

Hate Violence as Border Patrol: An Asian American Theory of Hate Violence

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Chico, California 1877

Arsonists of the Order of Caucasians, a white supremacist group that blamed Chinese immigrants for all the economic sufferings of white workers, tried to burn down the Chinatown in Chico and murdered four Chinese men by tying them up, dousing them with kerosene, and setting them on fire.

Rock Springs, Wyoming 1885

A mob of white miners massacred twenty-eight Chinese laborers, wounded fifteen, and chased several hundred out of town. The white miners opened fire at a crowd of unarmed Chinese, burned their huts to the ground, and threw the bodies of the dead Chinese as well as the wounded Chinese who were still alive into the flames. A grand jury did not indict a single person.

Detroit, Michigan 1982

Vincent Chin was a Chinese American male beaten to death a few days before his wedding with a baseball bat by two white laid-off autoworkers who screamed during the killing that the “Japs” were taking all the jobs. The killers were fined less than \$4000 each and sentenced to three years of probation.

Denver, Colorado 1984

Helen Fukui, a fifty-two year old woman, disappeared in Denver on December 7, 1984. Her decomposed body was found weeks later. The fact that she disappeared on Pearl Harbor Day when anti-Asian speech and incidents heightened racial tensions was considered significant in the Asian American community, but the case was not investigated as a hate crime. No suspects were ever arrested.

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New York City, New York 1985

Ly Yung Cheung, a nineteen year old seamstress in New York's Chinatown, was waiting for a subway train when she was pushed into the path of a train by a man claiming to have a psychotic "phobia about Asians." Cheung was decapitated by the oncoming train. She was seven months pregnant at the time.

Jersey City, New Jersey 1987

A Jersey City gang who called themselves the "Dotbusters" (a reference to the red bindi that some South Asian women wear as a sign of marital fidelity) published a letter in the paper stating that they would take any means necessary to drive the Indians out of Jersey City. Numerous racial incidents from vandalism to assault followed. Later that month, the Dotbusters used bricks to bludgeon and beat Navroze Mody, a South Asian male, into a coma. No bias charges were brought against the killers.

Stockton, California, January 1989

A gunman dressed in military clothes entered the schoolyard of Cleveland Elementary School in Stockton and opened fire with an AK47 assault rifle. He killed one Vietnamese and four Cambodian children: Raphanar Or, age 9; Ram Chun, age 8; Thuy Tran, age 6; Sokhim An, age 6; and Ocut Lim, age 8. The killings were driven by the gunman's hatred of Southeast Asians because of the Vietnam War.

Houston, Texas, August 1990

Hung Truong, a fifteen-year old Vietnamese American teenager, was walking down the street with three friends when they were accosted by persons in two cars that stopped alongside them. Two men stepped out of one car with a club and began to chase Truong, who was separated from his friends. While shouting "white power," the two men kicked and beat Truong. Truong begged them to stop and said "God forgive me for coming to this country. I'm so sorry." After they left him bleeding on the ground, Truong's friends called the paramedics who claimed that Truong seemed well enough to go home. Truong died the next morning.

Alpine Township, Michigan, June 1995

Thanh Mai, a 23-year old Vietnamese American, visited a teen nightclub with two of his friends in Alpine Township, Michigan on June 18, 1995. Mai was sitting alone and was accosted by three young white males who taunted Mai with racial slurs, including "What the f—k are you looking at, gook?" Mai tried to walk away from the situation, but when his attention was diverted, one of the white men surprised Mai by hitting him in the face. Mai fell to the concrete ground with such force that his skull split open, sending him into convulsions. Mai died five days later from major head trauma.

Southern California, August 1999

Joseph Ileteo, a Filipino postal worker was gunned down by a white supremacist on a shooting rampage in Southern California, which included opening fire in a Jewish community center. The killer shot Ileteo nine times in the chest and later confessed that he killed Ileteo because he looked Asian or Latino. The media initially invisibilized the murder of Joseph Ileteo and characterized the rampage as a solely anti-semitic one.¹

INTRODUCTION

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.² Most hate crimes committed against Asian Americans draw upon notions of Asian Americans as perpetual foreigners who do not belong in this society.³ Indeed, Victor Hwang notes how violence based on notions of foreignness has been an integral theme in Asian American history when he writes:

The Asian American community is based on an understanding and appreciation for the fact that we have struggled for nearly two centuries against this violence and exclusion in the plantations, in the courts, and on the battlefields....It is in our struggle against this pattern of violence and its underlying message of physical, political, and historical exclusion that we find ourselves as Asian Pacific Americans.⁴

In the United States, wherever there is foreignness, there is also a negative reaction to foreignness. This negative reaction includes setting up borders and expelling foreigners. Robert S. Chang and Keith Aoki note, “[i]n the same way that the cell wall or membrane serves a screening function, the border operates to exclude that which is dangerous, unwanted,

¹ There are so many more victims of anti-Asian violence, many of whom we do not even know. The lost lives recounted here are not intended to be a complete representation.

² I use the term “anti-Asian violence” to include hate violence against both Asians and Asian Americans.

³ See Telephone interview with Victor Hwang, Staff Attorney at Asian Law Caucus and Director of Hate Crimes Project (Nov. 20, 1998)[hereinafter Hwang Interview]; Jerry Kang, *Racial Violence Against Asian Americans*, 106 HARV. L. REV. 1926 (June 1993); National Asian Pacific American Legal Consortium, *Audit of Violence Against Asian Pacific Americans: Anti-Asian Violence, A National Problem*, First Annual Report (1993)[hereinafter NAPALC Audit I]; National Asian Pacific American Legal Consortium, *Audit of Violence Against Asian Pacific Americans: Anti-Asian Violence, A National Problem*, Second Annual Report (1994)[hereinafter NAPALC Audit II]; National Asian Pacific American Legal Consortium, *Audit of Violence Against Asian Pacific Americans: The Consequences of Intolerance in America*, Third Annual Report (1995)[hereinafter NAPALC Audit III]; National Asian Pacific American Legal Consortium, *Audit of Violence Against Asian Pacific Americans: The Violent Impact on a Growing Community*, Fourth Annual Report (1996)[hereinafter NAPALC Audit IV]; National Asian Pacific American Legal Consortium, *Audit of Violence Against Asian Pacific Americans: Continuing the Campaign Against Hate Crimes*, Fifth Annual Report (1997)[hereinafter NAPALC Audit V]. The National Asian Pacific American Legal Consortium is affiliated with the Asian American Legal Defense and Education Fund in New York, the Asian Pacific American Legal Center of Southern California in Los Angeles, and the Asian Law Caucus in San Francisco.

⁴ Victor Hwang, *The Interrelationship Between Anti-Asian Violence and Asian America*, 22 CHICANO-LATINO L. REV. 18, 19 (2000).

undesirable.”⁵ The United States guards its borders seriously and marks foreigners within its physical borders according to race. Not all foreigners are treated the same by the United States. Angelo Ancheta uses the term “outsider racialization” to describe the construction of Asian Americans and other non-whites as foreigners. Outsider racialization operates on two different levels:

First, Asian Americans, Latinos, and Arab Americans are racially categorized as foreign-born outsiders, regardless of actual citizenship status. Racialization operates on multiple levels: through psychological cognition and learning, social and political discourse, and institutional structures. Second, ostensibly race-neutral categories such as “immigrant” and “foreigner” are racialized through the same social processes. Just as Asian Americans, Latinos, and Arab Americans are presumed to be foreigners and immigrants, foreigners and immigrants are presumed to be Asian, Latino, or Arab.⁶

Thus, some immigrants are able to cross the border into the United States and gain immediate acceptance as un-foreign because of their white appearance. Racialized others may physically enter the country, but not without foreignness stamped on their faces through their racial uniforms. Accordingly, hate crimes against Asian Americans take on the unique dimension of operating as a form of border patrol and protection of the nation against the foreign “alien.” An analysis of anti-Asian hate violence must recognize the social context of foreignness in which the violence manifests as well as the reactions that foreignness triggers from the state and from private actors.⁷

Part I of this paper briefly examines violence as a form of systemic oppression against people of color throughout history and its prevalence in particular against the Asian American community. Part II addresses how perceptions of Asian Americans have always been and continue to be informed by stereotypes grounded in foreignness and focuses on the treatment of Asian Americans by the state. Part III explores white American national identity in the context of immigration, white American anxiety over cultural security and over maintaining borders as a way to deal with the resulting identity crisis. This section also focuses on popular and cultural perceptions of Asian Americans as foreigners. Part IV builds upon the notion of Asian Americans as perpetual foreigners and analyzes how perceptions of foreignness cause Asian Americans to be subject to both official state and unofficial private forms of border patrol. Hate violence is examined as constituting a form of border patrol by both state and private actors. Finally, this section considers how the construction of

⁵ Robert S. Chang and Keith Aoki, *Policy, Politics and Praxis: Centering the Immigrant in the Inter/National Imagination*, 85 CAL.L.REV. 1395, 1411 (1997).

⁶ ANGELO N. ANCHETA, RACE, RIGHTS, AND THE ASIAN AMERICAN EXPERIENCE 64 (1998).

⁷ This paper will focus on the nativist violence against Asian Americans although other groups of color such as Latina/os and Arab Americans certainly also face such nativist violence. Because this paper focuses on nativist violence and racism, I do not discuss hate violence within the Asian American community (which includes domestic violence and sexual assault against many Asian American women) and between communities of color (particularly between the Asian American, Latina/o, and African American communities). I do not intend to imply that these forms of violence do not exist.

individual hate crimes as the sole problem ignores the border patrol function of hate violence and the role of the state in perpetrating hate violence.

I. VIOLENCE: THE AMERICAN WAY

*I believe in revolution
because everywhere the crosses are burning,
sharp-shooting goose-steppers round every corner,
there are snipers in the schools...
(I know you don't believe this.
You think this is nothing
but faddish exaggeration. But they
are not shooting at you.)*⁸

A. *The Face of Oppression: Violence*

Group-based violence has been a means of maintaining dominant power relationships throughout the history of the United States. Violence played a major role in the initial colonization of North America and genocide of Native Americans, the subjugation of African Americans into slavery, the conquest and annexation of Mexico and its people, and the exclusion of Asian Americans. It has been used strategically to circumvent any protective laws and to suppress any rebellion from the subordinated. One representation of such violence is evident during the reign of terror when the Ku Klux Klan commanded during Reconstruction to prevent the Thirteenth, Fourteenth, and Fifteenth Amendments from being effectively implemented. Physical violence and the psychological terror that accompanies it have been some of the most effective tools of the state to oppress people of color, and they are tools that the private citizenry has utilized fully. Violence by private individuals and by organized white supremacist groups like the Ku Klux Klan has a long history and continues today as a major threat to targeted groups, especially with new media such as the Internet available to spread its message of terror.⁹

While oppression occurs in many different forms, violence is one of its oldest and most pervasive forms. Iris Young explains:

What makes violence a face of oppression is less the particular acts themselves, though these are often utterly horrible, than the social context surrounding them, which makes them possible and even acceptable. What makes violence a phenomenon of social injustice, and not merely an individual moral wrong, is its systemic character, its existence as a social practice.¹⁰

⁸ Lorna Dee Cervantes, *Poem for the Young White Man Who Asked Me How I, an Intelligent, Well-Read Person, Could Believe in the War Between Races*, in *UNSETTLING AMERICA, AN ANTHOLOGY OF CONTEMPORARY MULTICULTURAL POETRY* 248, 248-49 (Maria Mazziotti Gillan and Jennifer Gillan eds., 1994).

