

U.S. Immigration Policy: Sustaining Racialized Inequalities Through “Illegality” and  
Education

by

Kira Olsen-Medina

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Graduate Supervisory Committee:

Aggie Yellow Horse, Chair  
Sujei Vega  
Eileen Diaz McConnell

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## ABSTRACT

Through an interdisciplinary American Studies approach, this thesis examines access to education and immigrant “illegality” as tools of racial domination by investigating colonial legacies and structural inequalities linked with immigration policy. Providing a background on the political formation of immigrant “illegality”, this research focuses on how race relations have influenced immigration policies, as well as political efforts to exclude racialized and minoritized groups from lawful immigration, naturalization, and national belonging. These historic texts shed light on overarching connections between the racialized policy construction of immigrant “illegality” and the role of education in nation building and class conservation. Comprising three analytic chapters; the first historicizes how education was used as a tool of the nation-state in the early formation of U.S. territories, the second chapter applies discourse analysis to link contemporary political rhetoric with color-blind ideologies. The third analytic chapter is a critical review of existing quantitative findings on the effects of legal status on educational attainment for Mexican and Central American immigrants and their descendants living in the United States. Challenging the dominant narrative around immigrant “illegality”, this work highlights the racist formation and continued application of unequal access (to both education and citizenship), further demonstrating how structural inequalities remain racialized.

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## INTRODUCTION

Latinx immigrants in the United States face both historically-embedded nativist and racialized hostilities that continue to significantly affect their everyday lives. Latinx immigrants report a great deal of discrimination that is based on both racialized inferiority and othering (Kim, 1999). Research using the National Latino and Asian American Survey –one of the first nationally-representative survey that includes the large sample size of Latinx population– showed that Latinx immigrants experience substantial discrimination, which is subsequently linked with their sense of wellbeing and behaviors (Pérez, Fortuna, & Alegria, 2008). To examine the United States’ enduring legacies of systemic racial exclusion of ‘undesirable’ immigrants through multiple interconnected mechanisms (e.g., narrowly defining racial access to citizenship and the rights therein), requires a deeper understanding of the systemic patterns of racial domination that have forced cultural standards centered on Whiteness over time.

More overt systemic barriers (e.g., racial exclusion of specific immigrant groups based on racial quota) provide deeper insights into the patterns of managed structural education inequalities. Which also demonstrates that one of the key mechanisms of White supremacy is reinforcing ongoing racial domination through a settler colonial state. Centering “racist nativism” as the starting point of inquiry is critical, as it acknowledges White supremacy as a fundamental motive behind systemic injustice and inequities Latinx immigrants continue to experience through racialized othering (Huber, Lopez, Malagon, Velez, & Solorzano, 2008; Lippard, 2011). Racist nativism is a conceptual framework that links the connections between the historical racialization of immigrants of color and contemporary experiences for immigrants of color (Huber et al., 2008).

Social constructions around race and racism in the United States have had severe consequences for racialized and minoritized groups throughout its history. This legacy is important to remember because racial domination is sustained as a result of the dominant group concealing and erasing their oppressive deeds, especially in the United States (Desmond and Emirbayer, 2009). This intentional disconnection from seemingly uncomfortable racist historical narratives to the contemporary events, permits the dominant society a willful amnesia about the racial traumas they actively reproduce (Lipsitz, 2018; Bebout, 2016; DiAngelo, 2013; Jacobson, 1999; Gandhi, 1998). However, such historical contexts are important for uncovering and uprooting the conditioned imperial narratives embedded within the White supremacist fabric of American national identity (Pratt, 1992); and to fully understand the ongoing systemic violence of colonial legacies shaping race relations in the United States. Racialized definitions of “normative” White American identity deprive racialized and minoritized groups of the full benefits of ingroup citizenship and maintains systems of privilege and inequality based on social norms of “whiteness, settler coloniality, heterosexuality, maleness, affluence, and able-bodiedness” (Brandzel, 2016: p. 3).

The historical and legal contexts of U.S. citizenship -and who gets access to it, have evolved over time; and it is embedded in race. For example, certain immigrant groups were legally banned from immigration (e.g., Chinese Exclusion Act of 1882) and from becoming a U.S. citizen based on race (U.S. Citizenship and Immigration Services, 2020; Lee, 2019). The National Immigration Act of 1924 established a racial quota which determined who can immigrate to the United States and be acknowledged as “legal”; this practice was not abolished until the National Immigration Act of 1965 (Lee, 2019).

Similar policies –arguably more covert– continue to be weaponized through nation-state restrictions on immigrant rights, mobility, and access to resources; particularly Latinx immigrants (Molina, 2014).

Grounded in American Studies scholarship that is enriched through interdisciplinary perspectives and methods, this thesis investigates the construction of Latinx immigrant “illegality” (De Genova & Roy, 2020; De Genova, 2004), and exams the role of racist nativist politics (Huber et al., 2008) in the formation and maintenance of racialized inequalities in education. In doing so, I present the significance of barriers for educational attainment among unauthorized immigrants as an ongoing tool of racial dominance in the United States. Social stratification within formal education is particularly important because it can also have significant impacts on intergenerational transfers of human capital and access to upward mobility (Hasmath, 2012), as well as the accumulation of wealth (Pfeffer, 2018). The beginning includes guiding theoretical and methodological perspectives; and a historical background on the policy formation of immigrant “illegality”. Illustrating how the concept of human illegality started as an escalation of racialized immigrant removal tactics, but later became a necessary mechanism for preserving White demographic dominance and racial inequality (Ngai, 2004). This historical examination of immigration policy can help to better understand how colonial legacies are linked to contemporary xenophobic discourses.

This thesis includes three analytic chapters of interdisciplinary inquiry. To examine the role of education in U.S. colonization and early practices of racial domination, the first chapter uses *historiography* to place in critical analysis “the study of what people have written about history” (Deloria & Olson, 2017; p. 27). I examine how



access to education during the (re)integration of Mexicans in U.S. Southwest territories (1848-1960) was shaped through racialized oppression. Critical Race Theory (CRT) and racist nativist concepts (Huber et al., 2008) would suggest that historicizing the formation of public education in the U.S. Southwest territories might help to demonstrate how *racialized* educational burdens with inequitable outcomes were intentionally created. Second, I use *discourse* analysis (Deloria & Olson, 2017; Graham, 2012) to investigate color-blind political rhetoric (Bonilla-Silva, 2018) within congressional debates, immigration policies, government reports, newspaper articles, and political advertisements. Providing examples for how nativist exclusionary rhetoric around power (political), immigration (citizenship), and education (upward mobility) is inherently racialized (Huber et al., 2008). The third analytic chapter provides a critical review of existing quantitative research through a Critical Race Quantitative Intersectionality (CRQI) lens to examine the effects of legal status on educational attainment for Mexican and Central American immigrants and their descendants living in the United States. CRQI concepts provide essential frameworks for investigating issues of race through statistical analysis. Finally, I conclude with directions for future research and policy recommendations. This interdisciplinary method of inquiry offers multiple perspectives and tools to bridge historical contexts with modern political discourses, and gain a deeper understanding of the persistence of “racist nativism” in immigration policy and systems of education.

