

Arizona's Senate Bill 1070: Targeting the Other¹ and Generating Discourses and Practices of Discrimination and Hate

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ABSTRACT

The state of Arizona, through its Senate Bill 1070, has made legal the practice of profiling as one of the key tools to regulate migration and differentiate those who are presumed to be residing in the state without legal documents. The state is encouraging xenophobia and empowering the groups with a strong anti-immigrant sentiment to become directly involved in the monitoring of such practice. History has shown us that when the state and large sectors of civil society exclude the "other" and criminalize his/her presence, hate toward the "other" is the most common result. The consequences of such a dynamic can result in an increase in racism, segregation, and an intensification of social violence and state repression. By tearing down the social and economic relationship between those who can legally reside in the state and those who are excluded, a future of a common ethos of inclusion and mutual respect is seriously jeopardized.

I. INTRODUCTION

The very relationship with the other is the relationship with the future.
—Emmanuel Levinas (*Levinas Reader*, 2001, p. 44)

On May 6, 2010, a 44-year-old, third-generation Mexican-American native-born U.S. citizen, Juan Varela, was watering a tree in his front yard when Gary Thomas Kelly confronted him, pointed a snub-nosed revolver at his face, and fatally wounded him with a single shot to the neck. According to initial police reports, Kelley, who also threatened Varela's brother, Antonio, had shouted, "Hurry up and go back to Mexico or you're gonna die" (quoted in Ferraresi & Kiefer, 2010, p. 1). Much to the dismay of the

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Varela family, the Maricopa police department hesitated to characterize the shooting as a hate crime. However, on June 9, the Maricopa County Attorney's Office alleged that this was a hate crime—one more of the 1,950 hate crimes reported by the Federal Bureau of Investigations (FBI) in Arizona since 1992 (The majority of these crimes have had as offenders White males and as victims Hispanics) (“Hate Crimes Add an Element of Bias,” n.d).

The characteristic of this crime, and particularly of the derogatory remark made by Kelly, is that it reflects a dominant, or hegemonic discourse² and practice, in which Hispanics in general, and Mexicans in particular, are perceived as intruders or, as the mainstream media has characterized them, “aliens,” “invaders,” or, even more specifically, as a very popular TV anchor, Lou Dobbs, referred to them, “an army of invaders” (Dobbs, 2006). And history has shown us that invaders can be killed in defense of the nation. Although there is not a clear consensus on the morality of killing in self-defense or even in the defense of a nation, States, through custom and written law, have often granted citizens and state agents the legal and moral capability to kill those subjects who are considered as violating their sovereignty (Walzer, 1977; Thomson, 1991). Thus, by characterizing immigrants (with or without legal residence) as “aliens,” many sectors of civil society and its dominant institutions automatically define them as being the Other—those whose lives are generally perceived as less valuable. Thus, taking away their life is justified not only as an act of self-defense, but also as the last resort to protect what is understood through the dominant or hegemonic discourse to be the essential values and racial/cultural traits that make up the “true” citizen of the nation.

The state of Arizona, through its Senate Bill 1070 (SB 1070), has made legal the practice of profiling as one of the key tools to regulate migration and differentiate those who are presumed to be residing in the state without legal documents. Through the institutionalization of so-called racial/cultural differentiation, the state is encouraging xenophobia and empowering those groups with a strong anti-immigrant sentiment to become directly involved in enhancing such discourse and practice. The mandate to enforce SB 1070 to the fullest extent possible is reinforced by a provision allowing for any legal resident of Arizona to collect money damages by showing

any official or agency of this state or county, city, town or other political subdivisions of this state that adopts or implements a policy that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law. (SB 1070, Sec. 2. Title 11, para. G, 2010)

History has shown us that when the State and civil society exclude “the other” and criminalize his/her presence, hate toward the later can develop, particularly among those members in society who consider “the other” or the “alien” as a threat to their existence (Perlmutter, 1999). The consequences of such a dynamic can result in an increase in racism and segregation, an intensification of state repression and social violence, and a deeply divided society with a loss of unity and historical direction (Perlmutter, 1997).

One of the critical consequences of tearing down the social and economic relationship between those who can legally reside in the state and those who cannot—or are perceived as not being allowed to, due to their “race”/ethnicity/culture—is that a future in which the common ethos of inclusion and mutual respect is desired can be seriously jeopardized. Furthermore, the most dangerous consequence of what seems to be a national trend (there are now more than 20 states discussing bills similar to Arizona’s SB 1070) is that the institutions, discourse, and practice of segregation will inevitably create an environment in which fear of the Other may push people to increase hate crimes.

I will attempt to show that such a perverse dynamic, which is a product of false consciousness, exacerbates a political economy in which, in Gramscian terms, those who control the state institutions in this particular Historic Bloc are reaping material benefits (Gramsci, 2000).³ It is a well-known fact that the Hispanic population receives lower wages than any other minority (Kazis & Miller, 2001). Nevertheless, a large number of non-Hispanics from the working and middle classes are now seeing their jobs and wages declining at the same time that they see the American Dream evaporating (Peterson, 1995). In the meantime, those in control of capital have thrived from the increasingly unequal political economy; yet their survival depends, at least in the short term, on the creation of a scapegoat that they know is needed by all those who still want to believe in the American Dream. But as history has shown us, the ultimate consequences of instilling hate can be socially, politically, and economically unsustainable.

Unfortunately, today, there are seemingly many individuals and organizations that are ready to act out their deep frustrations as Kelly did. There may also be many Hispanics and undocumented workers who might take actions of resistance beyond pacific protests through streets and avenues. Such a situation of civil unrest could lead to increased State violence, which would then become a major story on every news outlet, a situation that could, in turn, catalyze even greater and more generalized social unrest.

Therefore, if the American ethos is still to be grounded on the peaceful co-existence of multiple cultures under one nation, making a change in the

way migrants are defined legally and socially is imperative. In order to achieve this, a counter-hegemonic response that could lead to the creation of alternatives to the present immigration policies at both the federal and state levels would be needed. Some of the possible alternatives will be explored in this paper.

However, if the hegemonic idea is to control potential social unrest through the collaboration between civil society and the police forces so as to maintain the present social and economic structures of inequality, then what is needed is a serious redefinition of the present political economy. This would also necessitate making fundamental changes in social and political institutions—a situation that might jeopardize the very basis of civil and political liberties inherent in the American Constitution.