⁹ See NAPALC Audit II, *supra* note 3, at 13. See also ANTI-DEFAMATION LEAGUE, *HIGH-TECH HATE: EXTREMIST USE OF THE INTERNET* (1997).

¹⁰ IRIS YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE* 61-62 (1990).

Thus, the violence that people of color experience is not simply a random, individual act, but a widespread and systematic act of domination with all institutions of society in complicit support of the violence. Young further describes:

Violence is systemic because it is directed at members of a group simply because they are members of that group.... The oppression of violence consists not only in direct victimization, but in the daily knowledge shared by all members of oppressed groups that they are *liable* to violation, solely on account of their group identity. Just living under such a threat of attack on oneself or family or friends deprives the oppressed of freedom and dignity, and needlessly expends their energy.¹¹

Consequently, people of color understand that violence is a part of racial oppression which must be struggled against in the quest for liberation.

Violence is a tool of the state as well as a tool of individuals over oppressed groups. The two forms of manifested violence are interrelated: violence by the state is approved and supported by the private citizenry, and violence by private actors is tolerated and encouraged by the state. Thus, violence by police officers, border patrollers, and the military are all state forms of violence supported by the citizenry, and the state's condoning and ignoring violence by private actors by failing to prosecute such behavior is a form of state complicity with private acts of violence.

B. Pervasiveness of Hate Violence Against Asian Americans

For this paper, I define hate violence according to how it is defined by the National Asian Pacific American Law Consortium (NAPALC).¹² Under this approach, hate violence includes:

any verbal or physical act that intimidates, threatens, or injures a person or person's property because of membership in a targeted group. That membership can be based on actual or perceived race, ethnicity, national origin, immigration status, religion, gender, sexual orientation, or age. Such acts may include verbal or written threats, harassment, graffiti, property damage, and physical assaults, some of which result in serious injury or death.¹³

This definition is broader than the legal definition of a hate-motivated crime used by the Federal Bureau of Investigation (FBI) in collecting its statistics. Under the FBI's approach, hate crimes only consist of criminal offenses motivated by a person's race, religion, ethnicity, or sexual orientation.¹⁴ In addition, the FBI requires more than the mere utterance of racial epithets as evidence of bias motivation in order to consider an incident as a hate crime.¹⁵ NAPALC's broader definition "recognizes the role of racist language in dehumanizing, humiliating, and ultimately

¹¹ *Id.* at 62. 62 (1990).

¹² NAPALC is a collaboration of major civil rights organizations in Asian American communities across the country and is specifically affiliated with the Asian American Legal Defense and Education Fund in New York, the Asian Pacific American Legal Center of Southern California in Los Angeles, and the Asian Law Caucus in San Francisco.

¹³ NAPALC Audit III, *supra* note 3, at 7.

¹⁴ *See id.*

¹⁵ *See* NAPALC Audit II, *supra* note 3, at 7.

creating an atmosphere that both fosters and condones violence against racial minorities.”¹⁶ The more inclusive definition also reflects the common occurrence of racial slurs that escalate into physical violence.¹⁷ The effects of hate violence reach far beyond the physical consequences, as the psychological, sociological, and political costs of hate violence reverberate throughout the larger Asian American community as well as other oppressed communities of color.¹⁸

Hate crimes are committed against all subordinated groups in the United States, but they exist as particular forms of control over people of color who are perceived as foreign.¹⁹ Victor Hwang, staff attorney at the Asian Law Caucus in San Francisco and head of its Race Relations: Hate Violence Project, states that most hate crimes against the Asian American community reflect the notion of Asians as foreigners who need to be expelled from the country.²⁰ Asian Americans are the fourth most likely group to be hate crime victims, yet are only 3% of the U.S. population.²¹ In fact, hate violence against Asians has increased at a faster rate than for any other ethnic group.²²

The Asian American civil rights community recognizes the prevalence of violence as a major civil rights issue for Asian Americans. In 1993, the National Asian Pacific American Legal Consortium began to track hate incidents and published its first annual report on anti-Asian violence. It was the first comprehensive, nationwide, non-governmental attempt to collect and assess data on anti-Asian violence.²³ However, it is critical to note that severe underreporting problems exist for a variety of reasons. Not all law enforcement agencies collect data on hate crimes, and although the federal Hate Crimes Statistics Act, enacted in 1990, sought to develop a uniform system of data collection, reporting is only voluntary for law enforcement agencies. Furthermore, there is widespread underreporting of hate crimes against Asian Americans because of linguistic barriers between victims and police and the lack of bilingual law enforcement personnel, a lack of knowledge on the part of Asian Americans regarding hate crime

¹⁶ NAPALC Audit III, *supra* note 3, at 7.

¹⁷ *See id.*

¹⁸ *See* Richard Delgado, *Words that Wound: A Tort Action for Racial Insults, Epithets, and Name Calling*, 17 HARV. C.R.-C.L. L. REV. 133 (1982).

¹⁹ On some level, all people of color are perceived as the “other” and thus, foreign and not belonging to this nation which claims white as its color. Because this paper concentrates on anti-Asian violence, the focus is on Asian Americans and foreignness. There are unique ways in which the Asian American, Latino, and Arab-American communities have been constructed as foreign which differs from the African American and Native American experiences. *See* Robert Chang, *Dreaming in Black and White: Racial-Sexual Policing in The Birth of a Nation, The Cheat, and Who Killed Vincent Chin?*, 5 ASIAN L.J. 51 (1998), for a description of how Blacks suffered racism as the “real” racial Other while Asians suffered nativistic racism as the “real” foreign Other.

²⁰ *See* Hwang Interview, *supra* note 3.

²¹ *See* Jerry Kang, *Racial Violence Against Asian Americans*, 106 HARV. L. REV. 1926 (1993) (citing ORGANIZATION FOR CHINESE AMERICANS, IN PURSUIT OF JUSTICE 2 (1992)). *See generally* U.S. Comm’n on Civil Rights, *Civil Rights Issues Facing Asian Americans in the 1990s* 45-48 (1992)[hereinafter *Civil Rights Issues*]; U.S. Comm’n on Civil Rights, *Recent Activities Against Citizens and Residents of Asian Descent* 40-57 (1986) [hereinafter *RECENT ACTIVITIES*].

²² *See* Kang, *supra* note 21 (citing Brief of the National Asian Pacific American Legal Consortium, *Amici Curiae* at 3, *Wisconsin v. Mitchell*, (U.S. 1993) (No. 92-515)).

²³ *See* NAPALC AUDIT II, *supra* note 3.

laws and civil rights protections, a mistrust of the police and thus a reluctance to report hate crimes, and finally, shame or embarrassment of being a victim. Even when racially motivated incidents are reported to the police, law enforcement may still fail to classify the incident as a hate crime, sometimes deliberately to avoid further investigation and additional paperwork.²⁴ Even with severe underreporting, the statistics are alarming because they reveal that Asian Americans are twice as likely to be assaulted than harassed and thus more likely to be physically injured during a hate crime.²⁵

II. THE PERPETUAL FOREIGNERS: STATE TREATMENT OF ASIAN AMERICANS AS FOREIGNERS

*"Mrs. Hammerick...Boiling Spring Elementary School...I was scared of her like no dark corners could ever scare me. You have to know that all the while she was teaching us history...she was telling all the boys in our class that I was Pearl and my last name was Harbor. They understood her like she was speaking French and their names were all Claude and Pierre. I felt it in the lower half of my stomach, and it throbbed and throbbed until I thought even you sitting three rows away could hear it...It would be so many years...I would understand that Pearl Harbor was not just in 1941 but in 1975."*²⁶

The state has historically classified Asian Americans as foreigners and has treated Asian Americans as threats to U.S. solidarity and security. In this section, I will explore three specific examples of how Asian Americans were perceived as foreign by the state and the impact of such perceptions.

A. Chinese Exclusion

The fear of non-white immigration can be seen in the Chinese Exclusion laws of the 1880s and 1890s. In fact, U.S. immigration law is fundamentally based on the exclusion of Chinese immigrants.²⁷ In 1882, 1884, 1888, and 1892, Congress passed the Chinese Exclusion laws, which were the first set of federal immigration laws to be challenged in the judicial system.²⁸ In the Chinese Exclusion Case, *Chae Chan Ping v. United States*, 130 U.S. 581 (1889), the Court worried about the refusal of Chinese immigrants to assimilate and feared that Chinese immigrants presented a "great danger" because "at no distant day that portion of our country would be overrun by them [Chinese], unless prompt action was taken to restrict their immigration."²⁹ Justice Field, writing for a

²⁴ See CIVIL RIGHTS, *supra* note 21, at 46; NAPALC AUDIT I, *supra* note 3, at 6.; NAPALC AUDIT II, *supra* note 3, at 9.

²⁵ See NAPALC AUDIT I, *supra* note 3, at 6; NAPALC AUDIT II, *supra* note 3, at 8.

²⁶ Monique Thuy-Dung Truong, *Kelly*, in ASIAN AMERICAN LITERATURE: A BRIEF INTRODUCTION AND ANTHOLOGY 288, 289 (Shawn Wong ed., 1996).

²⁷ See *Chae Chan Ping v. United States*, 130 U.S. 581 (1889).

²⁸ See THOMAS ALEXANDER ALEINIKOFF ET AL., IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY 179 (4th ed. 1998).

²⁹ *Chae Chan Ping*, *supra* note 27, at 595 (1889).

unanimous Court, stated that “[i]t seemed impossible for them [Chinese] to assimilate with our people, or to make any change in their habits or modes of living.”³⁰ He also referred to Chinese immigrants as an “Oriental invasion” and as a “menace to our civilization.”³¹

In *Chae Chan Ping*, the Supreme Court sought to answer for the first time the question of which branch of government had the authority to set immigration policy and invented the plenary power doctrine. The Constitution does not grant authority to Congress to regulate immigration.³² Despite the idea that the United States is a government of enumerated powers, the Supreme Court declared that the power of the United States to regulate immigration and control its borders was so basic that it was inherent in the sovereign power of the state.³³ This plenary power doctrine defies the constitutional structure of delegated powers and allows the power to exclude foreigners to remain unchecked by the Constitution. The doctrine of plenary power has continued to dominate immigration law and virtually exempts it from judicial review.³⁴ Consequently, judges are very reluctant to intervene and usually defer to the legislative branch instead. Although Chinese Exclusion was later modified by legislation, *Chae Chan Ping* is not merely an ugly remnant of the past. In fact, *Chae Chan Ping* is valid precedent as the case has never been modified or reversed and continues to be cited by modern courts to support the plenary power doctrine.³⁵

The states have also sought to exclude Chinese immigrants from entering its borders. California’s State Constitution, for example, included an entire section devoted to how Chinese must be excluded from sectors such as corporations and public works. As declared in the constitution: “No corporation now existing or hereafter formed under the laws of this state shall, after the adoption of this constitution, employ, directly or indirectly, in any capacity, any Chinese or Mongolian. The legislature shall pass such laws as may be necessary to enforce this provision.”³⁶ The next section stated, “[n]o Chinese shall be employed on any state, county, municipal, or other public work, except in punishment for crime.”³⁷ In referring to Chinese immigrants, the state constitution also stated, “[t]he presence of foreigners ineligible to become citizens of the United States is declared to be dangerous to the well-being of the state, and the legislature shall discourage their immigration by all the means within its power.”³⁸

³⁰ *Id.*

³¹ *Id.*

³² See ALENIKOFF, *supra* note 28, at 178.

