

# The Racialization of “Illegality”

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**I**n a December 2011 interview, the sheriff of Maricopa County, Arizona, Joseph Arpaio, explained to me that his critics did not “get it”: he was not a racist, his only goal and responsibility was to enforce the law.<sup>1</sup> To accomplish this, he needed to deploy his officers to neighborhoods and businesses throughout the Phoenix metro area where they had “intel” that “illegal activity” was going on. They were not, he assured me, out to get Latinos; it just so happens that there are many Latinos who are “illegal,” he explained. The U.S. Supreme Court disagreed. The sheriff’s zealous approach to immigration enforcement was found to be unconstitutional; the Court ruled that the Maricopa County Sheriff’s Office racially profiled Latinas/os living in the county.<sup>2</sup>

Latinas/os—mostly Mexicans, Guatemalans, Hondurans, and Salvadorans—overwhelmingly bear the burden of the immigration enforcement system in the United States today. Immigrants from these four countries make up 70 percent of the undocumented population; however, they are overrepresented among the immigrants who are detained and deported: 88.6 percent of the detainees are from Mexico, Guatemala, Honduras, or El Salvador and 79.4 percent are men; 90 percent of Immigration and Customs Enforcement (ICE) removals are from these four countries as well.<sup>3</sup> The reverse holds for other immigrant groups, especially Asians, whose undocumented immigrant population is the fastest growing in the

United States, increasing from 7 percent of all undocumented immigrants to nearly 16 percent in 2015 alone.<sup>4</sup> For instance, while 4 percent of the Indian population in the country is undocumented, these immigrants constitute only 0.6 percent of ICE removals. And though Filipinos make up 3 percent of the undocumented population, Chinese 3 percent, and South Koreans 2 percent, none of these groups reaches 0.5 percent of ICE removals.<sup>5</sup>

which intersect with race to shape various forms of exclusion associated with anti-immigrant sentiment; and Juan Herrera has highlighted racialization within stigmatized immigrant groups, which complicates conceptualizations of racialized illegality.<sup>18</sup>

The racialization of illegality is a product of various forces. It is generally acknowledged that the category of “illegality” is produced by law; it is a political identity that underscores immigrants’ relationship to the state.<sup>19</sup> However, “illegality” is also socially constructed based on stereotypes that assign illegality to certain groups, producing what René Flores and Ariela Schachter refer to as “social illegality.”<sup>20</sup> Certain characteristics associated with illegality “become embedded in elaborate narratives of threat and transgression that intersect with racism and reactionary politics.”<sup>21</sup> Social illegality thus complements and sustains legal structures and bureaucracies of enforcement. Popular discourse buttresses the continued reproduction of a class of immigrants seen as particularly suited for certain jobs who can then be made excludable and disposable.<sup>22</sup> Along these lines, Armenta has noted that the overwhelming targeting of enforcement on Latinas/os she found in Tennessee— that is, their racialization as undocumented— is not simply the result of racist officers’ decisions to stop, arrest, and detain these immigrants; instead, these practices are the result of institutionalized policies in enforcement agencies, policies and laws that on their face appear to be race-neutral.<sup>23</sup> Nazli Kibria, Cara Bowman, and Megan O’Leary have observed that “the race-immigration nexus” constitutes a “fluid and intertwined bundle of linkages . . . among institutions, ideologies and practices.”<sup>24</sup> Thus, the institutionalization of exclusion through “illegality” based on race creates the illusion that enforcement is directed at excluded groups, for instance Latinas/os, because of their legal status, not their race; however, seemingly neutral immigration policies have racial effects because laws are not implemented in a social vacuum but within specific racial formations.<sup>25</sup>