## THEORETICAL AND METHODOLOGICAL PERSPECTIVES

This research draws from interdisciplinary theoretical and methodological frameworks, but is centered in *racist nativism*. Another important theoretical framework is *settler colonialism* which emphasizes the impacts of colonial conquest and uses the idea of racial hierarchies as a structural tool to maintain White supremacy (Deloria & Olson, 2017). The settler colonialism framework creates a master narrative around immigration that both conceals and reproduces White privilege. Undesirable immigrants are perpetually racialized as foreign “others”, preventing true integration for any racialized and minoritized group that does not represent the normative White American identity (Romero, 2008). Meanwhile, the dominant White society maintains their racial power (demographic majority) through extremes of immigrant “elimination” and “exploitation” (Glenn, 2015, p.60).

Another theoretical perspective that is essential to this inquiry is Critical Race Theory (CRT). CRT is a conceptual framework that provides an analytical perspective for investigating everyday racism in society, from macro- and micro- level racialized aggression, to intersectionality, and critical narratives; this scholarship offers a model for sociological imaginations to connect the lived consequences of racism with the false narrative of a color-blind society (Romero, 2008). One of the founding CRT scholars, Derrick Bell acknowledged the endurance of racism in American institutions and social structures, challenging scholars to “get real” about its ongoing consequences for racialized and minoritized groups (Bell, 2008: p. 5). The topic of immigration was identified within CRT as being a major human rights issue worldwide; and while there was a critical gap in research connecting issues of race with contemporary immigration

policies (Romero, 2008), a growing body of recent scholarship has emerged to address it (Álvarez, & Urbina, 2018; Wong, 2017; Abrajano, & Hajnal, 2015; Ioanide, 2015; Chomsky, 2014). Adding to work by other CRT scholars, this three-part analyses draws from an interdisciplinary line of inquiry in order to make broader generalizations about the nation-state's racialized power structures, the effects of racism across different era's in American history, and serves to make connections between issues of race, immigration policy, and educational inequalities in the United States.

An important concept from CRT, the *intersectionality* framework (Collins, 1999; Crenshaw, 1990) considers the “multiple ways that structures of privilege and disadvantage intersect in individual lives” (Zamudio, Russell, Rios, & Bridgeman, 2011: p. 37). The intersectionality framework is grounded in Black Feminist theory, and it allows researchers to consider how multiple identities such as race and gender are experienced as overlapping layers of oppression (Collins, 1999). The intersectionality framework can be useful for bridging the cumulative effects of multiple layers of discrimination immigrants experience through legal status, citizenship binary, politics, class, race, gender, culture, and language (Zamudio, Russell, Rios, & Bridgeman, 2011). Another CRT concept, *interest convergence*, or the “White self-interest principle”, is used to explain why policy reforms have been relatively ineffective at reducing racial social inequalities (Zamudio, Russell, Rios, & Bridgeman, 2011). For example, this concept would suggest that advancements made during the civil rights movement were a necessary (self-preservation) response from the White dominant society in order to subdue growing racial discontent, however, true progress was stunted through color-blind

racist tactics that continue to obscure racial inequalities. This concept is especially important for critically analyzing legal challenges and immigration policy reforms.

CRT is particularly helpful as it offers practical tools and concepts for investigating how racialized inequalities persist across generations. The myth of *meritocracy* in immigration for instance, suggests that immigrants who work hard enough, demonstrate their worthiness, and follow the rules (or ‘get in line’) will have the opportunity to immigrate lawfully (Romero, 2008). This ideology supports the master narrative which suggests ‘America’ is a nation of equal opportunity and denies the realities of how immigration policies have grown increasingly restrictive, offering fewer options for lawful immigration. The myth of American exceptionalism (which is based on White supremacy) fuels the expectation that immigrants ‘assimilate’ into White American society, and creates stratified outcomes based on their deviations from Whiteness (Romero, 2008). The myth of *meritocracy* serves to maintain White privilege through forcing immigrant ‘assimilation’ into norms of Whiteness. This promotes the myth of American exceptionalism and conceals White racial domination through expectations cloaked in rhetoric pertaining to national identity (e.g., “racist nativism”) (Huber et al., 2008).

The concept of *meritocracy* in education is another CRT tool -which is fueled by the assumption that individual success or failure in education attainment is reflective of the students’ “work ethic, values, drive, and individual attributes such as intelligence” (Zamudio, Russell, Rios, & Bridgeman, 2011, p. 12). Despite existing social and structural inequalities, the meritocracy narrative in education (similarly with

immigration) provides a foundational myth that suggests members of society advance or fail solely on their individual merit.

Building on these CRT concepts, I apply Bonilla-Silva's (2018) frameworks on color-blind racism to examine how modern immigration policies aimed at restricting access to education have evolved post-1965 and consider their connections to escalating immigrant criminalization and deportation policies. The color-blind racism framework argues that racism is society is difficult to address because it is masked behind color-blind rhetoric that denies racism is a widespread social problem in the post-civil rights era (Delgado & Stefancic, 2017). This framework provides an essential tool for uncovering "racist nativism" ideologies within modern political discourses on immigration.

According to Bonilla-Silva (2018), political arguments framed in *abstract liberalism*, *cultural racism*, or *minimization of racism*, work to maintain racist structures through distorting, distracting, or denying reality. The dominant racial frameworks that preserve White supremacy often misrepresent the world to obscure their dominance structure. The frame of *abstract liberalism* engages ideologies related to political and economic liberalism, which use abstract principles of "equal opportunity" and individualism in order to rationalize deeply racialized inequalities. The *cultural racism* frame focuses stereotypes of culture in order to explain a racial minority groups' position in society. Finally, the frame of *minimization of racism* is another tenant of color-blind racism that refuses to acknowledge the ongoing role of discrimination and racism in social structures and policies, such as immigration. In short, CRT suggests through developing a critical consciousness that reveals structures of racialized inequality and confronts them directly -society can begin to address the social inequalities that persist

through racism. To that end, this thesis aims to demystify the use of color-blind racism in contemporary U.S. immigration policy.