³³ See *Chae Chan Ping*, *supra* note 27, at 609 (1889).

³⁴ See ALENIKOFF, *supra* note 28, at 217-18 (citing Henkin, *The Constitution and United States Sovereignty: A Century of Chinese Exclusion and its Progeny*, 100 HARV. L. REV. 853, 862-63 (1987)).

³⁵ See ANCHETA, *supra* note 6, at 88.

³⁶ CAL. CONST. of 1879, art. XIX, § 2.

³⁷ CAL. CONST. of 1879, art. XIX, § 3.

³⁸ CAL. CONST. of 1879, art. XIX, § 4.

B. Alien Land Laws

Even for the Asian Americans exempted from the Chinese Exclusion laws, the alien land laws ensured their subordinate position in society by denying them the right to own land. The California legislature began to discuss proposals to prohibit land ownership by Japanese immigrants in 1907 and introduced such bills within the next few sessions.³⁹ In 1913, the California legislature passed the first Alien Land Law, which restricted land ownership to U.S. citizens. It stated that only "aliens eligible to citizenship may acquire, possess, enjoy, transmit, and inherit real property or any interest therein."⁴⁰ Since the federal 1790 Naturalization Act prohibited non-whites from becoming naturalized citizens, only white immigrants could satisfy the phrase 'aliens eligible to citizenship,' thus effectively precluding Asians from owning land.⁴¹ The proponents of the legislation openly acknowledged the racially discriminatory intent of the law and claimed that it was necessary to combat the Japanese threat. State Attorney General Ulysses Webb maintained that the concern of "race undesirability" prompted the bill since Japanese individuals would probably not immigrate and remain in the United States if they could not acquire land and settle here.⁴²

Other states were quick to follow California's lead and soon a multitude of alien land laws spread rapidly in the early 1900s.⁴³ Arizona passed one in 1917, Washington and Louisiana in 1921, New Mexico in 1922, Idaho, Montana, and Oregon in 1923, and Kansas in 1925.⁴⁴ These laws were facially neutral and survived constitutional challenge but were targeted towards Asian immigrants as a group because the racial bar on naturalization made them ineligible for citizenship. The alien land laws diminished the ability of Chinese, Japanese, Korean, and South Asian immigrants to earn a living in agriculture. Although California's 1913 Alien Land Law was not enforced by prosecutors much during World War I due to the need for food production, once the war was over Californians passed a ballot initiative in 1920 to eliminate the ability of Asian non-citizens to lease farm land completely. In 1923, an amendment made sharecropping agreements between landowners and Asian non-citizen farmers illegal even though technically no legal interest in the land itself was conferred.⁴⁵

³⁹ See RONALD TAKAKI, *STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS* 203 (1989).

⁴⁰ BILL ONG HING, *MAKING AND REMAKING ASIAN AMERICA THROUGH IMMIGRATION POLICY 1850-1990* 30 (1993).

⁴¹ See TAKAKI, *supra* note 39, at 82. Although the 1870 post-Civil War Naturalization Act extended citizenship to African Americans and the question of whether to extend citizenship to Chinese Americans was debated, Congress ultimately refused to extend citizenship to Chinese Americans. See SUCHENG CHAN, *ASIAN AMERICANS: AN INTERPRETIVE HISTORY* 47 (1991). It is important to point out that even though the 1870 reform did technically extend citizenship to persons of African ancestry, this was in name only as Blacks were still effectively disenfranchised.

⁴² See TAKAKI, *supra* note 39, at 204.

⁴³ See CHAN, *supra* note 41, at 47.

⁴⁴ See *id.*

⁴⁵ See *id.*

While the Chinese community focused on the legal challenges to the exclusion laws, the Japanese community challenged the validity of the alien land laws.⁴⁶ Four landmark cases were heard by the U.S. Supreme Court in 1923, all of which eliminated any rights the Japanese farmers may have previously exercised. The Court upheld Washington's and California's alien land laws in *Terrace v. Thompson* and *Porterfield v. Webb*.⁴⁷ In *Webb v. O'Brien*, the Court held that sharecropping agreements were illegal, and in *Frick v. Webb*, the Court upheld laws prohibiting non-citizens from owning stocks in corporations formed for the purpose of farming.⁴⁸ It was not until *Oyama v. California* in 1947 that California's alien land law was finally struck down.⁴⁹

C. Japanese American Internment

The construction of Japanese Americans as foreigners began long before the Pearl Harbor bombing, as evidenced by the alien land laws and the anti-Japanese hysteria that shrieked for the removal of Japanese Americans. The Los Angeles Times editorialized, "[a] viper is nonetheless a viper wherever the egg is hatched—so a Japanese American, born of Japanese parents—grows up to be a Japanese, not an American."⁵⁰ Henry McLemore, a prominent syndicated columnist for the Hearst papers, called for the internment of Japanese Americans:

I am for immediate removal of every Japanese on the West Coast to a point deep in the interior. I don't mean a nice part of the interior either. Herd 'em up, pack 'em off and give 'em the inside room in the badlands. Let 'em be pinched, hurt, hungry and dead up against it....Personally, I hate the Japanese. And that goes for all of them."⁵¹

This anti-Japanese rhetoric was also present in governmental documents. General DeWitt, military commander for the western states, stated in his formal recommendation for removal, "In the war in which we are now engaged racial affinities are not severed by migration. The Japanese race is an enemy race and while many second and third generation Japanese born on United States soil, possessed of United States citizenship, have become 'Americanized,' the racial strains are undiluted."⁵²

Japanese American Internment exemplified the fear of the "alien" within our borders and the need to expel the foreigner. Neil Gotanda writes, "It is within this dynamic—the evolution of the treatment of Other non-whites—that the concentration camp cases are best understood....

⁴⁶ See *id.* at 49.

⁴⁷ See IAN F. HANEY LOPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* 129 (1996). See also *Terrace v. Thompson*, 263 U.S. 197 (1923); *Porterfield v. Webb*, 263 U.S. 225 (1923).

⁴⁸ See CHAN, *supra* note 41, at 95-96; see also *Webb v. O'Brien*, 263 U.S. 313(1923); *Frick v. Webb*, 263 U.S. 326 (1923).

⁴⁹ See HANEY LOPEZ, *supra* note 47, at 129; see also *Oyama v. California*, 332 U.S. 633 (1947).

⁵⁰ TAKAKI, *supra* note 39, at 388. (1989).

⁵¹ ANCHETA, *supra* note 6, at 69. (citing COMM'N ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, *PERSONAL JUSTICE DENIED* 71-72 (1982)).

⁵² TAKAKI, *supra* note 39, at 391 (citing DANIELS, *CONCENTRATION CAMPS USA* 65 (1972); COMM'N ON WARTIME RELOCATION, *PERSONAL JUSTICE DENIED* 66 (1982)).

these cases were crucial steps in the development of the complex links of the social and legal categories of race and alienage. Most important in this development has been the persistence of the view that even American-born non-Whites were somehow “foreign.”⁵³ In *Korematsu v. United States*, the Court upheld the internment of Japanese Americans even under its own strict scrutiny test because internment supposedly constituted a military necessity.⁵⁴ The Court insisted that it was not merely looking at race but the issue of military necessity and “national security”: “To cast this case into outlines of racial prejudice, without reference to the real military dangers which were presented, merely confuses the issue. *Korematsu* was not excluded from the Military Area because of hostility to him or his race. He was excluded because we are at war with the Japanese Empire.”⁵⁵ However, white immigrants like German and Italian Americans were not interned like the Japanese Americans because they did not seem foreign in the same way; unlike the foreign and “otherized” Japanese Americans, German and Italian Americans did not threaten the existence of a white national identity or its security.

III. THE PERPETUAL FOREIGNERS: IDENTITY AND BORDER CRISES

*“excuse me, ameriKa,
I’m confused.
You tell me to lighten up,
but what you really mean is whiten up.
You wish to wash me out,
melt me into your cauldron.
Excuse me, if I tip your melting pot,
spill the shades onto your streets.”*⁵⁶

A. White American National Identity and Immigration

In order to fully understand the dynamics occurring in anti-Asian hate violence, we must examine the role that race and foreignness play in the construction of white American identity.⁵⁷ American national identity is defined as a white one, and thus, anyone not white is “otherized.” The status of being the “Other” implies being “other than” or different from the assumed norm of white national identity.⁵⁸ Because America sees color as

⁵³ See Neil Gotanda, *Other Non-Whites in American Legal History: A Review of Justice at War*, 85 COLUM. L. REV. 1186 (1985).

⁵⁴ See *Korematsu v. United States*, 323 U.S. 214 (1944).

⁵⁵ *Id.* at 223.

⁵⁶ ANIDA ROUQUIYAH YOEU ESGUERRA *of I WAS BORN WITH TWO TONGUES, excuse me, ameriKa, on BROKEN SPEAK* (Fist of Sound Records 1999)(transcribed by the author).

⁵⁷ The capitalization of terms in this Comment is done purposefully, with the names for people of color capitalized and the term “white” left in the lower case. Gotanda explains, “As a term describing racial domination, ‘white’ is better left in lower case, rather than privileged with a capital letter. ‘Black,’ on the other hand, has deep political and social meaning as a liberating term, and, therefore, deserves capitalization.” For a more complete discussion, see Neil Gotanda, *A Critique of Our Constitution Is Color-Blind*, 44 STAN. L. REV. 4, n. 12 (1991).

⁵⁸ For a discussion of othering, see Patricia Hill Collins, *Learning from the Outsider Within: the*

fundamental to its very core identity and existence, it needs to label and drive out the “Other” to preserve this color of white. This dynamic is reflected in American immigration history.

After over a century of Asian exclusion, the Immigration and Nationality Act of 1952 (McCarran-Walter Act) nullified the 1790 Naturalization Act restricting naturalization to whites, finally allowing Asian Americans to naturalize, and technically ended exclusion by allowing a small number of immigrants from South and East Asia.⁵⁹ However, it was post-1965 immigration that really changed the landscape for Asian immigration. The 1965 Immigration Act was framed as an amendment to the McCarran-Walter Act of 1952, but it substantially changed the immigration system by reforming the “national origins quotas” as the basis for immigration.⁶⁰ The 1965 Act provided for an annual admission number from the eastern and western hemispheres and enacted a new preference system for immediate family members and skilled laborers.⁶¹

The 1965 Act changed immigration patterns and demographics more dramatically than the proponents of the legislation could have imagined. Although the original supporters of the Act had predicted that European immigration would continue to predominate, in actuality, Asian immigration has dominated, behind only Mexico. The proponents appeased nativist groups opposing the legislation by arguing that Asian immigration could only increase slightly because the number of Asian citizens in the United States was too small to really take advantage of the family preference system for reunification of immediate family members.⁶² However, because of the 1965 reforms, Asian immigration has increased steadily. The Philippines, Korea, China, and Vietnam rank as the second through fifth largest sending countries of immigrants to the United States, behind only Mexico which sends the highest number of immigrants.⁶³ Prior to 1965, immigration had been predominately European and from the western hemisphere.

