Asians Assumed to be Documented Noncitizens

The racialized legal status of being "documented" has largely fallen on the Asian community, despite studies indicating that Asians are the fastest growing

114. Kittrie, *supra* note 103, at 1508.

115. *Id.*

116. Jones et al., *supra* note 55.

117. *Id.*

118. Neil G. Ruiz, Luis Noe-Bustamante & Sono Shah, *Diverse Cultures and Shared Experiences Shape Asian American Identities*, PEW RSCH. CTR. (May 8, 2023), <https://www.pewresearch.org/race-ethnicity/2023/05/08/diverse-cultures-and-shared-experiences-shape-asian-american-identities>.

119. *Id.*

group of undocumented immigrants in the United States.¹²⁰ This can be partially attributed to the “model minority myth,” which “refer[s] to a minority group perceived as particularly successful, especially in a manner that contrasts with minority groups.”¹²¹ This term is commonly used to refer to the Asian community, who are seen as comparatively more successful in wealth, education, and assimilation than other minority groups in the United States.¹²²

But despite being assumed to be documented, Asians are seen as “foreigners” in American society as well. An 1873 newspaper article stated, “[t]he ‘Orientals’ . . . would be less odious and onerous if they came with the intention of remaining.”¹²³ The article’s sentiment demonstrates that early on in U.S. history, Asians were seen as a group not fit to stay long-term and become citizens, despite many who did stay and attempt to gain citizenship.¹²⁴ In 2002, Frank H. Wu describes his experience as an Asian American like this:

“Where are you from?” is a question I like answering. “Where are you really from?” is a question I really hate answering.

“Where are you from” is a question we all routinely ask one another upon meeting a new person. “Where are you really from?” is a question some of us tend to ask others of us very selectively.

For Asian Americans, the questions frequently come paired like that. Among ourselves, we can even joke nervously about how they just about define the Asian American experience. More than anything else that unites us, everyone with an Asian face who lives in America is afflicted by the perpetual foreigner syndrome. We are figuratively and even literally returned to Asia and ejected from America.¹²⁵

Yet now, twenty years later, Asian Americans continue to get asked this question.¹²⁶ Although the “Where are you from?” question implies an individual’s foreignness, it does not necessarily imply anything about the

120. Menjivar, *supra* note 50, at 97.

121. *The Model Minority Myth*, PRACTICE (Nov./Dec. 2018), <http://clp.law.harvard.edu/knowledge-hub/magazine/issues/asian-americans-in-the-law/the-model-minority-myth>.

122. *Id.*

123. PFAELZER, *supra* note 18, at 80 (internal quotations omitted).

124. See generally *United States v. Wong Kim Ark*, 169 U.S. 649 (1898) (signifying a case in which an American-born-Chinese sued for his birthright citizenship).

125. FRANK H. WU, *YELLOW: RACE IN AMERICAN BEYOND BLACK AND WHITE* 79 (Basic Books 2002).

126. Sharon Kwon, *This Is What No One Tells You About Being Asian in America in 2021*, HUFFPOST (Feb. 18, 2021, 9:00 AM), https://www.huffpost.com/entry/asian-hate-crimes-2021-covid_n_602c00e8c5b6c95056f3dd41 (“You can’t be from here. Where are you *really* from?”); Dan Kim, *Where Are You From?*, ASIAN ARTICULATIONS (Sept. 2, 2018), <https://asianarticulations.com/2018/09/02/where-are-you-from/> (“If you’re Asian American, the chances are, you’ve heard this question more than once.”); Selena Razo, *Ellen Degeneres Asks Constance Wu the “Where Are You From” Question*, ASAMNEWS (Aug. 28, 2018), <https://asamnews.com/2018/08/28/ellen-degeneres-asks-constance-wu-the-where-are-you-from-question/> (“The main issue with questions regarding where a person is ‘originally’ from is that they are seen as filler questions for celebrities of color.”); Umair Haque, *This is What Being Asian in America is Really Like*, MEDIUM (Mar. 20, 2021), <https://eand.co/this-is-what-being-asian-in-america-is-really-like-614a2c85a787/> (“So...where are you really from?’ ‘No, but where are you *really* from?’ ... ‘Can I see your passport?’ (Yes, really, to this day Americans ask me that.)”).

person's citizenship status. In fact, the question of "Where are you *really* from?" does not doubt that the answerer may have been raised in the United States, but rather inquires about the individual's culture or ancestry, further demonstrating that Asians are seen as "documented" albeit foreign. This defining Asian American experience contrasts the universal experience that Latinx Americans face—of being perpetually seen as undocumented.