II. THE MAKING OF THE MEXICAN/ILLEGAL ALIEN/OTHER

Perhaps the most compelling definition of “the other,” for the purposes of understanding its construction as applied to immigrants in general and Mexican migrants in particular, could be the one put forward by the *Merriam-Webster Dictionary*, in which “other” can be understood as “disturbingly or threateningly different: alien, exotic” (Merriam-Webster.com, n.d.). This definition has been at the core of the legal, political, and social differentiations between what the dominant discourse has considered as a “true American” versus an “Alien,” the later regardless of his or her legal status. Regarding the creation of the discourse of hate toward Mexican migrants, such an “other” has now been elevated to an “invader,” which dismantles the political and social construct of the immigrant and redirects the legal debate to equating migration with a threat to the national security of the State, and in our particular case, the security of Arizona as a sovereign state within the United States.

From the time that the United States was formed and consolidated as a federal republic, there has been constant tension between the federal government and the states on the following key question: Can the core principles of American exceptionalism and the discourse that supports them, as identified by Lipset (1997), be sustained if the largest flow of migrants, of which the political economy has created a continuous demand, is identified as a threat to such principles? This question, particularly when seen through the legal construct of “the other,” has been prevalent since the passing of The Alien and Sedition Acts of 1798, of which the Alien Enemy Act has remained intact as 50 U.S.C. § 21-24. The importance of this Act is that it is the first document to define a non-U.S. citizen as an “alien,” not just an “immigrant”; and an alien, in the context of American exceptionalism, is not just a foreigner owing allegiance to another government, but a subject

who, due to his or her cultural or physical characteristics, can represent a potential threat to such exceptionalism.

In legalistic terms, one could suggest that the issue can be resolved by an individual's pledging allegiance to the United States and its apparent core values. However, if a socio-legal analysis is conducted, it becomes apparent that history has presented the following conundrum to the dominant classes and political elites: Should the U.S. Constitution and its first, tenth, and fourteenth amendments give the same rights to the Other? Can the political economy that supports the idea of American exceptionalism permit the same level of social mobility to the Other? Can capital accumulate at the same rate as if the Other were not fully included?

Even though many national groups that do not relate in sociological terms to the dominant Anglo-Saxon-Protestant culture have suffered from social and economic exclusion related to the questions above, the two most targeted populations regarding these questions have been the Native Americans and the Mexicans (Johnson, 1998). Although Mexicans have been perceived as a threat to American exceptionalism since the United States' expansion based on the theory of Manifest Destiny that concluded in territorial terms with the 1846-48 war with Mexico and the Treaty of Guadalupe-Hidalgo, practically all major changes in U.S. migration laws and policies, at both the federal and state levels, have created excessively restrictive conditions for them to legally migrate into the United States (Horsman, 1981). These conditions are particularly severe for Mexicans migrating from depressed rural areas. This phenomenon has been compounded by the fact that the rural oligarchies and political elites in Mexico have also marginalized the *mestizo* and indigenous communities as an inferior "other." The result is that in both states, the *mestizo* and the indigenous peoples are valued only as the cheapest of the factors of production.

This said, one would presume that in times of economic hardships, most Americans would not mind taking a job in the labor markets dominated by those who are considered as inferior "others." Furthermore, it is puzzling and paradoxical that, beyond carrying out raids and other punitive measures, there are no federal or state programs promoting and supporting jobs in the industries where such "others" work. Moreover, the *vox populi* has deeply integrated into its popular narratives the notion that such "others" standing at the corner on Main Street, washing dishes in their favorite restaurants, landscaping their gardens, taking care of their children, making their beds in hotels, washing their cars, building their fences and houses, working in the most unsanitary meatpacking facilities across the country, and of course, picking their fruits and vegetables, should be pitied as well as feared.

The Other has become one of the most important factors of production

for those economic sectors that *could not* maintain a high rate of capital accumulation if they were to follow the apparently treasured and unmatched American rule of law. This means that the wages and working conditions that are inferior to those regulated by the state can be maintained only by ensuring the “illegality” and “otherness” of such a labor force. As De Genova (2004) eloquently states:

Mexico has provided US capitalism with the only “foreign” migrant labor reserve so sufficiently flexible that it can neither be fully replaced nor completely excluded under any circumstance. However, the US nation-state has historically deployed a variety of different tactics to systematically create and sustain “illegality,” and furthermore, has refined those tactics in ways that have more thoroughly constrained the social predicaments of undocumented Mexican migrants. (p. 166)

Enforcing the conditions above, a myth has prevailed of the Mexican migrant as the Other not willing to integrate and embrace the values and principles of an American exceptionalism rooted in an Anglo-Saxon-Protestant *weltanschauung*. And through the fetishism of the law, the Other is perversely a necessary evil to maintain the present social relations of production. And the discourse of that threat, in opposition to understanding the “illegality” as a link to a system of exploitation similar to that of the American system of indentured servitude that lasted until the passage of the Thirteenth Amendment to the United States Constitution in 1865 (Morgan, 2000) but without the stigma of slavery, can be found in reductionist theses of why the Mexican/illegal alien/Other has to be understood as a potential “disturbingly or threateningly different” “other.” As Samuel Huntington (2004) bluntly states regarding such “threat”:

No other immigrant group in U.S. history has asserted or could assert a historical claim to U.S. territory. Mexicans and Mexican Americans can and do make that claim. Almost all of Texas, New Mexico, Arizona, California, Nevada, and Utah was (*sic*) part of Mexico until Mexico lost them as a result of the Texan War of Independence in 1835-1836 and the Mexican-American War of 1846-1848. Mexico is the only country that the United States has invaded, occupied its capital—placing the Marines in the “halls of Montezuma”—and then annexed half its territory. . . . Demographically, socially, and culturally, the *reconquista* (re-conquest) of the Southwest United States by Mexican immigrants is well underway. (pp. 4, 7)

For those who see such an immigrant group as a threat, integration and assimilation will always be problematic, if not impossible, though not necessarily a problem if a certain lifestyle is to be maintained. The reaction will

be to continue finding a balance between maintaining the deportability of the “illegal aliens,” and hence a legal frame that responds to this, and generating a discourse that ensures that both the federal and state governments find ways to embrace the popular discourse of mistrust and hate toward the Other as they keep their repressive policies within the limits of what the dominant classes and ideology consider “politically correct.” This balancing act has never been an easy one, particularly when the 1965 Immigration and Nationality Act abolished the National Origins Formula, establishing a quota system with an annual limitation of 300,000 visas for immigrants, including 170,000 from Eastern Hemisphere countries, with no more than 20,000 per country. By 1968, the annual limitation from the Western Hemisphere was set at 120,000 immigrants, with visas available on a first-come, first-served basis. As shown by Calavita (1995) and Papademetriou (2004), the demise of the Bracero Program in 1964 (pointedly described by Justin Akers [Akers & Davis, 2006, p. 139]) as a “twentieth century caste system,” added to the inability of the Mexican economy to satisfy its demand for labor and the increase in the demand for cheap labor in the U.S., would result in a constant and substantial increase in the number of undocumented Mexican migrants.