Differential racialization of immigrants is obvious when examining the treatment and acceptance of white immigrants as compared to immigrants from Africa, Asia, the Caribbean, and Latin America. Chang and Aoki explain, “Fear of immigration, often discussed in generalized terms, is colored so that only certain immigrant bodies excite fear. . . . The ‘problem’ of legal and illegal immigration is colored in the national imagination: fear over immigration is not articulated solely around foreignness per se; it includes a strong racial dimension.”⁶⁴ The ability to label a group of people as foreigners enables white America to define itself in opposition to the foreigners, because white Americans are not

Sociological Significance of Black Feminist Thought, 33.6 SOC. PROBS., S14, S18 (1986).

⁵⁹ See TAKAKI, *supra* note 39, at 413-417. (1989).

⁶⁰ See CHAN, *supra* note 43, at 145-146. (1991).

⁶¹ See *id.* at 145.

⁶² See *id.*

⁶³ See *id.*

⁶⁴ Chang and Aoki, *supra* note 58, at 520.

foreign. Different non-white groups experience being the "Other" as a foreigner outside of white American national identity in different ways. Obviously no group of color fits the definition of white American national identity, but the specific ways in which foreignness may be constructed and experienced varies across different communities of color. For Asian Americans, the image of the perpetual foreigner is a pervasive stereotype, which informs our experience as the "Other."⁶⁵

The process of "othering" necessarily involves a relational system of defining identity in a social and historical context of domination and subordination. Thus, "othering" involves the categorization of people in terms of their difference from one another so that one derives its meaning only in relation to the other. Patricia Collins explains, "[f]or example, the terms in dichotomies such as black/white, male/female, reason/emotion, fact/opinion, and subject/object gain their meaning only in *relation* to their difference from their oppositional counterparts."⁶⁶ In this relational system, American national identity is inextricably tied to non-American (foreign) identity. The positive, superior American national identity is white, good, patriotic, and belonging; the negative, inferior non-American identity (foreign) is non-white, bad, treacherous, and invasive.

Edward Said's work on "Orientalism" examines how the western colonial gaze constructed "the Orient" in opposition to itself, "the Occident" so that its self-identity relied on a negation: what we are, they are not; what they are, we are not.⁶⁷ Keith Aoki elaborates on Said's notion of "Orientalism" by analyzing a particular strand of "American Orientalism" which explains the process of "othering" for Asian Americans in the context of foreignness:

the national identity of the United States has been constructed in opposition to racialized 'Others' like Asian immigrants and Asian Americans. 'American Orientalism' also carries a significant additional component: the idea of 'foreignness,' which refers to the construction of the American nation-state that involves categorization of persons as 'citizens' or 'foreigners.' . . . In a complex fashion, the American 'Orientalist' gaze deeply inscribes 'otherness' on Asian Americans and Asian immigrants as simultaneously 'racialized' as 'non-white' and 'foreign and unassimilable.'⁶⁸

Thus, Asian Americans are "otherized" as non-whites, but are also "otherized" as foreign.

⁶⁵ See note 19.

⁶⁶ Collins, *supra* note 58, at S20.

⁶⁷ See EDWARD W. SAID, *ORIENTALISM* (1978).

⁶⁸ Keith Aoki, "Foreign-ness" and Asian American Identities: Yellowface, World War II Propaganda, and Bifurcated Racial Stereotypes, 4 UCLA ASIAN PAC. AM. L.J. 1, 6-9 (1996).

B. *White American National Identity Crisis and Cultural Insecurity*

The desire to protect white national identity has often been framed in terms of “national security.”⁶⁹ However, this term must be distinguished from cultural insecurity on the part of anxious whites. Often, “national security” points to cultural insecurity and the preservation of a white, Eurocentric national identity. This is exemplified by Pat Buchanan’s statement, “if we had to take a million immigrants in, say, Zulus, next year or Englishmen and put them in Virginia, what group would be easier to assimilate and would cause less problems for the people of Virginia? There is nothing wrong with us sitting down and arguing that issue, that we are a European country.”⁷⁰ Multiculturalism and people of color are perceived as threats to this illusory notion of a cohesive white cultural security. Consequently, it does not take a large number of Asians to trigger the perceived threat to cultural security. The mere presence of Asians in America and their impact on the national culture, in terms of, for instance, languages other than English being spoken, is enough. Immigration policy has historically reflected such fears. Enid Trucios-Haynes explains, “The current immigration debate fully illustrates that U.S. society will accept only a multiracial population that is subordinate and non-threatening to the dominant Western European culture.”⁷¹ Fears that Chinese immigrants would be unable to assimilate and would challenge the cultural/“national security” were certainly reflected in the Chinese Exclusion legislation. The Court in *Chae Chan Ping* articulated concern over the unassimilability of the Chinese, but it was really trying to protect American cultural/“national security” from an “Oriental invasion.”⁷² Ruben J. Garcia notes, “Assimilationism is also proxy for the fear of shifting demographics which

⁶⁹ The concept of “national security” must be deconstructed to its many different meanings, none of which are racially neutral for those who are racialized as foreigners. When the rhetoric of “national security” is employed, we should remember the ways in which it can and has been used against Asian Americans. For instance, “national security” can be a territorial idea of protecting United States soil and physical land. This concern for “national security” is reflected by Chinese Exclusion which warned against invasion, the alien land laws which protected U.S. soil from “foreigners” by not allowing them to own it, and “protection” of the U.S. from Japan by interning the Japanese Americans. “National security” can be a militaristic secret intelligence notion of protecting the American people. This concern results in racial profiling in the Department of Defense where Dr. Wen Ho Lee was admittedly targeted because of his race. Although the targeted investigation lasted over two years, no evidence was found of espionage on his part. He was held in jail without bail for security violations of which other people in the department are also admittedly guilty. “National security” can also be a financial type of security depending on how healthy the U.S. market economy is. This is reminiscent of the anti-Japan bashing which occurred in the 1980s when Japanese cars gained popularity and Japan was doing well in trade, culminating in the murder of Vincent Chin by two laid-off automobile workers in Detroit who beat Chin to death with a baseball bat while yelling that “Japs” had taken all the jobs. “National security” can also be a cultural security which is at stake, as reflected in the fear of multiculturalism and the fear of multiple languages, as seen in “English-Only” laws.

⁷⁰ Bill Ong Hing, *Beyond the Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of Separatism and Conflict in an Immigration Driven Multiracial Society*, 81 CAL. L. REV. 863, 863-64 (1993) (citing Patrick Buchanan on *This Week With David Brinkley*, ABC News television broadcast, Dec. 8, 1991).

⁷¹ Enid Trucios-Haynes, Symposium, *Citizenship and Its Discontents: Centering the Immigrant in the Inter/National Imagination (Part I): Section One: Race, Citizenship, and Political Community Within the Nation-State: Article: The Legacy of Racially Restrictive Immigration Laws and Policies and the Construction of the American National Identity*, 76 OR. L. REV. 369, 377-78 (1997).

⁷² *Chae Chan Ping*, *supra* note 27, at 595.

will make whites the minority in some areas of the country.”⁷³ Indeed, efforts to either expel or assimilate Asians in this country have always had roots in white cultural insecurity.

C. *Nativistic Racism and Figurative Borders*

The interplay of racialized foreignness results in what Chang and Aoki term “figurative borders”:

Foreignness is inscribed upon our bodies in such a way that Asian Americans and Latinas/os carry a figurative border with us. This figurative border, in addition to confirming the belonging-ness of the ‘real’ Americans, marks Asian Americans and Latinas/os as targets of nativistic racism. It renders us suspect, subject to the violence of heightened scrutiny at the border, in the workplace, in hospitals, and elsewhere.⁷⁴

Asian Americans and Latinas/os are threatening to whites as we have crossed the physical border and have “penetrated” into the interior. Despite being physically inside the border, we can still be marked with figurative borders.

These figurative borders have serious consequences because “violence operates to regulate boundaries.”⁷⁵ Borders have historically been places of violence, and those marked as foreign are likely to experience violence.⁷⁶ Chang and Aoki explain:

This violence is spurred on by certain narratives of America which permit and perhaps encourage the pathological impulse toward nativistic racism. This violence is not confined to the geo-political periphery; it may explode anywhere that there is a border (and remember: the border is everywhere). This has serious consequences for those who carry a figurative border on our bodies. Asian Americans and Latina/os, as perpetual internal foreigners, allow “real” Americans to reassure themselves that the national community begins and ends with themselves, ensuring, at least momentarily, a stable notion of the national community and the fiction of a homogeneous American identity.⁷⁷

This ability to mark non-whites with figurative borders allows white Americans to believe in cultural security and temporarily stabilizes the white American national identity crisis.

D. *Stereotypes of Asian Americans: Threats to Cultural Security*

Stereotypes of foreignness abound in the popular imagination, mostly with Asian Americans and Latinas/os as the epitome of foreignness. Stereotypical portrayals of Asian Americans are very much informed by

⁷³ Ruben J. Garcia, *Critical Race Theory and Proposition 187: the Racial Politics of Immigration Law*, 17 CHICANO-LATINO L. REV. 138 (1995).

⁷⁴ Chang and Aoki, *supra* note 5, at 1396, 1414 (1997).

⁷⁵ *Id.* at 1416.

⁷⁶ For a discussion of border violence, see Michael J. Nunez, Note, *Violence At Our Border: Rights And Status Of Immigrant Victims Of Hate Crimes And Violence Along The Border Between The United States And Mexico*, 43 HASTINGS L.J. 1573 (1992) and Jesus A. Trevino, Comment, *Border Violence Against Illegal Immigrants and the Need to Change the Border Patrol's Current Complaint Review Process*, 21 HOUS. J. INT'L L. 85 (1998).