Perpetual foreigner syndrome is the concept that "ethnic minorities will always be seen as the 'other' in the White Anglo-Saxon dominant society of the United States."¹²⁷ No matter their immigration status, Asians are considered less "American" because of their appearance and will be assumed to be foreigners.¹²⁸ This is often expressed implicitly rather than directly, with questions such as "Where are you from?" automatically assuming that the individual is not from the United States without straightforwardly saying so. Other forms of subtle exclusion include complimenting someone for their English skills or mistaking them to be a foreigner.¹²⁹ Being "American" was equated with being white, in both European Americans' and Asian Americans' minds.¹³⁰ This belief was implicit, even when individuals explicitly identified an ethnic minority as American.¹³¹

2. *Racialized Legal Status Negatively Affects Asians' Sense of Belonging While Also Deterring Undocumented Asian Immigrants from Revealing Their Immigration Status*

The idea of being a "lesser" citizen who will never fully be accepted as American has proven to affect Asian immigrants' and Asian U.S.-born citizens' behavior and mental health. Asian Americans who are more aware of the perpetual foreigner stereotype exhibited lower signs of hope and life-satisfaction.¹³² This awareness likely affects their sense of self, as they become stuck in between two cultures and identities, not fully belonging to either group. Asians who grew up in or were born in the United States feel that they are either

127. Que-Lam Huynh, Thierry Devos & Laura Smalarz, *Perpetual Foreigner in One's Own Land: Potential Implications for Identity and Psychological Adjustment*, 30 J. SOC. & CLINICAL PSYCH. 133, 133 (2011).

128. Devos & Banaji, *supra* note 54 ("On the most generic and straightforward explicit measure of ethnic American associations . . . , Asian Americans, and to a lesser extent African Americans, are not viewed as being as American as White Americans."); ERIKA LEE, *THE MAKING OF ASIAN AMERICA: A HISTORY* 6–7 (Simon & Schuster 2015) (arguing that Asian immigrants were seen as one monolithic group and identified as "always Asian and never American").

129. Huynh et al., *supra* note 127, at 135. It is important to note that Latinx immigrants are also subject to perpetual foreigner syndrome. *Id.* at 154 (noting that Latinxs, and other ethnic minorities, "report significantly higher awareness of the perpetual foreigner stereotype toward them than do European Americans").

130. *Id.* at 134.

131. *Id.*

132. *Id.* at 156.

too Asian for American society or not Asian enough for their Asian heritage.¹³³ These emotions lead to shame and feelings of displacement.¹³⁴

Racialized legal status erases the existence of undocumented Asian immigrants by naturally assuming all Asians are documented.¹³⁵ This invisibility from being identified as undocumented acts as a “double-edged sword” against Asian immigrants.¹³⁶ On one hand, undocumented Asians are alleviated from the worry of deportation or being questioned about their legal status¹³⁷ (which is the exact opposite experience of their Latinx counterparts).¹³⁸ On the other hand, they are especially hesitant to break this perceived image of being documented.¹³⁹ While Latinx undocumented students are generally open about their undocumented state, Asian undocumented students are too scared or embarrassed to disclose their immigration status.¹⁴⁰ This remains true even within the Asian community, where members do not reveal their legal status to other Asians.¹⁴¹ The omission of immigration status solidifies a feeling of loneliness and isolation among undocumented Asians, despite many others in their community being in the same situation.¹⁴² Asians are less likely to access resources, such as Deferred Action for Childhood Arrivals (DACA),¹⁴³ due to fear of exposing their legal status and the stigmas that follow.¹⁴⁴ As stated previously, the choice of not accessing social resources or assistance has negative implications in the long-run that stunt the individual’s economic success and assimilation to the United States.¹⁴⁵ These effects can ripple through