The “illegal aliens” would become the deportable “illegal invaders” of the 21st century. Moreover, the latter would become the subjects of what is now one of the tensest legal and political debates between the federal and state governments regarding which level of government is to be in charge of “defending” the borders of the Union while preserving the sovereignty of its states. On the other hand, the political economy, apparently rooted in the notion of exceptionalism, is failing to deliver the “American Dream” to those who have embraced it as a *quasi*-religious act (Cullen, 2004).

III. INCREASING THE RESTRICTIONS FOR MEXICAN LEGAL MIGRATION WHILE TARGETING THE OTHER: FROM CALIFORNIA'S PROPOSITION 187 TO ARIZONA'S SB 1070

Although states have been involved at many levels in managing certain aspects of migration policies (Akers & Davis, 2006), California's Proposition 187 was one of the contemporary precursors for resuscitating the interpretation of the Tenth Amendment with regard to the powers it can delegate to states and their people to defend themselves, in our case, against the so-called “illegal aliens/invaders.” One of the ways in which the Tenth Amendment was used by then Governor Pete Wilson (1991-1999) was to confer the powers not explicitly delegated to the federal government on the “people” and the “state” of California. The 1994 ballot initiative, introduced by Assemblyman Dick Mountjoy as “Save Our State” (SOS), was based on

a discourse of self-defense in which the “illegal aliens” were considered a threat to the survival of the state and to American exceptionalism. Section 1 of the Proposition stated that:

The People of California find and declare as follows: That they have suffered and are suffering economic hardship caused by the presence of illegal aliens in this state. That they have suffered and are suffering personal injury and damage caused by the criminal conduct of illegal aliens in this state. That they have a right to the protection of their government from any person or persons entering this country unlawfully.

The proposition was explicitly designed to deter the so-called “illegal aliens” from entering the country as a first step in ending what was referred to by Stanley Mailman (quoted in Bustamante, 2001, p. 3) as the “illegal alien invasion.” As a matter of fact, regardless of the tensions between the federal government and the states derived from the Supremacy Clause, Governor Wilson went on to sue the state. Wilson would state in the lawsuit that “the massive and unlawful migration of foreign nationals . . . constitutes an invasion of the state of California against which the United States is obligated to protect California.” The suit cites Article IV, Section 4 of the Constitution, which states: “The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion” (Weintraub, 2001, p. 1).

Although Proposition 187 was defeated by an appellate court judge, it received very strong support from 59% of voters. Furthermore, the discourse that it created in characterizing the undocumented workers as “invaders” became the new way to relate to the Mexican migrant. And it is that characterization that has triggered the far-right from most of the Southwest to construct a discourse of hate that, after September 11, 2001, would be shored up by the obsession with absolute security through the absorption of immigration matters into the new Department of Homeland Security (DHS). Migration in general, and particularly the “illegal” migration, would become part of the National Security discourse and policy of both the federal and state governments. This shift in dealing with a socioeconomic phenomenon, in a climate of fear and economic uncertainty, was to revive the debates and policies of exclusion at both the federal and state levels.

Regardless of the fate of Proposition 187, its discursive power resided in the fact that the majority of Californians, through a democratic process reflecting the principles of the Tenth Amendment that can delegate powers to the people, embraced a dominant discourse as if it were theirs, yet controlled by the dominant classes of the state that were to produce further illegality and hence increase the deportability and exploitative conditions of undocumented workers (Akers & Davis, 2006). Paradoxically, it is quite

possible that if the Proposition would have gone through, the savings incurred by employers and society in general would have made even more attractive the already very cheap labor of undocumented workers that has been one of the most important factors in the agribusiness of California that supported Governor Wilson and Proposition 187 (Garza, 1977; Chacón & Davis, 2006). As a matter of fact, according to Papademetriou (2004, p. 51), "From 1980 to 1994, migration from the surveyed rural communities to the United States increased by 95 percent" and by 2002, migration to the United States was 452% higher than in 1980, with California's industries that had supported Governor Wilson being among the main receptors of a surge of immigrants from Mexico.

The federal response to Proposition 187, Operation Gatekeeper, was an initiative of President Clinton that, according to the Immigration and Naturalization Service, was intended "to restore integrity and safety to the nation's busiest border" (quoted in Nevins, 2002, p. 3). According to a White House press release, Operation Gatekeeper was launched on October 1, 1994, almost a year after NAFTA was enacted as the most important comprehensive agreement to stop "illegal immigration" ("Remarks by President Clinton," 1993). This policy would focus on closing the five westernmost miles of the border, extending from the Pacific Ocean to the San Ysidro checkpoint. U.S. migration routes immediately shifted eastward, and the use of professional smugglers increased. In May 1995, the Border Patrol initiated Operation Disruption to target smugglers, known as coyotes or *polleros*, and established new checkpoints on interior highways (Nevins, 2002). These measures resulted in a substantial increase in the flow of undocumented migration through Arizona.

According to the Department of Homeland Security, Arizona had one of the fastest-growing undocumented immigrant populations in the country, increasing from approximately 100,000 in 1994 to 560,000 by 2008 (Fernandez & Robinson, 1994; Hoefer & Baker, 2008). Such a staggering increase in mostly Mexican undocumented immigrants, within a context of an increase in anti-immigrant sentiment among a large number of Arizona's residents, added to a struggling economy and economic anxiety during the late 2000s, could only result in a strong push from conservative politicians and anti-immigrant pundits to promote strong anti-immigration laws packaged as public safety bills. And if there is a state where sheriffs or former sheriffs have been involved in crafting, implementing, and operationalizing discourses and practices of discrimination, Arizona would be in the forefront.