Quantitative research, which relies on statistical methodologies for knowledge production, is esteemed as the golden standard for influencing structural change (public policy). This preference leads to an embedded bias wherein society does not value (or fund) diverse methods of research. Not only does this logic devalue the essential work of qualitative research, but it can also prohibit quantitative focused researchers from understanding important nuances in their data sets. Critical Race Quantitative Intersectionality (CRQI) is a framework guided by CRT principles that can provide quantitative researchers with strategies to challenge existing power structures (in academia, government, and policy) which narrowly focus on the “neutral” and “objective” findings of statistical analysis (Covarrubias & Velez, 2013). Critical race scholars argue that statistical research methods have historic connections to White supremacy and eugenics ideologies, pointing to how “statistical analysis was developed alongside a logic of racial reasoning. That the founder of statistical analysis also developed a theory of White supremacy is not an accident” (Zuberi & Bonilla-Silva, 2008: p. 3).

This is not to say that all quantitative research knowingly or willfully perpetuates racist paradigms, or that anti-racist objectives should avoid racial statistics, instead CRQI suggests researchers explore issues of race beyond a simple variable and stay mindful to not to re-affirm the logic of biological constructions of race in their work (Covarrubias & Velez, 2013). For instance, there are important social and political nuances to be understood from different countries of origin that are lost when immigrants from different

countries are combined into one pan-ethnic category (Hispanic). Researcher positionality is unavoidable too, CRQI scholars argue that even the dominant practices of statistical analysis are more the “result of the consensus-making process within the discipline” than the result of a “neutral” and “objective” logic of methods (Zuberi & Bonilla-Silva, 2008, p. 8). The general assumptions are that statistical findings are free of underlying biases, however, it is important to acknowledge that we cannot fully separate the methods and logic of statistical analysis from the analysts themselves -who are socialized through society and hold particular beliefs and presumptions about power structures which (consciously or unconsciously) affects how they explain social data.

## BACKGROUNDS

### Race, Immigration and White Supremacy

The United States has a long history excluding racialized and minoritized groups from national belonging, from Chinese exclusion and Mexican repatriation to Japanese internment, the racial formation of Asian and Latinx groups in the United States has been influenced by a defining legal characteristic of “alien citizenship” (Ngai, 2007). Socially ascribed as inherently foreign, “alien citizens” are denied full acceptance into mainstream culture, labeled as resistant to assimilation and unassimilable, and are subject to the revocation of rights and citizenship status. The need for distinctive group boundaries within national identity frameworks has resulted in the systemic marginalization of non-phenotypical members (Theiss-Morse, 2009). Generating legal and cultural environments of exclusion where normative concepts of White American identity demand the

assimilation and detachment from one's own ethnic group, to even attempt membership. Acceptance will likely never be possible for individuals who do not phenotypically pass as White, and therefore not-White-presenting Americans will forever be labeled as a hyphenated-(second class)-American.

The classification of hyphenated racial/ethnic identities within U.S. citizenship, such as Mexican-American, Asian-American, African-American, Native-American, etc., connotes a subclass of *perceived* foreign nationals<sup>1</sup> who are categorically different from the normative White American standard. This racialized distinction highlights an important dimension for analyzing anti-immigrant rhetoric and the hostile xenophobic defense of normative White American culture. Race-based violence continues to impact racial and ethnic communities, in 2019 more than half of all hate crimes (55.8%) reported in the United States were motivated by racial and ethnic biases (U.S. Department of Justice, 2020).

Compounding the issues of race, immigration policies in the United States conjointly play a significant role in shaping the receiving contexts under which immigrants work, live and belong. Their legal classification acts as a mechanism of social and systemic stratification that grants, or limits, access to various rights and resources. Analysis on the effects of legal status on Latinx immigrants provides richer insights into current sociopolitical power dynamics of racialized and minoritized groups; and race relations. It may also demonstrate how White supremacy continues to shape our national dialogues about immigration through a racialized lens. There is considerable evidence of

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<sup>1</sup> It is important to note that such distinction is made based on *perceived* foreignness – constructed as a deviation from the Whiteness as it even includes Indigenous Peoples in the United States.



racially motivated immigration policies that have sought to control immigration; and subsequently, which groups have access to upward mobility (Douglas, Sáenz, & Murga, 2015; Ngai, 2004; Kilty & Haymes, 2000). In short, immigration policies do not simply affect who is admitted into the United States; but rather, it continues to impact how immigrants of color are influenced in terms of their post-migration experiences including socioeconomic status and mobility.

In 1790, the U.S. Congress restricted American citizenship to “white persons” (Haney-Lopez, 2006) –effectively securing non-White immigrants as an exploitable labor force to fuel capitalist markets, without ever having to accept non-White immigrants as legal permanent citizens. The White racial requirement for citizenship in the United States was not removed until 1952 (Lee, 2019). Through analyzing the legal and institutional patterns of racial domination, we can start to better understand the motives that drive nativist and xenophobic rhetoric, especially when it comes to political discussions around national identity, immigration policy, and even access to education. Put differently, American nativism is a racialized gatekeeping framework utilized to assert White racial dominance over immigrant communities and justify the preservation of White American identity through anti-immigrant policies (Lee, 2004). This directly affects unauthorized immigrants’ post-migration experiences including their upward social mobility through unequal opportunities for higher educational attainment.

#### Legislating Immigrant “Illegality” and Racialized Exclusionary Rhetoric

There is an important relationship between the nation-state’s restrictive immigration policies and the structural marginalization of Latinx immigrants through

their decreed illegality. Modern color-blind ideologies would have you believe that immigrants choose not to immigrate lawfully, instead of considering the many legislative mechanisms which were increasingly enacted explicitly to exclude and restrict undesirable immigrant groups. Escalating immigration restrictions inescapably created illegal bodies from which policies were designed to exclude the least desirable immigrants (poor and low-skilled workers) from accessing the rights and privileges of citizenship (Waldinger, 2007). Immigration policies and border politics in the early 1900s sought to develop nation-state mechanisms for removing unwanted immigrants located within the nation's interior by extending deportation authority beyond the border in both *time* and *place*. Politicians leveraged federal authority around immigration policy to manipulate social hierarchies within communities and control population demographics through targeted criminalization and removal (Walia, 2021). The immigration act of 1891 for instance, extended the geographical jurisdiction of U.S. officials to deport undesirable aliens (individuals that belonged to the excluded categories) located anywhere within the United States, arguing that immigrants in exclusion categories who entered the country, did so unlawfully and therefore are subject to removal (51st Cong. Ch. 551, 1891).

Importantly, it also established a legal boundary on time, a one-year statute of limitations for enforcing deportation after arrival. The immigration act in 1903 doubled the legal deportation time period to two years within unlawful entry or becoming a public charge (57th Cong. Ch. 1012, 1903). The 1903 act increased the head tax on incoming immigrants, although it notably exempted immigrants from the Republic of Mexico, suggesting the essential role of Mexican labor. In 1907, again Congress extended the statute of limitations on deportation to three years past the initial act of unlawful entry.