133. See Frank Shyong, *On a New Podcast About Asian American Identity, We Talk About the Struggle to Feel We’re ‘Enough’*, L.A. TIMES (Mar. 10, 2020, 3:00 AM), <https://www.latimes.com/california/story/2020-03-10/asian-enough-why> (“When you can’t be Asian enough and you’ll never be American enough to fit into any other racial category, what remains is this nagging feeling of alienation and inadequacy.”); Hannah Nguyen, *Stuck Between Two Worlds: The Struggle of Not Being “Asian Enough”*, KNIGHT CRIER (May 15, 2020), <https://www.knightcrier.org/top-stories/2020/05/15/stuck-between-two-worlds-the-struggle-of-not-being-asian-enough> (“For some biracial or adopted people, this is what it feels like every single day, and it’s something they can’t ever forget about. Each and every single day, they have to fight against the concept of not being ‘Asian enough.’”).

134. Shyong, *supra* note 133.

135. Menjivar, *supra* note 50, at 97.

136. Beleza Chan, *Not Just a Latino Issue: Undocumented Students in Higher Education*, J. COLL. ADMISSION, Winter 2010, at 29, 30.

137. *Id.*

138. See *supra* Part II.B.1.

139. Chan, *supra* note 136.

140. Menjivar, *supra* note 50, at 98 (citing Laura E. Enriquez, *Border-Hopping Mexicans, Law-Abiding Asians, and Racialized Illegality: Analyzing Undocumented College Students’ Experiences through a Relational Lens*, in *RELATIONAL FORMATIONS OF RACE: THEORY, METHOD, AND PRACTICE* 257, 272 (2019)).

141. Esther Yoona Cho, *A Double Bind—“Model Minority” and “Illegal Alien”*, 24 *ASIAN AM. L.J.* 123, 127–28 (2017).

142. *Id.* at 128.

143. *Id.* at 127 (“Most prominently the disproportionately low rate of DACA requests by eligible Asian youth and young adults has been highlighted in the media . . .”).

144. Menjivar, *supra* note 50, at 98; see also Alex Dobuzinskis, *Asians, Many Out of Shame, Not Seeking U.S. Deportation Protection*, REUTERS (June 18, 2016, 8:39 AM), <https://www.reuters.com/article/us-usa-immigration-dreamers/asians-many-out-of-shame-not-seeking-u-s-deportation-protection-idUSKCN0Z40BP>.

145. See *supra* Part II.B.2.

generations, never allowing the family to settle into the host country in the fullest capacity.

3. *Why Asians Do Not Report*

Asian victims may refrain from reporting hate crime victimization because they hope to fight their racialized legal status by not acknowledging that they are a victim of a hate crime. By self-identifying to be American, the individual may feel that one cannot be both an American and a hate crime victim, and thus downplay the incident as anything but a hate crime.

a. *Model Minority Myth*

The stereotype of Asians as “model minorities” exacerbates the idea that Asians are self-sufficient and handle things within their family circles.¹⁴⁶ As Hong-Kong-born actor, Tzi Ma, said, “[w]e’ve [Asians] bought into our own stereotype: that we’re quiet and more docile.”¹⁴⁷ Because of this, Asians may internalize these characteristics, persuading themselves not to seek help or cause a scene after victimization.¹⁴⁸ In a comparison of victims who experienced a hate crime within the first two months of the COVID-19 pandemic, Asian victims of hate crimes were prone to downplaying the severity of the incident.¹⁴⁹ Compared to other victims, Asian victims were more likely to not report for three main reasons: (1) feeling that the crime was not serious enough to notify the police, (2) feeling unclear that the act was a crime, and (3) feeling that notifying the police would be inconvenient.¹⁵⁰ Despite Asian victims rationalizing that the incident was too small to report, further analysis demonstrated that these incidents included significant amounts of violence.¹⁵¹ The incidents involved: victims being threatened with physical violence, having personal property destroyed, having objects thrown at them, and having been punched, hit, kicked, or beaten.¹⁵² Asian victims appear to have a higher “tolerance” of crime, or, more likely, an extremely strong aversion to reporting.