⁷⁷ Chang and Aoki, *supra* note 5, at 1396, 1416.

foreignness. Both the “model minority” and the “yellow peril” stereotypes have elements of foreignness embedded in them. Gary Okihiro describes, “[t]he yellow peril and the model minority are not poles, denoting opposite representations along a single line, but in fact form a circular relationship that moves in either direction.”⁷⁸

The characterization of foreignness of Asian Americans is what allows dominant society to move freely between these two seemingly contradictory stereotypes.⁷⁹ The underlying constant of foreignness provides the continuity needed to transform from positive to negative to positive. Natsu Taylor Saito notes the slipperiness and interconnectedness of the traits: “The positive versions of these stereotypes include images of Asian Americans as hardworking, industrious, thrifty, family-oriented, and even mysterious or exotic. It is striking that the negative images almost invariably involve the same traits. Hardworking and industrious become unfairly competitive; family-oriented becomes clannish; mysterious becomes dangerously inscrutable.”⁸⁰

These stereotypes of Asian Americans as foreigners and the enemy are reinforced through the media, educational, and political institutions of dominant society. An almost infinite number of examples exist which perpetuate Asian Americans as foreigners and as the enemy. Anti-immigrant scapegoating is often triggered by current events, which portray Asian Americans as negative foreigners. In June of 1993, a freighter (the *Golden Venture*) carrying 300 Chinese indentured servants ran aground in Queens, New York. The resulting media coverage perpetuated negative stereotypes of Asians as foreign illegal smugglers (specifically, Chinese as undocumented immigrants) and fueled anti-immigrant sentiment across the nation.⁸¹ In reality, Italians were the largest group of undocumented immigrants in the state of New York in 1993.⁸² Next on the list were undocumented immigrants from Ecuador and Poland. In fact, illegal Chinese did not even make the top ten list of groups of undocumented immigrants in the state of New York.⁸³ The *Golden Venture* incident ignited serious backlash, which had ramifications for the Asian American community, including unwarranted detention of Asian Americans at international airports, searches for undocumented immigrants at Asian American homes, and a flood of hate mail to Asian Americans.⁸⁴ One letter sent in East Brunswick, New Jersey in July 1993 was signed by the “Ping Pong Exterminators.” The letter stated:

Enough is Enough. It is now time to send these illegals and slave traders to where they come from. We will get rid of Chinese from the Garden State beginning one month from July 4th. They are criminals hiding

⁷⁸ GARY Y. OKIHIRO, MARGINS AND MAINSTREAMS: ASIANS IN AMERICAN HISTORY AND CULTURE 142 (1994).

⁷⁹ See Natsu Taylor Saito, *Model Minority, Yellow Peril: Functions of “Foreignness” in the Construction of Asian American Legal Identity*, 4 ASIAN L.J. 71, 76 (1997).

⁸⁰ *Id.* at 72.

⁸¹ See NAPALC AUDIT I, *supra* note 3, at 19.

⁸² See Jeff Yang and Karen Lam, *Could It Happen Here?*, VILLAGE VOICE, Dec. 6, 1994, at 14.

⁸³ See Deborah Sontag, *Study Sees Illegal Aliens in New Light*, N.Y. TIMES, Sept. 2, 1993, at B1.

⁸⁴ See NAPALC AUDIT I, *supra* note 3, at 19.

behind their BMW's, Benz and use their laundry, restaurant and massage parlors to cheat this country. They are infiltrating into safe communities of the Garden State and bringing big city criminal gangs with them. Look what happened in Teaneck. We will start with Edison and East Brunswick, two of the safest communities these Chinese gangs have picked to infiltrate. If you think what is happening in Germany is violent, you ain't seen nothing yet. There will be Chinese blood and bones all over if they don't quit voluntarily by August 5th. God save and bless America. God bless the Ping Pong Exterminators.⁸⁵

The backlash also resulted in increased efforts to pass restrictive immigration laws and to dismantle political asylum.⁸⁶ The National Asian Pacific American Legal Consortium notes, "Anti-immigrant sentiment has become legitimized in that it is permissible to openly discriminate against people who look different, speak a language other than English, have a non-Anglo name or appear otherwise 'foreign.'"⁸⁷

Other recent examples of Asian Americans as the perpetual foreigner include the portrayal of the Chinese boat people in *Lethal Weapon 4* (which was the top-grossing film the first week it was released), the MS-NBC headline reporting on Tara Lipinski winning the gold medal over Michelle Kwan's silver as "American Beats Kwan," and the Democratic political donations scandal portraying Asians taking over the American government with dirty money.⁸⁸ Being the perpetual foreigner has serious ramifications for Asian Americans in the context of anti-Asian hate violence.

IV. HATE CRIMES AS BORDER PATROL

La Migra

I.

*Let's play La Migra
I'll be the Border Patrol.
You be the Mexican maid.
I get the badge and sunglasses.
You can hide and run,
but you can't get away
because I have a jeep.
I can take you wherever
I want, but don't ask
questions because
I don't speak Spanish.*

⁸⁵ *Id.*

⁸⁶ *See id.*

⁸⁷ *See* NAPALC AUDIT II, *supra* note 3, at 12-13.

⁸⁸ *See* "Lethal" Unleashes Firepower at Box Office, USA TODAY, July 13, 1998, at 1D; Eric Sorensen, Asian Groups Attack MSNBC Headline Referring to Kwan—News Web Site Apologizes for Controversial Wording, SEATTLE TIMES, Mar. 3, 1998, at A15; No Medals for an American Gaffe, S.F. CHRON., Mar. 4, 1998, at A18; Joann Lee, Mistaken Headline Underscores Racial Presumptions, EDITOR & PUBLISHER MAG., Apr. 25, 1998, at 64; NAPALC AUDIT V, *supra* note 3.

*I can touch you wherever
I want but don't complain
too much because I've got
boots and kick—if I have to
and I have handcuffs.
Oh, and a gun.
Get ready, get set, run.*

II.

*Let's play La Migra
You be the Border Patrol.
I'll be the Mexican woman.
Your jeep has a flat,
and you have been spotted
by the sun.
All you have is heavy: hat,
glasses, badge, shoes, gun.
I know this desert,
where to rest,
where to drink.
Oh, I am not alone.
You hear us singing
and laughing with the wind,
Agua dulce brota aquí,
aquí, aquí, but since you
can't speak Spanish,
you do not understand.
Get ready.⁸⁹*

excuse you, ameriKa

*excuse you, ameriKa,
While I scratch your name with 3 'K's,
mark 'X' for your xenophobic tendencies,
scrape the violence off your skulls,
and ask you why.
Why are you so angry, ameriKa?
You whip out wisecracks,
attack the defenseless,
flashing the superior color of your badge.
You beat us down,
blameless as victims,
who remain nameless.
Bashing the heads of all our Vincent Chins,
you serve violence,
a beating for culture's sake,*

⁸⁹ Pat Mora, *La Migra*, *supra* note 8, at 366-68 (*La migra*: term along the border for Border Patrol agents, *Agua dulce brota aquí, aquí, aquí*: sweet water gushes here, here, here).

*fist fights that finish a Denny's meal.
 You dig graves for forgotten faces,
 steal lives for petty skin crimes,
 bury our dead with bullet wounds,
 slay the living with foreign stares.
 Why don't you stop hating me?
 Why don't you stop killing me?*⁹⁰

Those who are marked as foreign are forever subject to border checks, both officially and unofficially. Border patrols occur all the time, everywhere, and in all different forms by both state and private actors. Hate violence is one such form of border patrol and can also be executed by either state or private actors.

A. State Forms of Border Patrol

Officially, the state controls the border carefully through a complex web of institutions and legal restrictions on non-citizens.⁹¹ The enforcement function of the Immigration and Naturalization Service (INS) consists of four different programs, which include Inspections, Investigation, Detention and Deportation, and Border Patrol.⁹² The mission of the Border Patrol is to police the border and stop illegal immigration into the United States.⁹³ However, border patrol does not exist just on the border. For instance, the INS border checkpoint on Interstate 5 is located approximately halfway between San Diego and Los Angeles, many miles away from the literal United States-Mexico border.⁹⁴

The anxiety of whites has led to an intense anti-immigrant hysteria and has spurred a renewed policing of the border with Asians and Latinas/os as the special targets of the INS and Border Patrol. Both the Asian American and the Latina/o communities are perceived to be perpetual foreigners to the United States. The similarities between these two groups have increased even more as an anti-immigrant climate has led to both communities being seen as illegal immigrants. At the same time, the INS has stepped up efforts against these two groups. For Asians, the focus now is on accusing Asian immigrants of being smuggled through the Mexico-United States border.⁹⁵ The INS has described the problem as one of multilingual smugglers in a global network who are bringing in an influx of Chinese into the United States.⁹⁶ The concern of the INS has prompted

⁹⁰ YOEU ESGUERRA, *supra* note 56.

⁹¹ Although the legal and widely-used term for non-citizens is "aliens" (legal/illegal), I choose not to use that term here because I find it to be very degrading to a group already so dehumanized and exploited. The term reveals just how differently non-citizens are treated in the United States which is, ironically, a nation of immigrants.

⁹² See <<http://www.ins.usdoj.gov/graphics/workfor/overview/working.htm>> (last visited 1998).

⁹³ See Trevino, *supra* note 76, at 88-89.

⁹⁴ See Chang and Aoki, *supra* note 5, at 1397 n.4.

⁹⁵ See Sam Dillon, *Asian Aliens Now Smuggled From Mexico*, N.Y. TIMES, May 30, 1996, at A9.

⁹⁶ See Sebastian Rotella and Lee Romney, *Smugglers Use Mexico as Gateway for Chinese Immigration: the Increasing Influx of Illegal Immigrants is Largely Because of an Alliance Between Latin American and Asian Crime Syndicates*, INS Authorities Say, L. A. TIMES, June 21, 1993, at A3.

President Clinton to announce the creation of a multi-agency federal offensive against the trafficking of immigrants.⁹⁷

Such border patrol targeted against Asians has also intensified along the U.S.-Mexico border along the Rio Grande.⁹⁸ In 1993, the Border Patrol launched "Operation Hold the Line" (originally named "Operation Blockade") in El Paso, Texas, which stationed 450 agents (three times the normal number) on an around-the-clock watch along the twenty miles of the Rio Grande River separating El Paso, Texas from Ciudad Juarez in Mexico.⁹⁹ This new strategy was to saturate the border with agents instead of the old strategy of allowing movement across the border and then apprehending illegal immigrants once they were on United States soil.¹⁰⁰

Following the implementation of "Operation Hold the Line" in Texas, the Border Patrol instituted "Operation Gatekeeper" in Southern California and "Operation Safeguard" near Nogales, Arizona in 1994. These operations also saturated the border with agents and erected new fences and lights.¹⁰¹ However, even before "Operation Gatekeeper," the INS had already replaced the traditional chain-link fencing with "solid metal fencing, fashioned from obsolete military landing mats used for temporary runways." In 1994, the INS also added new computerized fingerprinting technology, which would identify repeat illegal crossers.¹⁰² Doris Meissner, commissioner of the INS, attributes the increased smuggling of Asians through Mexico to the heightened crackdown on maritime smuggling that followed the 1993 *Golden Venture* incident.¹⁰³ Thus, with respect to Asians, the Border Patrol now focuses on the United States-Mexico land border in addition to maritime and airport patrol. Asian Americans are increasingly being targeted as part of a crackdown on smuggling rings involving Asian and Latina/o members. This demonstrates how Asians and Latinas/os are being linked together in Border Patrol raids and operations. In November 1998, federal officials were involved in a yearlong investigation called "Operation Seek and Keep" to catch smuggling cartels of Asian immigrants who attempted to illegally enter the U.S. through Russia, Cuba, and Latin America.¹⁰⁴ "Operation Seek and Keep" was the first investigation authorized to use new wiretap technology in illegal immigrant smuggling cases that was approved by Congress in 1996.¹⁰⁵

The state takes its duties of border control seriously and supports this with the necessary funding. Border Patrol funding increased from 374 million dollars in 1994 to 631 million dollars in 1997. In addition, Congress has authorized increased funds for additional Border Patrol employees. In November 1999, the INS Border Patrol website contained a

⁹⁷ See *id.*

⁹⁸ See Dillon, *supra* note 95.