The list of excludable immigrant categories for removal grew, encompassing immigrants deemed insane, a public charge, contract laborers, those afflicted with a contagious disease, or engaged in immoral occupations (59th Cong. Ch. 1134, 1907). An amendment in 1910 established the first criminal penalties, including imprisonment, for immigrants attempting to return after being deported (61st Cong. Ch. 128, 1910). The immigration act of 1917 continued to extend the statute of limitations for deportation, this time to five years past unlawful entry; it placed the burden of proof of residency on immigrants and outlawed entering the United States anywhere outside official ports of entry (64th Cong. Ch. 29, 1917). Although the statute of limitations on deportation cases for immigrants from excluded categories continued to increase, there was still a general consensus that after an immigrant settled and began to assimilate, it became increasingly unreasonable to deport them (Ngai, 2004).

Initially Mexican immigrants were not targeted for deportation because they were still considered necessary for agricultural production. In fact, to accommodate industry demands for Mexican labor during World War I, Mexicans were specifically exempted from the 1917 Burnett Immigration law which added a literacy test in addition to the head tax for all incoming immigrants (Johnson, 2003). Even though the Wilson administration temporarily removed the literacy and head tax requirements for Mexican immigrants, it was also under the condition that Mexicans were employed in agricultural work only, signifying the rigid terms of their imposed economic and social status. In the immigration act of 1907, Section 39 funded the U.S. Immigration Commission, later known as the Dillingham Commission, to investigate problems related to immigration and advise Congress on potential legislative reforms for immigration policy (Benton-Cohen, 2011).

Although the Dillingham Commission notably made little mention of Mexican immigration as a primary concern, evidence from the report which framed eastern and Southern European immigrants as *criminal* threats to the nation-state was later used to justify a national quota system through the Immigration Act of 1924, also known as the Johnson-Reed Act (Gonzalez, 2018). The policy was designed to discriminate and restrict undesirable immigrants based on their national origin, race, and (in essence) religion (Whom we shall welcome, report. 1953). However, Southern Democrats and many industry leaders lobbied to maintain accessible flows of Mexican labor, understanding the economic benefits of a cheap foreign workforce, they successfully ensured that Western Hemisphere immigrants would be exempt from the national quota system (Nevins, 2010). Also demonstrating how Mexican immigrants were not yet viewed as a dangerous threat but instead a necessary low-wage worker. These Mexican exemptions were not supported by everyone, afterwards political opposition to the Johnson-Reed Act (1924) urging Congress to restrict Mexican immigration was used in 1929 to problematize unauthorized entry itself as a criminal act (Gonzalez, 2018).

The Johnson-Reed Act (1924) established a numeric system of restrictions on immigration -with explicit racialized intentions that were public knowledge. An article published in the *Los Angeles Times* praised the law characterizing it as a “Nordic victory, for by sharply reducing immigration from Southern and Eastern Europe, it will tend to make Northern Europe the chief foreign-breeding ground of future American citizens” (O'Donnell, 1924: p. 1). Similar with other immigration debates, social conflict over national identity. The social conflicts were often rooted in anxieties of White decline, manifest as struggles over power (political/resources) and population demographics. The

article goes on to cite Representative Holaday (R-IL) providing insight into the guarded racial hierarchies in political structures of power, “When a race grows strong enough to send to this floor a member of their race to plead and to work for increased quotas from the country of their race, it is a danger sign” (p. 2) also clarifying that Rep. Holaday’s reference was directed toward Italian immigrants (O’Donnell, 1924).

The Johnson-Reed Act funded the formation of the U.S. Border Patrol, which enlisted agents from the Texas Rangers to Klansmen, instilling a “culture of racism, militarism, and violence” that is still widespread within the agency today (Walia, 2021: pp. 33). The 1924 immigration law also made another significant change to immigration policy by finally removing the statute of limitations on deportations, making the act of unlawful entry a deportable offense *indefinitely* (68th Cong. Ch. 190, 1924). This was a key shift in how unauthorized entry is prosecuted, whereas most laws carry a statute of limitations that are deemed commensurate with the crime. There is generally a time limit for which a criminal act can be prosecuted, except for extreme crimes like murder or violent sexual assault. Meaning this policy change effectively re-positioned the act of immigrant unlawful entry on the same level of criminal offense as murder.

Immigration policy and border politics provide evidence for how the racialized conversations framing Mexican immigration evolved from the need to segregate *cultural* and *economic* threats to the necessary removal of *criminalized* threats (Gonzalez, 2018). Nativist Congressman John Box (D-TX) expressed concerns over Mexicans’ “intermixture of blood”, describing their racial presence as a potentially dangerous “process of mongrelization... the most insidious and general mixture of White, Indian, and N\*\*\*\*\* blood strains ever produced in America” (Reisler, 1976: p. 244). Shifting his

rationale from a cultural argument to an economic one, he later introduced the Box Bill which aimed to restrict Mexican labor migration by extending the national quota system to the Western Hemisphere (Lukins, 2012). He argued that because Mexicans worked for lower wages, they were responsible for driving down American's earnings and quality of life.

The Box Bill was not well received among the Mexican community, a primary source article from the *New York Times* reported on an editorial from Excelsior (1928) which expressed deep resentment over the humiliating immigration proposal that would categorize and restrict Mexican nationals similarly to "Orientals" and effectively racialize them as non-White. The editorial suggests the true reason for Mexican expulsion is not the economic or social problems proposed in the Box Bill, but instead "that Mexicans cause a *racial* problem and are not wanted because they are not White" (New York Times, 1928). Fearful the Box Bill would pass the House, Senator McNary from the Agricultural Committee attempted to prevent it's vote by introducing a resolution to establish a commission to study agricultural labor problems instead of restricting Mexican immigration (Lukins, 2012). Eventually the Box Bill was defeated, as politicians were leery of placing Hemispheric quota restrictions that would have also affected labor flows from Canada (Calderón-Zaks, 2011). However, as Mexican immigration continued to increase, policy changes began to target Mexican immigrants through intentionally linking unauthorized entry with *criminal* penalties.