The social construction of illegality lies at the root of how immigrants are perceived by the public, employers, and institutions and how racialized illegality is deployed in various spheres of life. Flores and Schachter found that certain attributes of an immigrant group— such as national origin, social class, and criminal background— powerfully shape public perceptions of “illegality.” Mexicans as well as other Latin Americans, especially Salvadorans, are particularly suspected of illegality, whereas Asians and Europeans “arouse the lowest levels of suspicion.”<sup>26</sup> These scholars also found that jobs in the informal economy have become markers of illegality. Suspicions and perceptions that equate certain national origins, levels of education, and occupations with illegality solidify ethnoracial

ifying exploitative working conditions for the recently arrived (and mostly undocumented) workers.<sup>27</sup>

tle yet equally powerful racialization in immigration practices today.<sup>38</sup> Thus, in contrast to overtly racist immigration policies such as the Chinese Exclusion Act, the practice today is to deem certain activities that are common among certain immigrant groups “illegal.”<sup>39</sup> Legal status today then can serve as a proxy for race, both formally in the immigration system and socially, as when the public and media equate Latinas/os with being undocumented.<sup>40</sup>

Racialization of illegality also takes different expressions across contexts and societies today. For instance, in the Dominican Republic, illegality has been racialized as Haitian, and postwar migration to Britain has been associated with a host of social problems and with being Asian or Black.<sup>41</sup> In India, Bangladeshis are “marked as Muslim and male” and “made synonymous with ‘illegal migrant.’”<sup>42</sup> And in a study of the racialization of legal status of Central Asian immigrants in Russia, my colleagues and I found that legal status does not lessen these immigrants’ experiences of racism.<sup>43</sup> Within the larger group of Central Asian immigrants, Kyrgyz migrants, despite being culturally closer to Russians and up to that point enjoying a privileged path to citizenship, experienced more hostility. They were racialized as darker and phenotypically more distinct than the other groups in our study, Tajiks and Uzbeks, and thus were more often the target of ethnoracially motivated harassment by authorities who would regularly demand to see their papers.

The racialization of legal status only has meaning in a context of expanded enforcement, fear, and increased penalties for the individuals who are targets. García has called attention to the centrality of context in sustaining racialization processes, which unfold in the workplace, in educational and health institutions, and in the criminal justice system and homogenize Mexicans, regardless of nativity or legal status, as “illegal.”<sup>44</sup> Such a climate was the case in Arizona, where a string of laws passed in the 2000s culminated in the signing of SB 1070 in 2010, requiring law enforcement officials to determine an individual’s legal status during a lawful encounter if there was “reasonable suspicion” that the person was unlawfully present in the United States. The law was written and signed in a context saturated by other exclusionary laws, by media broadcasting the association between Latinas/os and undocumented status, and general social illegality that strongly associated being Latina/o with being undocumented.<sup>45</sup>

Since legal status is not a physically identifiable characteristic, Maricopa County officers needed to use other markers to make this determination. The Maricopa County (the largest county in Arizona) Sheriff’s Office set up checkpoints in predominantly Latino neighborhoods and conducted regular workplace raids overwhelmingly targeting businesses that employed Latina/o workers.<sup>46</sup> These practices resulted in “hyper-surveillance, abusive stops, problematic searches and unwarranted detention of suspected unauthorized immigrants,”<sup>47</sup> creating conditions of fear and anxiety for Latinas/os living in Maricopa County, regardless of citizenship or legal status.<sup>48</sup>

Although experiences of illegality are strongly linked to race and place, the legal production of illegality in the United States is enacted at the federal level, with consequences throughout the country but with specific local manifestations.<sup>49</sup> Media play a key role in the creation of social illegality, locally and nationally, contributing strongly to shape associations between undocumented status and being Latina/o. Women’s studies scholar M. Cristina Alcalde found that even though White youth in Kentucky condemned the racism they saw in their communities, their beliefs about immigration were similar to those in their social milieu: these youth made a strong connection between undocumented status and being Latina/o.<sup>50</sup> Thus, Alcalde argues, race matters; racism against Latinas/os is the norm rather than the exception for past and current generations.