⁹⁹ See ALEINIKOFF, *supra* note 28, at 623.

¹⁰⁰ See *id.*

¹⁰¹ See *id.*

¹⁰² See *id.*

¹⁰³ See Dillon, *supra* note 95.

¹⁰⁴ See Frank Davies, *Agents Crack Three Crime Cartels That Traded in Asian Immigrants*, THE BUFFALO NEWS, Nov. 21, 1998, at 6A.

¹⁰⁵ See *id.*

recruitment list of 2000 open INS agent positions.¹⁰⁶ Over 90% of Border Patrol agents are concentrated on the Southwest border where the number of border agents has jumped from 3,300 in 1994 to 6,200 in 1997. Furthermore, the number of prosecutions brought by U.S. attorneys in the Southwest for immigration-related violations has increased threefold between 1994 and 1997.¹⁰⁷

The last decade's intensification of immigration control has been accompanied by a climate of anti-immigrant hysteria. This hysteria has further encouraged law enforcement and private actors to discriminate against foreigners. Because so much of their job is based on discretionary judgments, Border Patrol agents possess a very powerful tool against anyone they perceive to be foreign. Border Patrol agents can subjectively determine whether reasonable suspicion exists that someone entered the U.S. illegally and have the right to stop and question a person solely to discern if the person has the right to be in the United States.¹⁰⁸ Such discretion allows Border Patrol agents to target Asian Americans driving across the border or arriving on international flights and to question them more aggressively.

While such harassment by INS agents may simply lead to inconvenience, it can also result in more tragic consequences. The Hwang case is one example of such tragedy. Stephen Hwang contends that "some immigration officers are overly aggressive when they question immigrants, Asians in particular, seeking re-entry into the United States."¹⁰⁹ Unfortunately, Stephen Hwang knows this from personal experience. His sixty-six year-old mother, Chen Seu-Ing Hwang, collapsed on the floor in customs at Los Angeles International Airport while being harassed by an immigration inspector. She suffered a stroke, which left her partially paralyzed, and died a few weeks later. Stephen Hwang filed suit against the INS and inspector Craig Porter.

The suit charges that the stroke Chen Seu-Ing Hwang suffered was the result of undue harassment by Porter, who had been aggressively questioning her in customs. An airline employee who was translating for Mrs. Hwang in customs said that Porter had tried to get Mrs. Hwang to admit that she had been out of the country for longer than 12 months, in violation of her permanent residency status. In fact, Mrs. Hwang had originally traveled to Taiwan to meet her husband who was undergoing eye surgery. However, he suffered chest pains after the surgery and died after a heart bypass operation. Mrs. Hwang stayed in Taiwan to take care of her late husband's affairs, which led her to be absent from the United States longer than anticipated.¹¹⁰ Stephen Hwang believes that Porter did not give

¹⁰⁶ See <<http://www.ins.usdoj.gov/graphics/lawenfor/bpatrol/bpcareer/index.htm>> (visited Nov. 18, 1999).

¹⁰⁷ See ALENIKOFF, *supra* note 28, at 625.

¹⁰⁸ See Trevino, *supra* note 76 (citing 8 U.S.C. § 1357(c) and 8 U.S.C. § 1357(a)(1) (1994)).

¹⁰⁹ David Reyes, *Son Says Intent in Suing INS Is to Give Value to Mother's Death*, L.A. TIMES, Sept. 19, 1989, at Metro 3.

¹¹⁰ See *id.*

Mrs. Hwang a chance to explain her circumstances and instead, harassed her and tried to bully her into admitting she had done something wrong.¹¹¹

Linda Wong, an immigration attorney formerly with the Mexican American Legal Defense and Education Fund, has said that many non-white permanent residents have had problems with airport immigration inspectors. Wong has encountered numerous complaints of agents targeting permanent residents at the airport and at the U.S.-Mexico border. Agents ask more aggressive questions, and even try to entrap non-white immigrants into saying that they have been out of the country for so long that they have abandoned their residency.¹¹²

B. *Legal Restrictions for Non-citizens*

Legally, non-citizens, or permanent residents, are an incredibly vulnerable class because they have limited rights and increasingly fewer constitutional protections.¹¹³ Since non-citizens are disenfranchised, they cannot participate in the political process and have no political clout. Even though "immigrant rights [groups] and some ethnic groups lobby aggressively for immigrants, their pull with politicians naturally is restricted by the electoral powerlessness of their constituency."¹¹⁴ Hence, it is easy for politicians to trample on them since their voices cannot be heard at the election booth. Permanent residents' lack of input in the political process is exacerbated by the plenary power doctrine. The doctrine compels the judiciary to defer to the other political branches when reviewing immigration policies.¹¹⁵ Thus, the political branches which immigrants have little influence over are given significant freedom by the judiciary in immigration matters.

Although permanent residents are obliged to pay taxes and serve in the United States military if called upon, they do not have the right to vote or to serve on juries.¹¹⁶ Permanent residents are now ineligible for most benefits, especially since the passage of the 1996 Welfare Reform Act, which made permanent residents ineligible for Social Security Insurance (SSI) and food stamps.¹¹⁷ The plenary power doctrine gives the legislature broad latitude to restrict federal public benefits for permanent residents.¹¹⁸

¹¹¹ See *id.*

¹¹² See *id.*

¹¹³ Based on an equality principle, non-citizens should not be treated as a lower or less-respected group than citizens. Non-citizens participate in and contribute to society and should not be treated as inferior. See ANCHETA, *supra* note 6, at 100.

¹¹⁴ Kevin R. Johnson, *Symposium on Immigration Policy: An Essay on Immigration Politics, Popular Democracy, and California's Proposition 187: The Political Relevance and Legal Irrelevance of Race*, 70 WASH. L. REV. 636 (1995).

¹¹⁵ See *id.* at 637.

¹¹⁶ See ANCHETA, *supra* note 6, at 99.

¹¹⁷ See ALEINIKOFF, *supra* note 28, at 551.

¹¹⁸ See *Mathews v. Diaz*, 426 U.S. 67 (1976) (holding that it is constitutional for Congress to condition a non-citizen's eligibility for participation in a federal medical insurance program on continuous residence in the U.S. for a five year period and admission for permanent residence). The Court went on to state that, "[f]or reasons long recognized as valid, the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government." *Id.* at 81.

For example, a challenge to the 1996 Welfare Act brought in New York district court was struck down in *Abreu v. Callahan*.¹¹⁹ The court in that case upheld the Welfare Act denying SSI benefits to lawful permanent residents who would have been eligible before the 1996 Act. The court found the government's interests legitimate and rationally related to the statute.¹²⁰

In the employment arena, all sorts of restrictions exist which make an already vulnerable class even more susceptible to exploitation. The 1986 Immigration Reform and Control Act permits discrimination based on one's citizenship status if required by state or local governmental authority.¹²¹ For instance, states can make citizenship mandatory as a job requirement in certain professions such as state troopers, public school teachers, and deputy probation officers.¹²² In addition, employers may give preference to a citizen over a legal permanent resident if the two are "equally qualified."¹²³ The rights and privileges of citizenship are not fixed. The plenary power doctrine allows the executive and legislative branches to determine which rights to attach based on citizenship.¹²⁴ For example, during the nineteenth century, some states granted non-citizens the right to vote, partly to increase the number of white male voters.¹²⁵ Some cities have also permitted non-citizen parents to vote in school board elections.¹²⁶ However, the overwhelming trend is to deny rights to non-citizens, not to extend them.

C. *Private Forms of Border Patrol*

The state engages in various forms of border patrol, but it does not end with the state, for the citizenry also performs border patrol in its own way. Every time people who are marked as foreign are asked how long they have been here or where they are from with the assumption that they must not be from the U.S., how they learned to speak English so well, or told to go back to another country, that is a type of unofficial border check. By relying on popular notions of foreignness, individuals participate in border patrol when they mark others as foreign and ask questions or make comments implying that the others must be foreigners. As signals of foreignness, accent discrimination and racial discrimination are forms of unofficial border patrol.¹²⁷ Because the American national identity is defined by whiteness, border patrol is practiced within the physical borders

¹¹⁹ 971 F.Supp. 799, 826 (1997).

¹²⁰ *See id.* at 820.

¹²¹ *See* ALENIKOFF, *supra* note 28, at 628.

¹²² *See, e.g.,* *Foley v. Connelie*, 435 U.S. 291 (1978), *Ambach v. Norwick*, 441 U.S. 68 (1979), *Cabell v. Chavez-Salido*, 454 U.S. 432 (1982).

¹²³ *See* ALENIKOFF, *supra* note 28, at 628.

¹²⁴ *See* ANCHETA, *supra* note 6, at 99-100.

¹²⁵ *See id.* at 100.

¹²⁶ *See id.*

¹²⁷ It is important to note that only accents of certain groups are considered to be foreign in this negative way. For instance, while a French or British accent may appear to be intellectual, an Asian or Spanish accent is perceived to be an indicator of foreignness and/or ignorance. For an excellent discussion of accent discrimination, see Mari Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 YALE L.J. 1329 (1991).

of the United States. Those individuals inscribed with figurative borders will be subject to internal policing mechanisms of foreignness.

A group in San Diego called "Light Up the Border" exemplifies private individuals taking border patrol into their own hands and performing their own border checks. In 1989, a group of private residents started a campaign where more than 1,000 volunteers parked their cars along the U.S.-Mexico border and shined their headlights toward Tijuana. Critics claim that "Light Up the Border" has heightened racial tensions and fueled anti-immigrant and anti-Latino sentiments. Since the group began its vigilante campaign, the U.S. Border Patrol has placed lights on the U.S.-Mexico border and the California National Guard has begun to improve the dirt roads that the Border Patrol drives on in its patrols.¹²⁸ The "Light Up the Border" group highlights private actors attempting to informally participate in border patrol.

In addition to the annoying questions regarding birthplace, shining lights on the border, and accent and racial discrimination, those inscribed with figurative borders must also worry about a more dangerous form of private border patrol. Hate violence has become a way of protecting cultural security and a form of border patrol over people marked as foreign which the private citizenry has taken upon itself to perform. Hate crimes are a manifestation of this border control on a much more physical and extreme level. Most hate crimes against Asian Americans involve anti-immigrant, nativistic racism and place Asian Americans in the context of foreignness.¹²⁹ One of the most well-known hate crimes against Asian Americans occurred in 1982 when Vincent Chin, a Chinese American, was killed in Detroit, Michigan by two white laid-off autoworkers who yelled "you Japs are taking all our jobs" while beating Chin with a baseball bat.¹³⁰ During the early 1980s, anti-Asian sentiment in the United States was intensely heightened, especially against Japan. Paula Johnson describes this sentiment as "particularly acute in Detroit, Michigan, where the heart of the American auto industry was economically depressed and Japanese auto imports gained in sales and popularity in this country."¹³¹ Bumper stickers saying "Unemployment-Made in Japan" and "Toyota-Datsun-Honda-and-Pearl Harbor" were popular in Detroit and other areas of the country.¹³² Johnson explains, "It was within this social climate and other social contexts that the killing of Vincent Chin occurred, bringing national and international attention to the issue of racially motivated violence against Asian Americans in the United States."¹³³

The Vincent Chin murder must be seen in this context of foreignness and border patrol. Although this case involved two private individuals, they were supported and implicitly condoned by a legal system, which did

¹²⁸ See Ernesto Portillo Jr., *Protests At Border Turn 1 Year Old But Participation In 'Light Up' Declines On Anniversary*, SAN DIEGO UNION-TRIB., Nov. 16, 1990, at B-3.