The legislative solution to criminalize unauthorized entry came from Senator Blease (D-SC), who introduced Senate Bill 5094, also known as the Undesirable Aliens Act of 1929. The bill was passed into law significantly intensifying the criminalization of

unauthorized entry (i.e., making the act a misdemeanor, punishable up to one year prison, a \$1,000 fine, or both), increasing immigrant detention, and making it a felony offense (i.e., punishable up to two years prison, a \$1,000 fine, or both) for reentry of any immigrant who was previously deported (70<sup>th</sup> Cong. Ch. 690, 1929). Blease's immigration bill, which repositioned *all* unauthorized entry as criminal, appeased both capitalists –who still relied on foreign labor, and White nativists– who sought to preserve their racial dominance through restricting non-White immigration. The criminalization of unauthorized entry provided businessmen with the power to deport their workforce when convenient and granted White nativists the authority to criminally detain (punish) and deport 'unauthorized' immigrants at will (Holloway, 2018; Molina, 2014).

It is important to understand Blease's political career and racialized motives in order to contextualize the origins of immigrant criminalization within United States immigration policy, which has served as the foundation for contemporary nationalist anti-immigrant rhetoric. Furthermore, Blease's political agenda provides evidence for how the histories of anti-black racism and anti-immigrant nativism are unavoidably linked.

Senator Coleman Blease was a known White supremacist from South Carolina, multiple primary source newspaper articles during his Senate term (1925 to 1931) reveal how his political objectives were widely motivated by racial prejudice. Blease often appealed to racial anxieties within his constituent base to attract political support and was known for provoking racialized violence. In one of his re-election campaign speeches, he encouraged the crowd to disregard anti-lynching laws and to continue exercising racially targeted violence to ensure the preservation of "White supremacy and the protection of the virtue of White women of the South" (Pittsburgh Courier, 1930). The Baltimore Afro-

American newspaper printed Blease's statements from a Senate Congressional hearing, in which he denounces interracial marriages, contending the State of South Carolina prohibits it; "and if the law does not take effect, disappearances from homes sometimes take effect" (Afro-American, 1928). This type of political rhetoric, grounded in anti-miscegenation and White supremacist ideologies (Fregoso, 2019), effectively provokes sexualized fears around White demographic decline and continues to be weaponized within contemporary immigration debates (Chavez, 2013).

Occasionally after a lynching, Blease would publicly celebrate the murder of African-Americans through "a bizarre death dance" (Simon, 1996: p. 84) which acted as a "spectacle of vigilante justice" (p. 84) that challenged White men to guard both their masculinity and their *Whiteness*. In 1928, Blease championed the third and last proposal to constitutionally ban interracial marriage in the United States (Stein, 2004); his proposal was also the strictest -not only criminalizing interracial unions but also mandating their punishment. In addition to stoking racialized violence through political rhetoric, Blease actively supported the structural oppression of racialized and minoritized groups through government policy. For instance, Blease opposed the allocation of resources for African-American education, arguing education would merely be "ruining a good plow hand" (Hudson, 2009: p. 19). The lived consequences of these attitudes toward racialized and minoritized groups is evident in pupil spending records, where the annual spending on African-American children (\$1.90) was starkly disproportionate to the resources spent on White students (\$17.02) (Hudson, 2009).

Despite serving only one-term in the U.S. Senate after losing his re-election, Senator Blease was nonetheless an influential political actor who used his platform to



pass legislation, such as the Undesirable Aliens Act of 1929, which continues to preserve White supremacist power structures through immigrant illegality. One newspaper article points to Blease's narrow Senate loss, citing his public disregard for the Constitution (not his support for lynching), as his political transgression that was "too much for his constituents to stand" (The Chicago Defender, 1930). The Pittsburgh Courier published an article discussing his loss and suggested, "If Senator Blease had simply favored the disenfranchisement of N\*\*\*\*s instead of lynching them..." he might have "been able to retain [his] seat in the Senate chamber" (Thomas, 1930). Illustrating how socio-political landscapes and 'acceptable' norms of racialized power dynamics began shifting away from overtly racist strategies in the first half of the 20<sup>th</sup> century. Notably, both newspaper articles avoid directly condemning Blease's racism, instead they criticize his delivery of it, with the latter proposing constructive alternatives.

Meanwhile, anti-immigrant hysteria fueled by the Depression era heightened deportation efforts targeting Mexican communities, increasing significantly throughout the Mexican Repatriations period (1929-1944). During which the United States government oversaw a systematic removal of nearly 2 million Latinx individuals, many whom were U.S. citizens or legal residents (Ray, 2005), suggesting the deportation campaign was motivated more by *race* than civic principles over *legal status*. The racialization of "illegality" among Mexican communities has had spillover effects on American citizens of Hispanic descent through legislated gatekeeping practices that have focused on restricting, detaining, and deporting undesirable immigrants (Chavez, 2013). During the repatriations period, Mexican-Americans were specifically targeted by welfare officials who pursued both immigrants and citizens for removal. Individuals who

refused to leave would have their cases closed by welfare officials documenting ‘failed to cooperate,’ and denying them future welfare payments (Weinberg, 1977).

Nationalists codify the myth of American exceptionalism through this nostalgic conceptualization of the United States as a welcoming “nation of immigrants”, which is misrepresented to justify public support for exclusionary immigration policies (Susman, 1964). The nation-state’s reputation for a ‘benevolent’ immigration system is then historicized through public discourse, positioning unauthorized immigrants as criminals *by choice*.

Applying CRT’s concept of meritocracy to immigration, I argue color-blind nativist perspectives ignore complex immigration policies which have become increasingly restrictive for low income, low-skilled workers to access legal immigration status. The logic of meritocracy suggests that if immigrants worked hard enough, they could immigrate lawfully, and implies their unauthorized status is more reflective of poor character than a direct (and intentional) consequence of restrictive immigration policies. The legislative shifts toward criminalizing ‘unauthorized’ immigrants, removing the statute of limitations on deportations, and the rise of interior policing, all contributed toward social constructions around Latinx “illegality” (De Genova & Roy, 2020). Ironically, modern nativist arguments focusing on the principals of immigrant illegality and rule of law -are rooted in legislation introduced by a known White supremacist (Blease) who was motivated with the explicit purpose of deporting of Mexicans (Holloway, 2018). Showing how the motives for creating immigrant illegality coincide with earlier efforts to restrict access to education because it ensures a racialized second class of workers with limited rights.

Building on scholarship on racist nativism and “illegality” frameworks; I provide three set of analyses to investigate structural inequalities in education among Latinx immigrants.

## PART I: THE HISTORICAL SIGNIFICANCE OF EDUCATION AND ITS ROLE IN MAINTENANCE OF RACIALIZED DOMINANCE

This first analytic chapter provides an overview of the structural manipulation of educational opportunities, and demonstrates how these disparities acted as a stratifying force of White racial domination in the U.S. Southwest territories. The historic examples provided here illustrate just some of the racialized experiences of Mexican American children in the U.S. southwest and perhaps offers a deeper insight into the motives behind structural education inequalities that still exist today.