Second, Asians are less likely to report hate crimes because they feel that they are “lucky to be here [in the United States].”¹⁵³ As a result of cultural

146. Dixie J. Koo, Anthony A. Peguero & Zahra Shekarkhar, *The “Model Minority” Victim: Immigration, Gender, and Asian American Vulnerabilities to Violence at School*, 10 J. ETHNICITY CRIM. JUST. 129, 142 (2012).

147. Andrew R. Chow, *‘We Are Perpetual Foreigners.’ Tzi Ma Talks Tigertail, Mulan and Anti-Asian Bigotry During Coronavirus*, TIME (Apr. 10, 2020, 7:16 AM), <https://time.com/5815442/tzi-ma-tigertail>.

148. Brendan Lantz & Marin R. Wenger, *Are Asian Victims Less Likely to Report Hate Crime Victimization to the Police? Implications for Research and Policy in the Wake of the COVID-19 Pandemic*, 68 CRIME & DELINQ. 1292, 1297 (2021).

149. *Id.* at 1306.

150. *Id.*

151. *Id.*

152. *Id.*

153. Kristin Wong, *What Does It Mean to Be ‘Lucky to Be Here?’*, MEDIUM (Mar. 26, 2021), <https://stopasianhate.medium.com/lucky-to-be-here-d6dadf07c85e>.

emphasis, Asian Americans are hyperaware that someone in their family has sacrificed an alternate life in their home country so that the younger generations may have a better life.¹⁵⁴ Combining this awareness with the cultural practice of filial piety, Asian victims may sweep the incident under the rug, fearing that reporting would mean complaining in the face of their ancestors' sacrifice.¹⁵⁵ As one advocate explains:

From a psychological standpoint, sometimes we [Asians, do not] want to talk about the problems because, and I see this in younger people who were immigrants or children of immigrants, their parents had worked so hard for them. They [do not] want to burden their parents . . . [b]ecause [it is] a sense of gratitude and [it is] very, very powerful.¹⁵⁶

The strong feelings of self-sustainability and not wanting to cause problems may deter Asian victims from reporting or seeking help after a hate crime incident.

b. *Cultural Practice of Saving Face*

The cultural instillation of saving face and protecting one's family from shame discourages victims of crime from seeking help from police. Instead, victims are pushed toward seeking solace within their own family. However, some victims are also discouraged from discussing their experiences altogether, causing them to suppress their emotions and pretend as if the situation did not occur.¹⁵⁷ If the "model minority myth" is true, and Asians have overcome discrimination, then theoretically these hate crimes against Asians should not be happening and should not be talked about.¹⁵⁸ Consequently, the victim places the blame onto themselves to "tough it out."¹⁵⁹ In order to save face and not draw attention to one's family, the victim may be socially and culturally pressured to not report their victimization.¹⁶⁰

154. *Id.*

155. Kimmy Yam, *Asian Americans Are Least Likely to Report Hate Incidents, New Research Shows*, NBC NEWS (Mar. 31, 2021, 9:56 AM), <https://www.nbcnews.com/news/asian-america/asian-americans-are-least-likely-report-hate-incidents-new-research-n1262607> ("Asian Americans may feel pressure to gloss over or ignore the problem to avoid burdening other family members, given what they had to endure to make it in the U.S.").

156. *Id.*

157. DeJuan Hoggard, *Local Therapist 'Not Surprised' as FBI Reports 76% Increase in Hate Crimes Against Asians*, ABC NEWS (Oct. 25, 2021), <https://abc11.com/asian-hate-crimes-fbi-crime-data-what-is-a/11166783> (reporting that a therapist responding to anti-Asian hate crimes stated, "If we don't talk about it and we suppress everything . . . I feel like that toxicity builds in our culture of let's not talk about it. . . . And that just worsens it").