The strong association between “illegality” and being Mexican or Latina/o produces a spillover effect that reaches Mexicans and other Latinas/os who hold lawful permanent residence, those who are naturalized, and even those who are U.S.-born.<sup>51</sup> Because this association is predicated on characteristics socially attributed to Latinas/os as a group, the boundaries of illegality are blurry in practice, not only to the public but also to those who enforce immigration law.<sup>52</sup> In practice, then, the category of illegality spills beyond the group that the law formally illegalizes and targets. As such, legal scholar Kevin Johnson has observed that Mexicans (and I would add Latinas/os who share phenotype with Mexican immigrants and speak Spanish or Mayan languages) “bear the brunt of race-based immigration enforcement, which also cuts to the core of their belonging to the national community.”<sup>53</sup>

García observed that regardless of their legal or generational status or the length of time they have lived in the United States, the women in her Houston-based study were often marked as undocumented.<sup>54</sup> This spillover effect thus extends to a wide swath of the Latino population regardless of generation, nativity, or legal status.<sup>55</sup> Although undocumented Latinas/os show the greatest concern about deportation, research has shown that (especially after Trump’s election) 66 percent of Hispanic lawful permanent residents and 33 percent of U.S.-born Hispanics worry about their own deportation or that of a family member.<sup>56</sup> In our study comparing perceptions of the police among Latinas/os of different legal and citizenship statuses in Chicago, Houston, Los Angeles, and Phoenix, we found that in a saturated enforcement context like Phoenix, Latinas/os are apprehensive of contacting the police regardless of their legal status.<sup>57</sup> Similarly, in El Paso, Texas, researchers found that living in neighborhoods with Latina/o-associated characteristics increases the likelihood for third- and fourth-generation Latinas/os to be questioned about their citizenship status.<sup>58</sup>

**T**he racialization of illegality for Latinas/os is sustained among Latinas/os as well as through the racialization of legal status for non-Latinas/os. The racialization of “illegality” among Latinas/os is buttressed through



ciated with illegality due to visible markers of being a model minority.”<sup>70</sup> And as undocumented Asians have become aware of the punitive enforcement practices directed at Latinas/os, some Asians “position themselves away” from Latinas/os, thus unwittingly reinforcing the “good immigrant–bad immigrant” dichotomy and posing challenges to organizing efforts for rights of the undocumented across immigrant groups.<sup>71</sup>

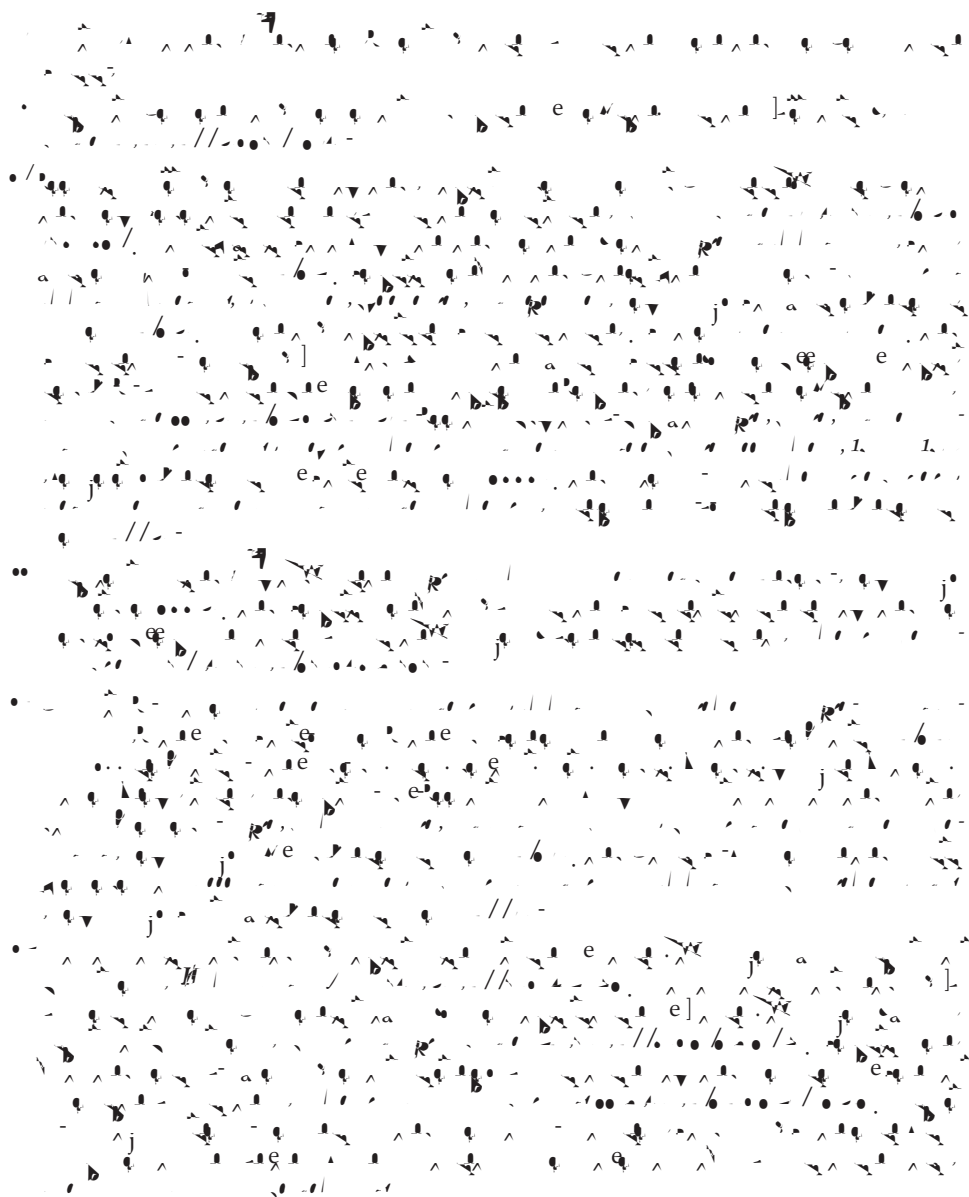
Similarly, Caitlin Patler has found that variations in access to coethnic networks and knowing other students in similar statuses determine whether undoc