Understanding the barriers for educational attainment for immigrants of color as the tool of White supremacy in maintaining the racial dominance in the United States is important. Early education systems played an essential role in the cultural reformation of the nation-state during U.S. territorial expansion, establishing and reinforcing racialized power hierarchies through exclusionary politics. For instance, Mexican Americans -who were otherwise granted citizenship rights through the Treaty of Guadalupe Hidalgo in 1848, were still excluded from political power by White settlers who placed education-based restrictions (e.g., English language, literacy) on voting and holding political office (Beadie, 2016).

Education-based policy restrictions operated simultaneously as a tool of exclusion and forced assimilation across newly conquered territories. An education historian,

Beadie (2016) draws parallels between federal policies such as the Bayonet Constitution of 1887 which used education-based restrictions on citizenship and political participation (e.g., voting, political office) to restrict power and force the assimilation of Native Hawaiian communities. Similarly, the Dawes Act of 1887 imposed education-based restrictions on Native Americans' access to citizenship (and land ownership rights), forcing their assimilation into White legal regimes and culture through institutions of education. Demonstrating how education-based restrictions during the colonization process and (re)integration of U.S. territories was specifically weaponized to restrict access to political power and legal rights (citizenship) within racialized and minoritized populations.

Gandhi (1998) describes the development of a postcolonial mind set from the dominant White culture which embraces a “self-willed historical amnesia” (p. 7) in order to modify uncomfortable historical narratives. Forgetting the past, specifically the violence of settler colonialism and White supremacy, allows for the ‘retelling’ of (White) American exceptionalism. This is an essential tactic for White racial domination which obscures the ironies of modern nativist attitudes toward immigrant populations, especially those of double colonized Mexican descent. Shortly after Mexico won its independence from Spanish colonial rule (1821), northern Mexican lands were conquered by the United States in 1848 at the end of the Mexican-American war. After being forcibly removed from the southwest region for centuries, Mexicans hold a more legitimate geographical claim to belonging in the U.S. Southwest region than the dominant White culture. Anzaldúa (1987) depicts the “new Mestiza” (p. 79) as coping with racial and cultural domination through adapting a tolerance for historical hypocrisies

and postcolonial ambiguity. Bringing to life the consequences of displacement, intergenerational oppression, she offers an important perspective for how nativist arguments, originating in settler colonial ideologies, continue to enact shame and violence on Chicana/Chicano bodies living in the United States.

Through the strategic domination of education systems, Whites established and maintained cultural power by imposing their religious values, legal regime, and English language on conquered territories (Stewart & De León, 1993). Following the Declaration of Independence in Texas (1836) White colonizers lobbied for control of the education systems, arguing that after Mexico invested little in education, subsequent developments would justify the adoption of English language and Protestant values in former Mexican territories (Stewart & De León, 1993). In 1857, a private school was established exclusively for White children in Corpus Christi and by the early 1870's a public school system created; however, Mexican children did not start attending until 1891 (Taylor, 1934). The modernization of early formal school systems across Texas from the 1850s to 1900 developed primarily in White areas, leading to a drastic delay in the allocation of resources for educational development in predominantly Mexican settlement regions and resulted in substantial learning disparities. The school attendance rates of Mexican-American children were less than half (31%) of White children's' (66%), which negatively affected development of literacy skills necessary for their socioeconomic mobility (Stewart & De León, 1993).

Educational institutions also served as an extension of the nation-state for managing social problems with racialized and minoritized groups. During the reconstruction period (1865-1877), political discourse in southern states frequently

questioned their return on investment for offering free public education, however, political preferences favoring education as a means of reinforcing White privilege - provide a deeper insight into the administrative role of education in maintaining racial hierarchies (Stewart & De León, 1993). According to Carter's (1970) depiction of education in the United States southwest, schools were essential for socializing Mexican American children into subordinate roles by rehearsing it at school. Formal education in the classroom was driven by the acquisition of knowledge and skills, however, discrete social control was also achieved through the social programming of informal education, in which educators greatly influence the cultural values, social norms, and behavioral expectations of society (Carter, 1970). By the early twentieth century over half (53%) of the Texas region Mexican workers were illiterate, compared to only 1.6% of White workers (Stewart & De León, 1993).

The practice of segregation into "Mexican schools" was justified as a necessary educational intervention to support English language needs, yet several institutional practices appeared to contradict this rationale. For instance, schools would automatically place all children with Spanish-surnames into "Mexican schools", including students who were fluent in English. Another institutional practice was assigning Black children to "Mexican schools", implying their primary concern for segregation practices was more strongly associated with *race* than *language*. A report funded by the United States Office of Education investigated the effects of bilingual schooling on student development and found that when students received instruction in both English and Spanish, their academic 'disabilities' disappeared (Andersson & Boyer, 1970). Authors of the

government report observed that inequalities in education stemmed more from structural education practices than innate student ability:

“They [Spanish-speaking children] would have a decided advantage over their English-speaking schoolmates, at least in elementary school, because of the excellence of the Spanish writing system. There are no “reading problems” as we know them, among school children in Spanish-speaking countries” (Andersson & Boyer, 1970: p. 53).

Despite this knowledge, Mexican American children continued to be subjected to campaigns of Americanization and cultural suppression through schools that enacted formal (reprimand) and informal (humiliation) social conditioning to reject Spanish language, and created environments of discrimination that reinforced an imposed educational handicap (Weinberg, 1977).

A multitude of issues affected the education attainment of rural Mexican children in Texas, where exclusionary politics with regard to opportunities for social mobility within White society were racially established and maintained through educational inequalities. For instance, Mexican students would lose several months of schooling each year attending substandard “Mexican schools” that would open late and close early to accommodate harvest picking schedules (Taylor, 1934). Frequent mobility from the harvest seasons also affected schooling, plus families often relied on child labor due to extreme poverty. Although Texas enacted compulsory attendance laws that required a minimum number of days in school, they were not enforced among Mexican children. Superintendents from several rural towns described situations in which “Mexicans are not interested” in education, and “nobody cares” (Taylor, 1934). Another well-known reason

for non-enforcement stemmed from the local education boards themselves (occupied largely by farmers) who were particularly unmotivated to enforce Mexican children's school attendance. As one superintendent explained, farmers "are afraid the Mexicans [if educated] would leave their farms," (p. 196) which reinforced their financial incentive "to keep the Mexicans ignorant" (Taylor, 1934). An educator with experience in the community observed common fears held by White farmers that schooling would liberate ignorant Mexicans out of fieldwork and peonage. Landowning farmers and businessmen who benefited from the cheap Mexican workforce desired a stable "uneducated labor class" that would not try to move beyond their stations (economic/racial class) in life, explicitly noting that "illiterates make the best farm labor" (Montejano, 1987). Social concerns over Mexican's academic advancement were a key aspect of farmers' Mexican education policies.