158. Mansee Khurana, *"An Unsaid Truth": Why Some Asian Families Are Hesitant to Discuss Racism*, CBS NEWS (May 5, 2021, 12:00 PM), <https://www.cbsnews.com/news/asian-families-hesitant-discuss-racism>.

159. *Id.*

160. *Id.* ("My family came from the mindset of, 'if you ignore things they won't exist' and 'you don't want to make any kind of trouble,' . . . I think that was a necessary way for them to survive and I think that had a purpose.").

D. SEPARATE STUDIES OF THE LATINX AND ASIAN IMMIGRANT EXPERIENCE DEMONSTRATE THAT EACH GROUP HAS A DIFFERENT RACIALIZED LEGAL STATUS THAT AFFECTS THE GROUP'S CRIME REPORTING BEHAVIOR

Comparing the racialized legal status of “undocumented” versus “documented but noncitizen” demonstrates that these stereotypes will result in changed behavior from victims. Latinx U.S. citizens are just as equally profiled as Latinx undocumented immigrants, despite having legal status in the United States. Despite being born and raised in the United States, American-born Asians are assumed to be just as foreign as their immigrant counterparts. Although a victim has the ability and legal right to report crime victimization without deportation, the individual is aware that the risk of being identified as deportable still exists and therefore he or she may give up reporting altogether to avoid even the slightest possibility of this occurring. Similarly, a victim may refrain from accessing legal resources to obtain citizenship due to the fear of revealing their undocumented status. Racialized legal status affects immigrants’ behavior, regardless of whether the perceived immigration status is the same as their actual immigration status in the United States.

III. SOLUTIONS AND RECOMMENDATIONS FOR FURTHER RESEARCH

To address the reasons that inhibit a hate crime victim from reporting, the problem of racialized legal status also needs to be addressed. The stereotyping of certain races with immigration status is problematic not only because it is often an inaccurate portrayal of the individuals’ legal statuses, but also because it encourages racial profiling among immigration enforcement.¹⁶¹ Implicit bias training and anti-racism training for law and immigration enforcement could help curb such practices. With the absence of racialized legal status, the reasons that deter immigrants from reporting crimes would hopefully disappear. However, the extinction of racialized legal status will likely take generations to be realized. In the meantime, to combat decreased reporting rates, cultural competency training could help foster community trust between immigrants and police. A few examples of this include removing language barriers for reporting, improving cultural diversity among staff in the criminal justice system, and holding workshops teaching police about the culture of the immigrant communities they serve.¹⁶² As law enforcement grows more aware of each community’s cultural instincts about police, they can actively work to combat those deterrents.

Because hate crime underreporting varies between different immigrant groups, more research is needed to better understand why victims from each population do or do not report hate crimes. Although this Note summarized a holistic study of Latinx and Asian immigrant communities, this was only a

161. Acevedo, *supra* note 75.

162. See Davis & Erez, *supra* note 27 (listing other solutions for criminal justice agencies to help immigrant victims).

general overview, and there are many other racial groups within these umbrellas. For example, there are multiple racial groups within the term “Latinx,” such as Guatemalan, El Salvadoran, and Mexican. Each of these communities has a unique experience with police and crime, which could significantly alter their reasons for not reporting. And each group is pursued by immigration officers in different frequencies. Similarly, the ethnicities within the umbrella term of “Asian” have different cultural habits that may differentiate that group’s reasons for not reporting. Overall, more research is needed to better understand the subtleties between various ethnicities’ and cultures’ interactions with the police.

CONCLUSION

Racialized legal status negatively affects Latinx and Asian immigrants. The perception of being an undocumented immigrant compared to being documented results in a unique way that immigrants behave and hold themselves in public. The stigmatization not only changes their trust in law enforcement, but also changes their view of belonging in the United States as well. These changes in sum have a negative effect on society and cause immigrants to refrain from accessing social services. It is also inherently unfair and prejudicial to imply immigration status on an individual simply based on his or her appearance or race. As a country that prides itself in diversity and equality, the United States should aim to prevent such stereotyping so that immigrants will no longer feel attacked and alienated.