In an interview on National Public Radio on March 12, 2008, two years before he personally promoted the SB 1070, the former Deputy Sheriff of the Maricopa County, then State Representative and chair of the Ari-

zona House Appropriations Committee, Russell Pearce, declared the following:

I believe in the rule of law, always have. I've always believed in the rule of law. We're a nation of laws. . . I will not back off till we resolve this problem of this illegal invasion. Invaders, that's what they are. They're invaders on the American sovereignty and it can't be tolerated. (Quoted in Inskeep, 2008, para. 6)

If one could personify the combination of American nativism and xenophobia, it would be Senator Russell Pearce. If one were to take him at face value, he would seem to represent a naive view of American exceptionalism that sees in the Other a “disturbing” or “threatening” alien to be feared and expelled at all costs. However, as naive as he may seem, he has been one of the most powerful contemporary politicians in Arizona and the foremost zealous promoter of the most controversial anti-immigrant laws implemented in the state. He has also shown that, regardless of the Supremacy Clause, states can enact many laws that affect immigration policies.

Senator Russell has been one of the most successful promoters of state bills that have exacerbated the perception of the Other and reinforced discourses and practices of hate, not just within Arizona but across the United States. Before promoting SB 1070 or The Support Our Law Enforcement and Safe Neighborhoods Act, he was a strong supporter of Proposition 200, also called Protect Arizona Now. This initiative, which passed in 2004 with 56% of the vote, requires individuals to produce proof of citizenship before they may register to vote or apply for public benefits. The Proposition also makes it a misdemeanor for public officials to fail to report persons unable to produce documentation of citizenship who apply for these benefits, and allows citizens who believe that public officials have given undocumented persons benefits to sue for remedies. Senator Russell, now President of the Arizona Senate, has pledged to push to reform the Fourteenth Amendment so as not to grant automatic citizenship to children born on U.S. soil and to make English the official language of the United States (Russell, n.d.). But beyond the strong support Senator Russell's initiatives have received from the majority of voters, state legislators, the state governor, and many media outlets, it is fundamental to understand the deeper and far-reaching links between what seem like local initiatives, yet are concerted efforts from a complex web of a very tight and well-organized historic bloc. In this bloc, the dominant classes have extended their power to all levels of government, key economic sectors, and the most powerful corporate media. Yet for most voters, SB1070 was just an Act to protect them from the Other who, according to the dominant discourse, has represented the main threat regarding public safety and the economic downturn—an Other who apparently has to

be hated for his/her perceived disdain for the American Dream and his/her longing to retake his/her historical land.

The day SB 1070 was signed into law by Governor Jan Brewer, little was known of the backstage process behind what was perceived as an Act emanating from the people's will. At face value, American democracy was at its best: Of the voters in Arizona, 59% voted for it; it passed the Arizona House of Representatives by a 35-21 party-line vote, and the revised measure then passed the State Senate by a 17-11 vote that also closely followed party lines. The killing of a 58-year-old rancher, Robert Krentz, and his dog, who were apparently shot by an "illegal alien" on March 27, 2010, while Krentz was doing fence work on his large ranch roughly 19 miles from the Mexican border, was to find some kind of resolution through a Bill that was actually going to be named after Krentz. No suspect was ever found, but in the imagination of many Arizona residents, Krentz was one of the first victims of the "illegal invaders" from Mexico (Thornburgh, 2010). The fact is that Mr. Krentz was just an unfortunate scapegoat for a piece of legislation reflecting a deeper and more disturbing national sentiment toward the Mexican/illegal alien/Other.

Although SB 1070 was an idea born from a man operating from a deep nativist and anti-immigrant sentiment, it was crafted primarily by a very pragmatic and well-educated individual with no direct ties to Arizona, who nonetheless was very committed to making immigration laws extremely restrictive: Kris Kobach. Mr. Kobach, who is now the Secretary of State of Kansas, is a young attorney and law professor with a very high level of education from the American Ivy League. There is no question that he could be the poster boy for the nostalgic image of the American Anglo-Saxon-Protestant who staunchly believes in American exceptionalism. In 2008, the Southern Poverty Law Center (SPLC) classified Mr. Kobach as one of the most influential nativists promoting racial discrimination through discourses and practices of hate. But how is Mr. Kobach linked to the dominant class that promotes a hegemonic discourse against so-called "illegal aliens"? Mr. Kobach, who has focused on working with local and state governments, is engaged with the Immigration Reform Law Institute (IRLI). The IRLI is the legal arm of the Federation for American Immigration Reform (FAIR), listed as a nativist hate group by the SPLC (Beirich, 2007). Although FAIR represents itself as a non-partisan nonprofit whose main mission is merely "to examine immigration trends and effects" ("About Fair: Mission Statement," n.d.) It was founded by Dr. John Tanton, who still serves on its Board of Directors. Dr. Tanton has been known nationally as one of the major architects of the U.S. contemporary nativist movement who, according to the SPLC, 20 years ago, was already warning of a destructive "Latin onslaught" heading to the United States (Beirich, 2007,

para. 4). Moreover, Mr. Kobach, in addition to Senator Russell, has been an active member of the American Legislative Exchange Council (ALEC), which is an extremely conservative nonprofit membership association of state legislators and private sector policy advocates. Among many of its activities, the ALEC assists its members in developing “model laws” for state legislatures and serves as a powerful networking apparatus for fellow legislators to share and anchor their ideological perspectives and policy goals. ALEC is perhaps the most powerful institution that conservative state legislators at both levels of government have used to attempt to accelerate the process of granting more powers to local and state governments. These powers are generally related to maintaining what they consider to be the fundamental principles of American exceptionalism. FAIR and ALEC were the main institutions where Arizona’s SB 1070 was politically and legally drafted, not the office of Senator Russell.

In the wake of the passage of SB 1070, for instance, FAIR advanced a copy of its new report on the alarming cost of illegal immigration in Arizona to *Fox News*. On May 17, *Fox* reported that “Arizona’s illegal-immigrant population is costing the state’s taxpayers even more than once thought—a whopping \$2.7 billion, according to researchers at the public-interest group that helped write the state’s new immigration law” (Barnes, 2010, para.1).