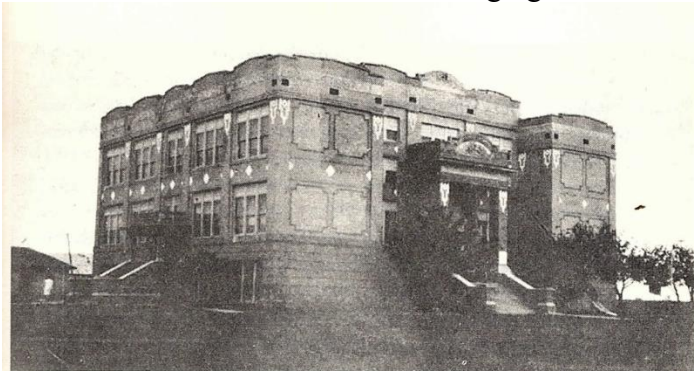
By providing a minimal amount of education, farmers ensured intergenerational oppression, as one remarked -Mexicans would make "more desirable citizens if they would stop [education] about the seventh grade" and stay in the fields (Taylor, 1934: p. 311). Farmers understood the risks to the racialized social order if Mexicans were to be educated at the same level as White students, instead their explicit solution was designing a permanently ignorant and exploitable lower-class workforce through segregation and persistent educational inequalities. As one education official observed about racialized class struggles, "The lower down the White man is the more he will object to the Mexicans. The lower-class White feels that the Mexican who is educated will try to be equal to him" (Montejano, 1987: p. 194). Other officials blamed the failure of Mexicans' academic progress on the prejudiced attitudes "chiefly from ignorant Americans" who



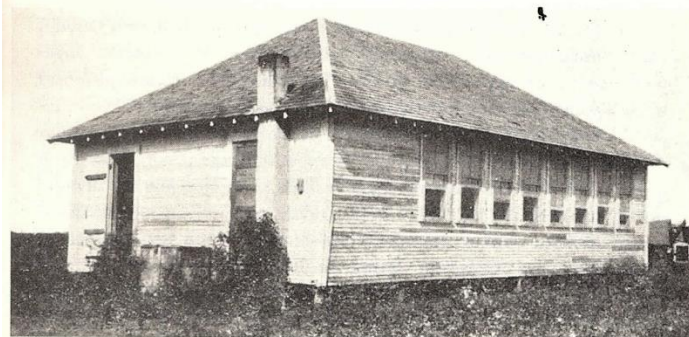
were economically insecure with their social position and felt compelled to defend their superiority (Montejano, 1987).

The Supreme Court ruling in *Plessy v. Ferguson* permitted the use of “separate but equal” schooling facilities (U.S. Supreme Court, 1896), however, the financial resources allocated for education within segregated “Mexican” schools were starkly inequitable (Figure 1). When the practice of “separate but equal” with regard to education was eventually overturned, *Brown v. Board of Education* (U.S. Supreme Court, 1954) acknowledged that segregation was intended to preserve White racial dominance through education systems that were inherently unequal (Zamudio, Russell, Rios, & Bridgeman, 2011).

Figure 1  
White “American” and “Mexican” Segregated Schools in South Texas -Late 1920’s



“American” and “Mexican” schools (above and below, respectively) in south Texas in the late 1920s. (Taylor, *American-Mexican Frontier*)



Note: Johnson, B. (2003). *Revolution in Texas: How a forgotten rebellion and its bloody suppression turned Mexicans into Americans*. Yale University Press.

Besides economic motives, racialized attitudes toward Mexicans played a significant role in their social ostracization and the general rejection of their presence through hygiene, culture, language (Taylor, 1934; Jacobson, 1999; Molina, 2014). This manifested through a common White belief that Mexicans were “an inferior race” intellectually. Despite growth in public opinion by the 1930’s which supported giving “Mexicans a chance” at education, systemic racialized opposition persisted. In California, the governing board of schools was entrusted with the power to segregate Indian children. Supplying a legal argument for the segregation of Mexican-American students, California State Attorney General U.S. Webb claimed that a majority of the population from Mexico was also Indian. This loophole was twisted to apply to Mexican-American children who were racialized as “Indian” to justify their educational segregation (Weinberg, 1977). As one school superintendent cynically noted about the prospect of educating Mexicans:

“As long as the attitudes of the people who economically control Mexican labor controls the schools, little will be done, not until a few generations come and then demand it. ... White folks don’t want the Mexicans to be anything but ignorant common labor. They are not going to do what they think is not to their interest [i.e., to educate the Mexicans]” (Taylor, 1934: p. 214).

Again, we see how racial dominance is enacted and managed through intentional academic disparities which resulted in distinct racial and class formations of power.

From California, an important federal court case *Mendez v. Westminster* (1947) challenged the practice of school segregation for children of Mexican ancestry, and the

Ninth Circuit upheld that the application of school segregation was discriminatory and unconstitutional (U.S. Court of Appeals 9th Cir., 1947). Months after this court ruling, California became the first state to officially desegregate schools and arguments from the case were later used in *Brown v. Board of Education* to support school desegregation (Background - Mendez v. Westminster Re-Enactment, 2021). Meanwhile, the threat of Mexican-American students' educational advancement in the U.S. Southwest region persisted through White social anxieties that sustained racial dominance through physical aggression and violence (Molina, 2014). A Texas resident recalls how Mexican American students in high school were beaten to dissuade them from coming, and these hazing practices were effective -maintaining extreme high school dropout rates among Mexican American students at nearly 100% until the 1950's (Weinberg, 1977).

After schools were forced to racially desegregate (U.S. Supreme Court, 1954), tracking procedures emerged within educational systems to continue previous efforts of racialized subjugation. In Driscoll, Texas school officials forced all Mexican American children (regardless of their English ability) to repeat early grades, systematically placing them four years behind their White peers by the time they left first grade (Miguel, 1983). These intentional learning delays resulted in a great deal of shame among Mexican American students who were also subjected to trauma through strict "Americanization" regimes in schools that used corporal punishment to discourage the use of Spanish language (Aleman Jr. & Luna, 2016). The League of United Latin American Citizens (LULAC) got involved in 1955, requesting Driscoll school district to change their policies for holding back Mexican American children, their response was to "experimentally" reduce the children's first grade tenure to a three-year period (Wilson,

2003). Driscoll's district wide practices of holding back Mexican American children were legally challenged in *Hernandez v Driscoll* (1957), and courts struck down the practice finding it arbitrarily discriminatory. Afterwards, school administrators adopted previous practices of segregating Spanish-surname children and assigning them into "Mexican rooms" (Carter, 1970). Consequently, Mexican American students continued to be routinely and disproportionately placed into lower-ability educational tracks that perpetuated stereotypes of the Mexican race as having an inherently lower IQ.