¹²⁹ See NAPALC AUDIT II, *supra* note 3. (1994).

¹³⁰ See Paula C. Johnson, *The Social Construction of Identity in Criminal Cases: Cinema Verite and the Pedagogy of Vincent Chin*, 1 MICH. J. RACE & L. 347 (1996) for a detailed analysis of the legal case.

¹³¹ *Id.* at 399.

¹³² See TAKAKI, *supra* note 39, at 483.

¹³³ Johnson, *supra* note 131, at 399-400.

not bring any justice to Vincent Chin. Neither killer served any time in prison for the murder. They each instead received small fines and only three years of probation.¹³⁴ Robert Chang recognizes the context of the murder of Vincent Chin in terms of borders when he writes, "The border and the color line are inscribed on his body, marking him as a foreign and racial other, a legitimate target for nativistic racism. Through his construction as a foreigner, he and others who look like him, help define America."¹³⁵

Nativistic racism also manifested itself in the tragic death of Navroze Mody in Hoboken, near Jersey City, and is another incident of hate violence as a form of border patrol by private actors. On September 27, 1987, Mody, a 30-year old South Asian, was "bludgeoned with bricks, punched, and kicked into a coma" by a gang of eleven youths who shouted "Hindu! Hindu!" during the attack.¹³⁶ Mody's white friend who was walking with him that night was not harmed. No bias charges were brought, and the jury convicted four of the attackers on assault charges. No one was found guilty of murder or even manslaughter.¹³⁷ This case must also be placed in its social and historical context to fully understand what occurred.

In the weeks before Mody's death, racial tensions and anti-South Asian sentiment were heightened after a racist group called the "Dotbusters" (referring to the red bindi worn by South Asian women on their foreheads as a sign of marital fidelity) published a letter in the *Jersey Journal* stating that their mission was to drive all South Asians out of Jersey City.¹³⁸ A campaign of racial harassment, vandalism, and assault was launched against the South Asian community. Three days after Mody's attack, another South Asian man, Dr. Kaushal Sharan, was severely beaten while walking home.¹³⁹ For at least a year after Mody's violent death, anti-South Asian incidents continued to occur in the Jersey City area.¹⁴⁰ In this case, private actors banded together to form their own border patrol gang, the "Dotbusters," to expel South Asians through the use of hate violence. The police failed to protect the South Asian community, and the legal system failed to render justice to Mody's life. Mody's family later brought a civil rights action against the city of Hoboken for racial discrimination in failing to protect the South Asian community and in failing to prosecute Mody's attackers in earlier assaults on other South Asians.¹⁴¹ However, a federal judge dismissed the suit, claiming that there

¹³⁴ See *id.* at 400.

¹³⁵ Chang, *supra* note 19, at 61.

¹³⁶ See CIVIL RIGHTS ISSUES, *supra* note 21, at 28-29; see also Corey Takahashi, *Killed In Action*, A. Magazine 32 (1997).

¹³⁷ See Takahashi, *supra* note 136.

¹³⁸ See *id.* 28-29.

¹³⁹ See NAPALC AUDIT I, *supra* note 3, at 9-10.

¹⁴⁰ See CIVIL RIGHTS ISSUES, *supra* note 21.

¹⁴¹ See Robert Rudolph, *Civil Rights Suit In Death of Indian Is Dismissed*, STAR-LEDGER NEWARK, Apr. 25, 1991.

was no evidence of racial bias and at worst, there was only negligence on the part of the police.¹⁴²

These attacks involve more than just the message of hatred but also include the message of hatred based on xenophobia, immigrant scapegoating for economic woes, and a sense of border control. Although the deaths of Vincent Chin and Navroze Mody are widely known examples of anti-Asian hate crimes, there are countless others who have suffered the same type of hate violence as border patrol.

Hate violence by private actors has escalated along with the increase in immigration from Asian and Latin American countries. Demographic changes between 1970 and 1990 have certainly fueled the perception that there has been an influx of Asians who are taking over the country. Between 1970 and 1990, the United States population experienced a total growth of 22.4%. The African American population increased by 33% and comprised 12.1% of the total population. The Native American population grew from 0.4% of the population to 0.8%. However, it is the Asian American and Latina/o populations, which have increased the most dramatically. The Asian American population grew by 384.9% to reach 2.9% of the population while the Latina/o population grew by 141% to reach 9% of the population.¹⁴³ During the period from 1970 to 1990, approximately nine million immigrants entered the United States from Asian and Latin American countries.¹⁴⁴

One popular perception is that the country is being overrun with immigrants of color, and studies have revealed that most whites believe that the United States is being taken over by people of color and that whites are the new minority in the United States. For instance, a recent *New York Times* poll showed that whites believed that African Americans comprised 23.8% of the population, Asian Americans 10.8%, Latinas/os 14.7%, and whites only 49.9% when in reality, African Americans are 11.8% of the population, Asian Americans 3.1%, Latinas/os 9.5%, and whites 74%.¹⁴⁵ The dramatic gap between reality and perception reflects the anxiety of whites that the "invasion" has begun.

On a state level, by 2001, the state of California will be officially majority non-white.¹⁴⁶ This demographic has frightened many whites into action, spawning an onslaught of conservative ballot initiatives in the 1990s attacking immigration, affirmative action, and bilingual education. These initiatives were supported by the majority of white California voters.¹⁴⁷

¹⁴² See *id.*

¹⁴³ See Bill Ong Hing, *Beyond the Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of Separatism and Conflict in an Immigration Driven Multiracial Society*, 81 CAL. L. REV. 863, 865 (1993).

¹⁴⁴ See *id.*, 81 Cal. L. Rev. 863, 865 (1993).

¹⁴⁵ See Priscilla Labovitz, *Immigration-Just the Facts*, N.Y. TIMES, Mar. 25, 1996, at A15. For a study of college students who estimated the university to be over 70% people of color when in fact the university was 70% white, see also Charles A. Gallagher, *White Reconstruction in the University*, 24 SOCIALIST REV. 165, 172 (1995).

¹⁴⁶ See Brad Edmondson, *The Minority Majority in 2001*, AM. DEMOGRAPHICS, Oct. 1996, at 16.

¹⁴⁷ See Proposition 187 (anti-immigrant), Proposition 209 (anti-affirmative action), and Proposition 227

D. Blurring Of State And Private Border Patrol: Proposition 187

Proposition 187, passed by California voters in November 1994, collapsed the distinction between state and private border patrol by effectively transforming private citizens into state agents.¹⁴⁸ Proposition 187 restricted undocumented immigrants from public benefits, public education, and non-emergency health care and created serious criminal penalties for the sale or use of false citizenship papers.¹⁴⁹ Proposition 187 also requires employees in social services, health care, and education to report any persons who are “reasonably suspect” of being undocumented to the State Director of Social Services, the Attorney General of California and the United States, and the Immigration and Naturalization Service.¹⁵⁰ Thus, private actors are basically made to assume the duties of an INS agent. Proposition 187 creates a police state mentality by forcing public officials to report anyone who they “suspect” of being illegal. Proposition 187, however, does not define what constitutes proper suspicion, thereby increasing the probability of discrimination occurring. Linda Bosniak notes different bases for suspicion: “Will the suspicion be based on the way you speak? The sound of your last name? The color of your skin?”¹⁵¹ As Chang and Aoki describe Proposition 187, “Foreign-ness then becomes a proxy for questionable immigration status. Foreign-ness triggers further scrutiny.”¹⁵² This police state would regulate the borders with the participation of the state and its citizens. Racist literature supporting Proposition 187 stuffed into mailboxes in Los Angeles demonstrates citizen border patrol occurring: “WE NEED A *REAL* BORDER, FIRST WE GET THE SPICS, THEN THE GOOKS, AND AT LAST WE GET THE NIGGERS. *DEPORTATION* THEY’RE ALL GOING HOME.”¹⁵³

The Proposition 187 campaign was premised on the idea of immigrants as “aliens” who needed to be taught a lesson. Proposition 187 represented a new chapter in the history of nativism in California and the nation. Proponents of Proposition 187 staunchly maintained that the issue was not race but immigration and saving America, but the immigration problem was definitely framed in racialized terms. There was no mention of the Immigration Act of 1990, which had just increased dramatically the number of immigrants from Northern Europe, particularly Ireland. Instead, the focus was on portraying illegal “aliens” as Mexicans running across the border and of Chinese boat people.¹⁵⁴ Stop Immigration Now founder Ruth

(anti-bilingual education) have passed with the majority of white voters in 1994, 1996, and 1998, respectively; see also Garcia, *supra* note 73, at 130.

¹⁴⁸ Even though parts of Proposition 187 have been enjoined, the negative repercussions of the proposition have already inflicted their damage.

¹⁴⁹ See ALENIKOFF, *supra* note 28, at 663.

¹⁵⁰ See Proposition 187 §§ 5(c)(3), 6(c)(3), 7(e), (November 8, 1994).

¹⁵¹ Linda S. Bosniak, *Opposing Proposition 187: Undocumented Immigrants and the National Imagination* 28 CONN. L. REV. 555, 561 n.9 (1996).

¹⁵² Chang and Aoki, *supra* note 5, at 1414.

¹⁵³ NAPALC AUDIT II, *supra* note 3, at 4.

¹⁵⁴ See Nancy Cervantes, Sasha Khokha, and Bobbie Murray, *Hate Unleashed: Los Angeles in the Aftermath of Proposition 187*, 17 CHICANO-LATINO L. REV. 1, 5 (1995); Chang and Aoki, *supra* note 5, at 1400.