But how would Kobach reach the more “liberal” sector of the dominant political elites? On April 29, 2010, the *New York Times* published an op-ed by Kobach in which he questioned the criticism of the Bill with a set of reflections on why state government can, and needs to be, involved in immigration issues. Kobach put on the spot two organizations that not only are considered progressive, but also have defended Latino immigrants in general and Mexican immigrants in particular. He stated, “Predictably, groups that favor relaxed enforcement of immigration laws, including the American Civil Liberties Union and the Mexican American Legal Defense and Education Fund, insist the law is unconstitutional” (Kobach, 2010, p. A31).

He then went on to explain what he understood as the constitutionality of the Bill and the “urgent” need for Arizona to implement it:

While it is true that Washington holds primary authority in immigration, the Supreme Court since 1976 has recognized that states may enact laws to discourage illegal immigration without being pre-empted by federal law. As long as Congress hasn’t expressly forbidden the state law in question, the statute doesn’t conflict with federal law and Congress has not displaced all state laws from the field, it is permitted. That’s why Arizona’s 2007 law making it illegal to knowingly employ unauthorized

aliens was sustained by the United States Court of Appeals for the Ninth Circuit.

In sum, the Arizona law hardly creates a police state. It takes a measured, reasonable step to give Arizona police officers another tool when they come into contact with illegal aliens during their normal law enforcement duties. And it's very necessary: Arizona is the ground zero of illegal immigration. Phoenix is the hub of human smuggling and the kidnapping capital of America, with more than 240 incidents reported in 2008. It's no surprise that Arizona's police associations favored the bill, along with 70 percent of Arizonans. (Kobach, 2010, p. A31)

It is no coincidence that the American Civil Liberties Union and the Mexican American Legal Defense and Education Fund were singled out. These organizations have been in a direct political and legal confrontation with the anti-immigration groups linked to the complex web of xenophobic, nativist, and openly racist organizations of which FAIR is one of the largest and most powerful ("Anti-Immigration Groups," 2001; Larsen, 2007).

This extremely controversial piece of legislation was supported and promoted by these national organizations because of their members' profound disdain for Mexican undocumented immigration and what it represents for their idea of America—not because of their concern regarding the so-called "economic burden" of immigration. It should be no surprise that many anti-"illegal immigrant" activists, members of the media, and local and federal governments have directly used, and benefit indirectly every day from, the cheap labor of such "disturbing" and "threatening" Others. Therefore, the most significant connection for our understanding of why these individuals and organizations are so important, to understand their influence regarding the exacerbation of the Other and the manufacturing of a hegemonic discourse of hate and practices toward the Mexican/illegal alien/Other, is that they have been linked to white supremacists who have been pushing to confront what they consider "an invasion of illegal aliens" and particularly, what they perceive as a threat from the Mexican migrants (Sullivan, 2010).

One certainly cannot conclude that all legal and political actions taken toward undocumented workers are intended to target the Other and "produce" more illegality. However, the overall benefits that these actions have on capital accumulation are vital for a system that can no longer sustain social stability based on an ideal type void of a formal system of segregation. To prove the perversion of this notion, it is important to bring into our analysis an additional key party involved in the drafting and implementation of SB 1070: the American private prison system, particularly the Corrections Corporation of America (CCA). We will see how CCA was the most powerful actor behind SB 1070—a situation that sheds light on Gram-

sci's contention that the dominant classes and their hegemonic expressions of power are more significant in determining the power relationships and social structures of a political system than the state itself (Gramsci, 1995, 2000).

In what was perhaps a surprise to those who believe in the transparency of American democracy, Laura Sullivan, National Public Radio's police and prisons correspondent, broadcast on the national airwaves what had also been investigated by other journalists such as Beau Hodai from *In These Times*: The most important goal for the ingenuously called The Support Our Law Enforcement and Safe Neighborhoods Act was to increase the profits of CCA (Sullivan, 2010). As disturbing as this may seem, it can only make perfect economic and legal sense if one is to believe that the American system is one in which the Rule of Law is diligently applied and that free markets are at the base of its economic system: If undocumented workers are considered "illegal," "criminals," mind you "invaders," and the law needs to be enforced, then they need to be locked up, so the logic of applying the Rule of Law goes. And if there is a market that can respond to the demand for prisons to enforce the law so as to maintain the markets' thriving and state deficits' being under control, why not ensure that such demand is met and legitimized by the people? Why would this disturb the law-abiding American citizen? Therefore, if one is to take into account public opinion polls, why be surprised if the SB1070 has had an overwhelming support of 55-80%? In a state poll conducted by Arizona State University's Morrison Institute and aired by *Fox News*, on September 1, 2010, it seems that the aim was to target the Mexican/illegal alien/Other as a potential criminal. The questions and results were as follows:

Question: Should people be required to produce documents verifying legal status?

Among registered voters polled, 81% said they approve of the provision within SB 1070 that requires people to produce documents that verify their legal status.

While there are differences in levels of support by political affiliation, the vast majority of each political party supports the provision: 92% of Republicans, 79% of independents and 68% of Democrats.

Question: Should police be allowed to detain anyone unable to verify their legal status?

This provision of SB 1070 receives solid support, with 74% of respondents in favor of allowing police to detain anyone who is unable to verify legal status.

There are, however, wide differences of opinion about this provision based upon party affiliation. While 93% of Republicans and 73% of

Independents favor detaining those who are unable to verify their legal status, only 50% of Democrats favor it.

Question: Should police be allowed to question anyone they think may be in the country illegally?

Some 68% of voters surveyed in the poll favor the provision of SB 1070 that would allow police to question anyone they think may be in the country illegally when stopped as a suspect or arrested for a crime.