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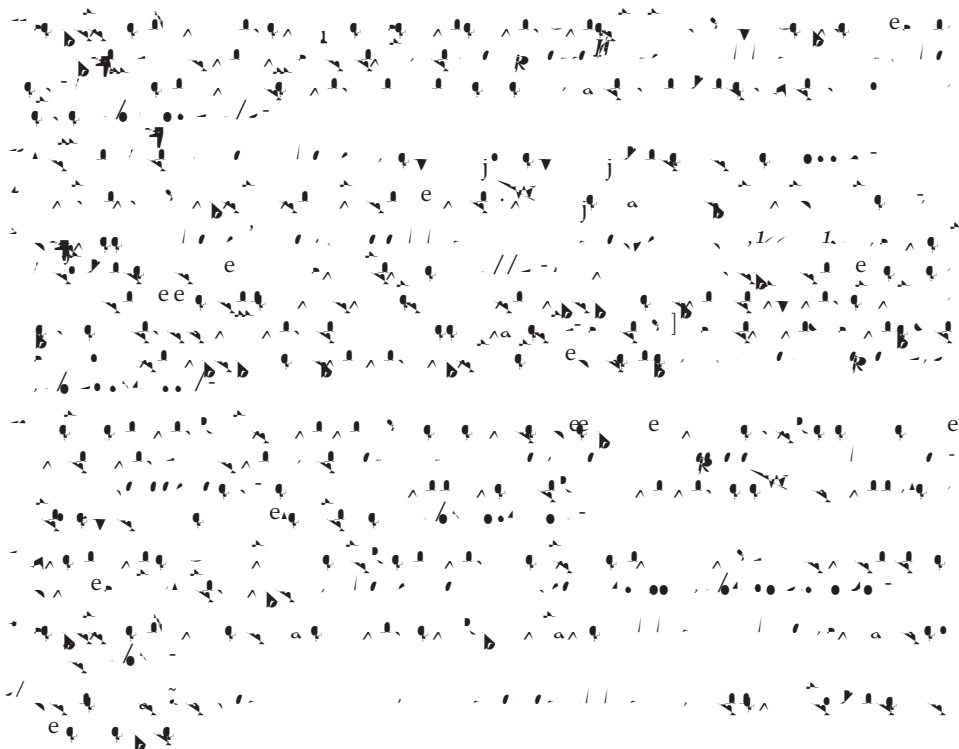
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- Staves with notes and rests, some with stems and beams.
- Dynamic markings such as *mf*, *f*, and *ff*.
- Articulation marks like accents and slurs.
- Rehearsal marks indicated by double slashes (//).
- Section markers labeled "ICE" and "F G".
- Vertical lines and dots scattered across the staves, possibly indicating specific rhythmic or structural points.





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