Coffey could only explain her position on the immigration issue in a racial manner when she said, "I have no intention of being the object of 'conquest', peaceful or otherwise, by Latinos, Asians, Blacks, Arabs or any other group of individuals who have claimed my country."¹⁵⁵

Especially after Proposition 187 passed, those individuals inscribed with figurative borders and marked as foreigners regardless of citizenship status or length of residence in the United States experienced intensified discrimination and increased hate violence. The rhetoric permeating the debate over Proposition 187 created an environment that encouraged discrimination and intolerance for anyone who was marked with figurative borders. Both the Latina/o and the Asian American communities suffered increased discrimination in places of business, increased hate crimes and hate speech, and increased police brutality.¹⁵⁶ Anti-Asian hate violence more than doubled in Northern California and increased by 40% in Southern California in 1994 from the previous year. The dramatic rise in anti-Asian violence in California was attributed to anti-immigrant sentiment supporting Proposition 187.¹⁵⁷ The Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA) set up a hotline after the passage of Proposition 187 to document the rise in incidents against the Latina/o community. Hundreds of phone calls poured in on the first day of the hotline describing people not being allowed to cash a check unless they showed passports, police demanding documents while beating those who they called "aliens," and Latina/o households being burned by arsonists who spray painted "white power" and "Mexico" with an "X" through it.¹⁵⁸ Essentially, Proposition 187 gave citizens a license to carry out their own border checks against anyone who looked foreign. The National Asian Pacific American Legal Consortium reported that in the months leading up to the passage of Proposition 187, there was a significant increase in incidents which included references to "go home" and get out of America.¹⁵⁹ There was an unprecedented number of hate fliers stuffed into grocery bags, home mailboxes, and student lockers. The fliers referred to the 'invasion' of the 'Gooks' and demanded that they 'had to go.' Most references in the fliers were to 'genocide' and to taking back America.¹⁶⁰ The result is that anti-immigrant sentiment has become legitimized and legalized so that it is acceptable to openly discriminate against people who are marked as foreign.¹⁶¹ This includes border checks from questions regarding citizenship status to hate speech and hate crimes manifesting this anti-immigrant sentiment in a more physical manner. Proposition 187

¹⁵⁵ Cervantes, Khokha, and Murray, *supra* note 155, at 3.

¹⁵⁶ *See id.*; NAPALC AUDIT II, *supra* note 3.

¹⁵⁷ *See* NAPALC AUDIT II, *supra* note 3, at 12-13; *see also* Kenneth B. Noble, *Attacks Against Asian Americans on the Rise, Especially in California*, N.Y. TIMES, Dec. 13, 1995, at B16.

¹⁵⁸ *See* Cervantes, Khokha, and Murray, *supra* note 155, at 14-15; *see also* Tanya Broder; Clara Luz Navarro, *A Street Without An Exit: Excerpts From The Lives Of Latinas In Post-187 California*, 7 HASTINGS WOMEN'S L.J. 275 (1995).

¹⁵⁹ *See* NAPALC AUDIT II, *supra* note 3, at 12-13; *see also* Kenneth B. Noble, *supra* note 157, at B16.

¹⁶⁰ *See* NAPALC AUDIT II, *supra* note 3, at 12.

¹⁶¹ *See generally* NAPALC AUDIT II, *supra* note 3.

authorized private actors to perform border patrol and gave them the legitimacy and power of the state to do so.

A group in San Diego formed after the passage of Proposition 187 demonstrates just how much authority civilians believe they possess to conduct border patrol. In 1996, Win Housley and 200 other private citizens formed a band of vigilantes into the "Airport Posse" and began to patrol the San Diego International Airport to find undocumented immigrants.¹⁶² The group roams the airport in blue shirts that read "U.S. Citizen Patrol," imitating government uniforms with the belief that the government has failed in its duty to end illegal immigration. Jose Luis Perez Canchola of Mexico's National Commission on Human Rights reported an incident in which the posse had confronted a group of 22 individuals and demanded proof of citizenship. He said, "They are civilians assuming the role of an immigration officer." In response to criticism that it is difficult to identify illegal immigrants, "Airport Posse" leader Housley insists that they are easy to spot. He explains, "They're nervous. They're in out-of-style clothing. When they talk to one another, it's always in Spanish. They're all, as I said, real nervous."¹⁶³ Obviously the "Airport Posse" is relying on their notions of foreignness as proper suspicion and targeting those with inscribed figurative borders.

E. Blurring Continued: State Engages in Hate Violence

Border patrol is clearly performed by both the state and non-state actors as the divisions have become blurred. As a form of border patrol, hate violence necessarily involves both state and private actors. However, hate violence has been constructed as a private problem of individual perpetrators. So construed, hate violence seems easily controlled under the traditional view advocated by law enforcement, the media, and mainstream society: that the law will protect subordinated groups if they would just let the system work. The problems with this approach are numerous, including what happens when law enforcement does not react to a hate crime or when law enforcement is the perpetrator of a hate crime. Victor Hwang, in his experience with the Race Relations: Hate Violence Project at the Asian Law Caucus, finds that law enforcement generally does not take hate crimes seriously.¹⁶⁴ This is confirmed by the fact that although almost 9000 hate crimes were reported to the FBI in 1996 (with reporting by law enforcement agencies covering only 84% of the U.S. population), only 38 of these resulted in prosecution by the Department of Justice.¹⁶⁵ Thus, the state implicitly sends a message condoning hate violence by failing to prosecute hate crimes. The recent failure to pass the federal Hate Crimes Prevention Act (HCPA) also demonstrates an unwillingness on the part of

¹⁶² See Dana Calvo, *Vigilante-Type Posse On Patrol At Airport For Illegal Immigrants*, SEATTLE TIMES, May 16, 1996.

¹⁶³ *Id.*

¹⁶⁴ See Hwang Interview, *supra* note 3.

¹⁶⁵ See Rebecca Leung, *Hate Crimes In America: Texas Killing Spotlights Nation's Racial Divide*, ABCNEWS.COM (June 17, 1998) available at <<http://www.abcnews.go.com/sections/us/DailyNews/hatecrimes980611.html>>; see also <<http://www.fbi.gov/ucr.htm>>.

the state to recognize the need for protection from hate crimes and the need to send an unequivocal message that hate violence will not be tolerated. The HCPA would have given the federal government a strong, uniform statute on which to prosecute hate crimes and would have closed the gaps in existing federal hate crime laws. The HCPA would have authorized the Department of Justice to prosecute hate crimes based on sexual orientation, gender, and disability, which are currently not covered by federal hate crime laws.¹⁶⁶ Furthermore, under current law, federal prosecutors may only file hate crime charges if the victim was exercising a federally protected right such as voting or attending school when attacked, leaving a loophole for a situation where a victim is killed in her/his home. The new statute would have allowed the Department of Justice to prosecute hate crimes involving bodily injury or death regardless of whether the victim was exercising a federally protected right.¹⁶⁷

The violent death of Kuanchung Kao exemplifies the participation of the state in hate violence and in policing the perceived foreign enemy who can and will attack with his martial arts skills. Kuanchung Kao, a 33-year old father of three, was shot to death by Rohnert Park police on April 29, 1997.¹⁶⁸ Earlier that evening, Kao had been drinking after being racially harassed in a separate incident. He returned home and began crying and screaming for help in front of his house. Officer Jack Shields and Officer Mike Lynch responded to a disturbing-the-peace call at the Kao residence. Within 34 seconds of their arrival, the officers shot Kao in the chest from at least 7 feet away, killing him.¹⁶⁹ Officer Shields claimed that Kao was waving a stick he was holding in a threatening and "martial arts" like manner and that he had to shoot because he did not know where Mr. Kao was from and feared him to be an expert in martial arts. Certainly the fact that Mr. Kao was Asian American informed the officers in their fear and judgment that Mr. Kao must know martial arts and their quick decision to shoot and kill him. Mr. Kao died on the front lawn and police would not allow Mrs. Kao, a registered nurse, to attend to her husband or to call for help.¹⁷⁰ The District Attorney cleared the officers of any wrongdoing, mainly because one of the officers claimed self-defense. This was the same officer who had been demoted by his own police department after being convicted of falsifying records the year before. The U.S. Department of Justice also refused to file federal civil rights charges in this case.¹⁷¹ Thus, the state is just as capable of committing hate violence based upon racial stereotypes of the foreigner as individual citizens are in the private sphere.

In fact, the National Asian Pacific American Legal Consortium's 1994 audit of anti-Asian violence found that the main perpetrator of racially motivated violence against Asian Americans in New York City was the

¹⁶⁶ See Dianne Feinstein, *Feds Need More Tools to Fight Hate*, S.F. EXAMINER, May 19, 1999, at A19.

¹⁶⁷ See *id.*

¹⁶⁸ See NAPALC Audit V, *supra* note 3, at 19.

¹⁶⁹ See *id.*

¹⁷⁰ See *id.*

¹⁷¹ See *id.*

police.¹⁷² The data reveals that the New York City police committed 50% of the total number of anti-Asian violent incidents in 1994. In over half of these incidents involving police brutality, racial slurs such as “Go back to China,” “F---ing Orientals,” “Go back to Pakistan,” and “This is not f---ing Pakistan” were uttered.¹⁷³ Many of these incidents involved South Asian American taxi drivers whose police encounters ranged from racial slurs to assaults. The police also issued false traffic violations in retaliation for civilian complaints the South Asian American taxi drivers have filed against the police officers for their discriminatory treatment.¹⁷⁴ Two years later, the 1996 National Asian Pacific American Legal Consortium report on anti-Asian violence again noted that police brutality continued to be a problem in New York City.¹⁷⁵

F. *A Community Response to Hate Violence*

With the collapsing of state and non-state forms of border patrol into the same capacity, we must realize the potential for hate violence by anyone in the private or public sector. The narrow construction of hate crimes focuses on the individual actor who perpetrates hate crimes and obscures the legalized aspects of border patrol, which are also drawing on the same notions of foreignness and result in anti-Asian violence. However, by focusing only on the individual aspect, we ignore the state’s role in border patrol as well as the historical context behind the systematic oppression of people of color through violence. Violence occurs in our social and historical system of domination and subordination and not in a vacuum. Even if law enforcement did take hate crimes against Asian Americans more seriously, the issue still remains with legalized hate violence in the form of border patrol. As previously discussed, border patrol exists officially and unofficially with the blurring of the two by laws such as Proposition 187 so that individual hate violence perpetrators are working in compliance with the state to protect white American national identity and cultural security.

Because anti-Asian violence may come from both state and private actors, solutions to anti-Asian violence must be pursued on multiple fronts. We must turn inwards for strength, community education, and empowerment and not rely on the state and law enforcement agencies to meet our needs. Victor Hwang explains that because hate crimes are social-political crimes, Asian Americans should look beyond the strictly legal aspect and concentrate on political and community pressure in order to be taken more seriously by law enforcement.¹⁷⁶ Thus, we must turn to the community for solutions and not solely rely on the state to protect us.¹⁷⁷

¹⁷² See NAPALC AUDIT II, *supra* note 3, at 12.

¹⁷³ *Id.*

¹⁷⁴ See *id.*

¹⁷⁵ See NAPALC AUDIT IV, *supra* note 3, at 10-11.

¹⁷⁶ See Hwang Interview, *supra* note 3.

¹⁷⁷ Solutions are always difficult for we face complex problems, and a complete discussion of solutions is beyond the scope of this comment. However, it is clear that because we cannot completely rely on the state to protect us, community activism should be a part of the struggle. Through community work, Asian Americans can struggle against hate violence whether perpetrated by the state or non-state actors.

CONCLUSION

This paper has attempted to place hate violence against Asian Americans as part of a larger context of increased border patrol. Asian Americans are marked with figurative borders, which has serious consequences, especially in the present anti-immigrant climate. Hate violence has become another way to patrol the borders of the nation which both state and private actors can participate in to preserve a white national identity and cultural security. As a community, we must turn inwards for strength rather than depend on the State to protect us. Anti-Asian violence has been a part of the Asian American community from the moment we arrived in this country and will unfortunately, continue into the future. It is through our collective struggle against violence and exclusion that we ensure our survival.