Almost nine in 10 registered Republican voters (87%) believe the police should be allowed to question anyone they think may be in the country illegally, compared with 67% of Independents and 48% of Democrats. ("New poll: Majority of Arizonans favor SB 1070 provisions," 2010)

The importance of this poll, which reflects similar questions and results as later nationally applied ones, is that it clearly illustrates that, regardless of the stipulations in the SB 1070 regarding its adherence to the Fourteenth Amendment, most Americans do not perceive that their rights would be threatened by granting such powers to the police forces. There seem to be only two logical answers to this matter: Either Americans do not know their constitutional rights and take for granted that they will never be subject to the powers they are supporting, or they have no doubts as to who the target of these measures is. If the media and its constant pounding on the threat that "illegal aliens/invasers" pose to their rights and freedoms, and the government, at both the state and federal levels, keeps referring to the national security threat posed by the southern border, why would any American citizen who does not have the racial profile of a Latino or a Mexican even be concerned about the fact that he or she is giving extra-constitutional powers to the local police? This has not just been patent in the minds of those who drafted SB 1070, it was also a fact that the CCA would rejoice at hearing; for regardless of the constitutional challenges that this bill has presented, it has secured enough legal and political support to ensure the latter's present contracts plus many more in Arizona and all other states that, through their legislative members in ALEC, are carrying on with copies of the SB 1070. For CCA, more inmates are a *must* in order to keep their profits high as the largest private correctional corporation of which stock is traded in the New York Stock Exchange. As one of their statements in their *United States Securities and Exchange Commission Form 10-K for the Annual Report Pursuant To Section 13 or 15(d) of The Securities Exchange Act of 1934* (2009) bluntly states regarding their constant need to increase their demand:

A decrease in occupancy levels could cause a decrease in revenues and profitability. . . We are dependent upon the governmental agencies with which we have contracts to provide inmates for our managed facilities. We cannot control occupancy levels at our managed facilities. Under a

per diem rate structure, a decrease in our occupancy rates could cause a decrease in revenues and profitability. When combined with relatively fixed costs for operating each facility, regardless of the occupancy level, a decrease in occupancy levels could have a material adverse effect on our profitability. (p. 25)

For CCA, which is the main correctional corporation that works with the U.S. Immigration and Customs Enforcement (ICE), the more SB 1070s are implemented nationwide, the better off the value of their stock. It is of course understood that economically, politically, socially, and logistically, the local police forces, the ICE, and the CCA are unable to lock in the more than 10 million undocumented workers in the U.S.—although doing so would be a dream come true for CCA. But as SB 1070 has proven, ICE can shore up their data on detentions, thereby increasing their legitimacy vis-à-vis the American citizens who believe that there is a measurable threat to their security; local police can appear as sensitive to the American population living under fear of being attacked by an “illegal alien/invaser,” and CCA keeps its shareholders satisfied. Hence the “production of Mexican/migrant ‘illegality,’” so eloquently referred to by De Genova (2005, pp. 160, 177), takes an even more dreadful twist as the political economy of the American private prison system capitalizes on a hegemonic discourse that finds in the present historic bloc support unmatched since the penitentiary system in the U.S. was privatized (Todd, 2005; Zito, 2003).

So how did CCA try to meet its demand through the SB 1070? According to an in-depth investigation by Laura Sullivan of National Public Radio (NPR), the whole power structure of the government of Arizona has been heavily influenced by the private prisons system. According to Sullivan, the governor’s top advisers, her spokesman, and her campaign manager are former lobbyists for the private prison companies; Senator Russell Pearce and 35 Arizona legislators who voted en masse for SB 1070 belong to ALEC, with Pearce being an executive member of ALEC’s Public Safety and Elections Task Force, and the private-sector executive members of this task force including CCA (Sullivan, 2010; Hodai, 2010). In a very revealing interview between Sullivan and the city manager of Benson, Arizona, a small town 60 miles from the Mexican border, it is quite appalling how forthcoming CCA executives are with regard to their longing to increase profits through the incarceration of undocumented immigrants. In the interview, the city manager mentions receiving an offer for “a prison for women and children who are illegal immigrants.” He also mentions that they “talk [about] how positive this was going to be for the community,” and “the amount of money that we would realize from each prisoner on a daily rate.” The city manager later asked, “How would they possibly keep a prison full for years—decades even—with illegal immigrants?” The answer was blunt:

They “talked like they didn’t have any doubt they could fill it” (Sullivan, 2010, paras. 5-7).

When Governor Jan Brewer was signing the Support Our Law Enforcement and Safe Neighborhoods Act on April 23, 2010, she stated that her decision was based on the following arguments:

Border-related violence and crime due to illegal immigration are critically important issues to the people of our state, to my administration and to me, as your governor and as a citizen . . . We cannot delay while the destruction happening south of our international border creeps its way north. We in Arizona have been more than patient waiting for Washington to act. But decades of federal inaction and misguided policy have created a dangerous and unacceptable situation. Yesterday, I announced the steps I was taking to enhance security along our border. Today—with my unwavering signature on this legislation—Arizona strengthens its security WITHIN our borders. (Brewer, 2010, p. 1)

Even though Governor Brewer tried to dissipate any criticisms regarding the racial profiling that this bill could clearly produce when she stated that she would “NOT tolerate racial discrimination or racial profiling in Arizona,” (Brewer, 2010, p. 1) she was also signing a “blank check” to the CCA. What is more, she was empowering those who believe their security is seriously at risk due to the “illegal aliens/invasers” crossing through the southern border. Senator Russell Pearce was quoted in an interview with NPR’s Sullivan:

“Enough is enough,” Pearce said in his office, sitting under a banner reading “Let Freedom Reign.” “People need to focus on the cost of not enforcing our laws and securing our border. It is the Trojan horse destroying our country and a republic cannot survive as a lawless nation.” (Sullivan, 2010, para. 16)

It is patent that the governor’s wording in her statement about SB 1070 (and the Senator’s statement on the nature of the southern border and his description of undocumented immigrants as a “Trojan horse”) takes us back to our first thesis regarding the exacerbation of the Other so as to ignite in the imagination of those who still believe in the American Dream a deep fear about their individual and collective security. The Mexican/illegal alien/Other re-conquering his/her land starts being perceived as a real threat—one that, if it cannot be dealt with by the federal or state governments, will have to be dealt with by “the people.” And it is precisely the idea of the powers that can be delegated to the people, expressed in the Tenth Amendment, that has elevated the local sheriffs and other anti-immigrant organiza-

tions to take into their hands what they consider to be a “war” against the “illegal alien/invasers.”

IV. FROM STOPPING THE “ILLEGAL INVADERS” TO PUNISHING THE “CRIMINAL ALIENS”⁴

The Other has been clearly identified through the media, the state and federal legislative bodies, and the *vox populi*; the state and federal laws are clearly drafted on the belief that the Southern Border and its constant flow of undocumented immigrants are a real threat to the United States’ National Security and Public Safety. Hence, what seems like the logical response to this belief is to secure the border by building a fence and militarizing it and, if the “illegal invaders” get to “break down” such defenses, to criminalize them to deter more “violations” of the United States’ sovereignty. If this is the logic that constructs the discourse supporting the federal response through operations such as Gatekeeper (1994), Endgame (2003-2012), Front Line (2004-2005), and Return to Sender (2006-2007), and bills like the 2006 Secure Fence Act and state responses with propositions like California’s 187 and the very popular SB 1070, then how can we expect from those who adhere to such discourse that they will not have different levels of reactions that will border on hatred, or openly embrace hatred toward those who are considered invaders and the number-one public safety enemies?

Perhaps the most powerful legal bridge between the federal and local governments in empowering the local governments to pursue immigration enforcement, is the not so well-known to the public Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act. As the U.S. and Immigration and Customs Enforcement (ICE) states:

The 287(g) program, one of ICE’s top partnership initiatives, allows a state and local law enforcement entity to enter into a partnership with ICE, under a joint Memorandum of Agreement (MOU). The state or local entity receives delegated authority for immigration enforcement within their jurisdictions. (n.d.)

Although certain limitations are present in the implementation of such delegated powers, SB 1070, and the House Bill 2162, which modified the former with the amended text stating that “prosecutors would not investigate complaints based on race, color or national origin” (HB 2162), clearly reflect such powers. In addition, they enhance the goals of federal operations to deport or incarcerate the now-called “illegal criminals.” One of the difficulties that immigration agencies such as ICE, or the U.S. Customs and Border Protection (USCBP), have is that, even though they have expanded

their mandates and expanded their operations under the Department of Homeland Security (DHS), they do not have the personnel to meet their goals. Therefore, there was a need to establish strong partnerships with local enforcement agencies. These partnerships are extremely controversial, for most law enforcement agencies have had neither a mandate nor the training to protect the sovereignty of the state and control immigration. Besides, local law enforcement agencies have to rely on a high level of community trust to carry out their mandates efficiently, and such trust cannot be sustained if these agencies represent a threat to the community, or large groups within the community.

However, once the "others," regardless of being part of the community, have been legally framed as the main threat to the public safety of the "legitimate" community, the local law enforcement agencies can use their force to carry out multiple operations to minimize or eliminate the threat posed by those who become criminals as a result of not having proper documentation. However, the only way this can happen at a collective level is if the federal and state laws can create or expand the legal concept of what constitutes criminal acts and the subjects that commit such acts. To immigrate without the required documentation has not been considered a criminal act by most states, yet the U.S. federal laws as well as state laws have expanded their codes to consider such violations as acts that can carry a conviction. In addition, once an individual or a group of individuals is labeled as "criminal," there is a social stigma that confines the scope of their activities since their presence is considered harmful to the general population or to the State. And those who apply the terms of "crime" or "criminal" intend to assert the hegemony of a dominant group, or to reflect a consensus of condemnation for the identified behavior and to justify any punishments prescribed by the State (Quinney, 1970, 1977). The most efficient political and legal structure to create such consensus and operationalize such controversial partnerships between the federal government and the state and local governments has been the institution of the sheriff's office. Why? In the United States, the sheriff is usually the highest law enforcement officer of a county, as well as the commander of the militia in the county where he or she has been elected. Therefore, sheriffs have an unusual power to create or recreate hegemonic discourses and practices as to how the law is to be enforced within their county.

So how does SB 1070 respond to the above logic? The SB 1070 starts by using language that seems to reflect an antebellum status in which the "enemy" or the threat has to be removed before the situation escalates and the losses to the state or the community become too high to bear. SB 1070 states that its normative intent is "to make attrition through enforcement the public policy of all state and local government agencies in Arizona (SB

1070).” It then identifies the target of attrition by stating that “the provisions of this act are intended to work together to discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States” (SB 1070, Section 1). In other words, the state of Arizona, through all its law enforcement agencies, will create an environment in which undocumented immigrants either leave the state or accept being marginalized in and segregated from the state’s formal economic structures.

Such language can only instill a deep fear and mistrust among the Latino population, and the Mexican one in particular, regardless of its members’ residency status. As a result of this fear, the former will further segregate themselves from the rest of the community so as to protect the more vulnerable members of their community, with the unintended consequences of pushing them deeper into the shadows. This of course will result in greater exploitation, for the fear of deportability increases exponentially. In addition, this scenario might cause immigrants to flee their neighborhoods, towns, counties, or the state, due to the increased stigmatization and potential harassment.

Regardless of the fact that some of the most egregious clauses in the bill have been blocked by a federal court injunction, putting on hold provisions that would require police to check the immigration status of someone they stopped while enforcing other laws or allowing for warrantless arrests of suspected illegal immigrants, criminalizing the failure of immigrants to carry registration papers, U.S. District Judge Susan R. Bolton has allowed other portions of the law to stand, including requiring police to work with federal officials in enforcing immigration laws. This last “requirement” still gives an enormous amount of power to Arizona’s law enforcement agencies to enforce immigration laws through their MOUs with ICE. Furthermore, the injunction does not question the criminalization of undocumented immigration that can include incarceration as stated in the US Code, Title 8 Section 1325.

Therefore, even if certain sections of SB 1070 have been blocked, the tension between the federal government and states has been resolved to a great extent by the MOUs that cities and counties have signed with ICE. These MOUs have been used extensively, with strong popular support by the offices of the sheriffs. In Arizona, the most strident use of these MOUs has been made, without a doubt, by the Maricopa County’s Sheriff’s Office, led by a man who is a state and national hero to those who believe that the American Dream is being threatened by the Mexican/illegal alien/Other, Sheriff Joseph M. “Joe” Arpaio. First voted into office in 1992, Sheriff Arpaio has promoted himself as “America’s Toughest Sheriff” and is known, with the support of the local and national corporate media, as the

person who has taken the most outspoken stance against undocumented immigration. This is a sheriff who exemplifies the romanticization of the American militia (Malcolm, 1983) as representative of people's power, a power that gives the sheriff the authority to articulate the Second Amendment of the U.S. Constitution. He has been the leader of a posse of more than 3,000 voluntary members dedicated to searching for and catching undocumented immigrants, as well as those who smuggle them in. The "Illegal Immigration Posse," as Arpaio calls it, is a militia that has attracted the collective and individual imagination of Americans beyond Maricopa County. For example, one of Arpaio's very popular news releases referring to the swearing in of volunteers for his posse mentions, with great fanfare, that:

Hollywood actors and real life law enforcement professionals Steven Seagal, Lou Ferrigno (*The Hulk*) and Peter Lupus (*Mission Impossible*) all signed on to work this detail. A retired Chicago police official aptly named Dick Tracy who now lives in Arizona has also joined this posse. And Wyatt Earp, a local resident whose uncle was the famous lawman, is joining the posse as well. ("Sheriff Joe Arpaio Launches Illegal Immigration Posse," 2010, para. 8)

For Sheriff Arpaio, as well as for many right-wing anti-immigrant organizations in Arizona and across the country, the only solution for managing undocumented immigrants is a punitive one. The idea, quite disturbing, is to exacerbate the threat of the so-called "illegal alien invaders" or "criminal aliens" to the point of degrading them, as did Glenn Spencer, the chairman of one of the most active anti-immigrant organizations, American Border, by referring to them as "cancers" ("American Border Patrol/American Patrol," 2011) and incarcerating all undocumented workers in facilities where the conditions are as humiliating as federal and state laws can permit, like the tent prisons of Sheriff Arpaio. Two extremely disturbing tactics are used by Arpaio in his tents (which are actually Korean War tents): One is to make both male and female prisoners wear pink underwear and old-fashioned black-and-white striped uniforms, and the other is to broadcast, on July 4 in full volume during the whole day, so-called patriotic songs to make the immigrants

remember what freedoms and privileges they are missing by being incarcerated for various crimes and so as to remind them of what this country is all about—freedom within the boundaries of our laws and our brave military men and women who fight to keep us free. (Maricopa's County Sheriff's Office, 2007)

These extreme tactics demonstrate a perverse expression of nativism and xenophobia that can come only from a deep fear and hatred toward the Mexican undocumented immigrants. In a statement that cannot keep us from remembering the fascist years when the Nationalist Socialist party in Germany was developing the concentration camps system for the “others,” Sheriff Arpaio’s blunt response when asked how to deal with the “others” coming from the south was, “The United States federal government should consider building tent cities across the border, lock up those who enter illegally rather than simply deport them and be more aggressive in finding and arresting illegals who have managed to make it undetected into the interior of the United States” (quoted in King, 2011, para. 5). What cannot be forgotten with this very twisted response toward a social and economic phenomenon that is not atypical due to the extreme economic asymmetries between the two countries bound together under a free trade agreement open for goods and services yet closed for the free movement of labor, is that without going to such extremes, SB 1070 is only one more piece of legislation in a legal and political puzzle that targets the Other, further segregates him or her, and ignites both individual and collective hatred that sees it as permissible to humiliate or even exploit such Others who are perceived as a serious threat to their culture, public safety, and the sovereignty of the nation-state.

Garry Thomas Kelly’s act was undoubtedly a hate crime; his action was one resulting from a deep fear, anger, and frustration that has been building up in many individuals as a result of a combination of many disturbing factors that are a direct product of the following: a political economy that evidently favors a very small yet powerful ruling class of which Garry would like to think he is a part; a dominant class that, regardless of its party affiliations at both the federal and state levels, is deeply controlled by private interests of which Garry would also like to feel he is a part; a corporate media that is driven by enormous profits made in targeting the Other and instilling fear and hatred in a population that is terribly paranoid about the new idea that they are the victims in a “War on Terror” that has no borders or time limits; and finally, a population that needs to hold on to the idea of exceptionalism as its last resort as it sees what its members perceive as their inherent right to the American Dream being destroyed with the passage of time.

All of those who have suffered the same fate as Juan Varela, as well as their families, are the victims of a history that was never able to fully integrate their culture into the hegemonic discourse—a discourse that cannot recognize that the United States, as a nation-state, was forged by controlling, eliminating, and conquering the peoples and the land of those who did not fit the Manifest Destiny. At the same time, it is a discourse that pro-

notes freedom, democracy, and liberty for those who deem themselves the “natural” inheritors of such “divine” destiny that, as of today, is still tacitly synonymous with being a White-Anglo-Saxon-Protestant or WASP.

But the WASP, as an ideal type, confronts several dilemmas: The WASP depends on the Other’s disposition to be exploited. The WASP needs the Other to be linked to its past. The WASP needs the Other for its future. Can such dilemmas be resolved by targeting, exploiting, segregating, and hating the Other? Only the future will enlighten us.

NOTES

1. In this paper “the other” with a capital O (Other) will mean the Mexican/illegal alien/illegal invader as expressed by certain media, political pundits, government officials, anti-immigrant organizations or civil society groups, certain corporations as well as the *vox populi*.

2. In this article we refer to the “dominant discourse” in terms of Antonio Gramsci’s (1995) work on hegemony. Gramsci defines hegemony as the exercise of “moral, political, and intellectual leadership” in a society. He conceptualizes this exercise of power beyond the traditional notion of the state as the singular institution that rules through force. Gramsci contends that the state does not rule through force alone, but cultivates consent through “a multitude of other so-called private initiatives and activities [that function] to the same end—initiatives and activities which form the apparatus of the political and cultural hegemony of the ruling classes” (p. 258). Hegemony, therefore, is a process by which “educative pressure [is] applied to single individuals so as to obtain their consent and their collaboration, turning necessity and coercion into ‘freedom’” (p. 242).

3. For Gramsci (2000), the historical bloc is an alternative interpretation of the relationship between the elements of the social structure: a dialectical one, stressing “the dialectical unity of base and superstructure” (p. 424). Gramsci clarifies this when he states, “The material forces are the content and ideologies are the form, though this distinction between form and content has purely indicative value, since the material forces would be inconceivable historically without form and the ideologies would be individual fancies without the material forces” (p. 200). Hence, the conjectural alliances between social structure composed of the economic base and the ideological superstructure are what Gramsci refers as the *historical bloc*. The two levels remain basically the same, except that Gramsci calls the levels of the superstructure *political society*, corresponding to the State, and *civil society*, “the ensemble of organisms commonly called private, i.e. the sum of social activities and institutions

which are not directly part of the government, the judiciary or the repressive bodies (police, armed forces)” (p. 420).

4. According to FAIR, “Criminal aliens” are “non-citizens who commit crimes that are a growing threat to public safety and national security, as well as a drain to the scarce criminal justice resources of the state.” See http://www.fairus.org/site/PageServer?pagename=iic_immigrationissuecenters0b9c.

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