Derrick Bell (1980) uses *Brown v. Board of Education* to demonstrate the underlying concept of White interest convergence and how judicial interventions have been ineffective at achieving racial equality. He argues the landmark Supreme Court ruling in *Brown v. Board of Education* helped to restore the reputation of the United States internationally as democracy during World War II, however, White flight, demographic patterns influenced by poverty, and the courts inability to enforce widespread social reforms made it nearly impossible to fully implement racial integration in school systems, and as a result segregation in education systems continue (Bell, 1980). Early practices of educational segregation focused on racialized differences as the primary motivation for segregation -effectively creating and reinforcing an enduring narrative around White intellectual superiority (Zamudio, Russell, Rios, & Bridgeman, 2011).

PART II: THE SHIFT TO COLOR-BLIND RACISM: UNAUTHORIZED  
IMMIGRANTS, DEPORTATION, AND ACCESS TO EDUCATION

*“Understanding that struggles over meaning are  
inevitably struggles over resources”*

(Lipsitz, 2001: p. 100)

This second analytic chapter provides examples of color-blind racism (Bonilla-Silva, 2018; Bebout, 2016) in contemporary immigration policies that center on immigrant illegality (De Genova, 2004). Using discourse analysis, I seek to make larger connections for how “racist nativism” maintains White racial dominance through color-blind political rhetoric that seeks to vilify immigrants based on socially constructed policies that create immigrant ‘illegality’ (Huber et al., 2008). This categorization permits nation-state legal violence through dehumanizing practices of immigrant detention and deportation, as well as justifies immigrant exclusion from rights and public services (Menjívar, 2016).

Nativist opposition to immigrants’ access to citizenship and public resources – specifically in the form of education– is more about power and domination than civic principals or fiscal conservatism. As illustrated earlier, nativist discourses toward “undesirable” immigrants have historically been racialized (Ngai, 2004). In response to social movements from the 1960’s, modern conversations around issues of race have adopted racially encoded tropes through color-blind terminology disguised as politically correct progress. Meanwhile, criminality has become a central narrative in legitimizing the subjugation of immigrants in the United States (De Genova & Roy, 2020), from the denial of basic rights through restricting access to citizenship to the exclusion of public resources and services (De Genova, 2004). This repeating narrative around unauthorized

immigrants draining public resources is often provoked in order to justify their exclusion and expulsion (Mehan, 1997). Provoking racialized anxieties that also release policymakers of the implications of racialized policy structures and their implementation practices.

Debates surrounding the allocation of public resources for immigrants' education, particularly unauthorized immigrants, can be characterized by a "rhetoric of injury" that emerges within nativist arguments by focusing on a perpetrator/victim paradigm (Gutierrez-Jones, 2001). The concept of "rhetoric of injury" emerges out of critical race narratives, in which ideological beliefs demand a "moral equivalence" between the perpetrator and injured party. Through this logic, politicians leverage a "rhetoric of injury" around immigration policy that positions unauthorized immigrants as offenders, while implying the nation-states' citizens are 'injured' through the depletion of public resources. Suggesting that the criminal detention and deportation of unauthorized immigrants cannot be racially motivated because it is simply holding them accountable for 'breaking the law' and unjustly seizing resources (education) (Gutierrez-Jones, 2001). Resentment emerges from unfulfilled expectations of immigrants' "moral equivalence" through legal immigration structures, and becomes a natural by-product of nativist perceptions of foreigner invasions (Gutierrez-Jones, 2001: p. 34).

Manipulation of the working classes during times of economic turmoil have historically led to immigrants being scapegoated for local problems (Robinson & Barrera, 2012). This redirection to economic blame hides class inequalities and instead focuses on what Hage (1998) describes as the psychopathology of "white decline" (p. 190) which exploits White nationalists' fears around losing a demographic majority of power.

Supporting this theory, a recent study found strong evidence to suggest that perceptions of White population decline by ingroup members is associated with feelings of collective existential *threat*, these heightened fears are then linked with increases in conservative policy preferences and racial bias (Bai & Federico, 2020).

Conservative rhetoric linking romanticized notions of Civil Rights legislation with the Immigration Act of 1965, facilitated the illusion of interrelated racialized progress, allowing the dominant culture to obscure and minimize persistent realities of racialized legal violence occurring in immigrant communities of color. The violence of anti-Black racism and the violence of anti-immigrant racism are both rooted in White supremacy, however, the legal violence enacted against these communities from enforcement agencies (e.g., police/ Immigration and Customs Enforcement) to judicial systems (e.g., criminal justice/immigration court) operate through different color-blind systems of oppression. The Civil Rights Act of 1964 produced some measure of legal protections against discrimination for most social statuses (e.g., race, color, religion, sex, or national origin), however, the immigration system directly calls for the discrimination and exclusion of immigrants from rights and public services –“on the basis of legal status” (Menjivar, 2016: p. 600).

Ironically, the Immigration Act of 1965 which was praised for bringing racial equality to U.S. immigration policy -also included mechanisms that disproportionately hurt Mexican immigrants by drastically reducing options for naturalization. Not long after 1952 when the White racial requirement for citizenship was removed, the Immigration Act of 1965 placed for the first-time numerical restrictions on immigration from the Western hemisphere -artificially growing categories of illegal immigrants

through policy (Douglas, Sáenz, & Murga, 2015). In addition, the 1976 Amendment changed labor certification requirements, eliminating previously available pathways to citizenship for immigrants without resources, education, or relatives living in the country. When President Gerald Ford signed the Immigration and Nationality Act Amendments of 1976, he recognized the uniquely negative impact on Mexican immigration the legislation would have, stating “I am concerned, however, about one aspect of the legislation which has the effect of reducing the legal immigration into this country from Mexico... This legislation would cut that number in half” (Ford, 1976: p. 1). Suggesting that policy-makers were well aware of the implications of this legislative amendment that would legally re-position roughly 20,000 Mexicans who migrate regularly for work as unlawful (Ngai, 2004).

During the same period, the United States Immigration and Naturalization Service (INS) commissioned Gallup to conduct a survey evaluating American “Attitudes toward Illegal Aliens” (1976). While many of the individuals surveyed had heard of illegal immigration as a problem, the prevalence of anti-immigrant rhetoric was notably stronger along the southwest border states where the rising demographic *threat* of foreign nationals was amplified. Interestingly though, exposure to anti-immigrant rhetoric alone had almost no effect on a person’s a desire for stricter immigration policies. The study did find that supporters of strict immigration policy were more likely to fall within certain categories (i.e., grade school education, manual laborers and famers, residents in the South, and those with perceptions that a large amount of illegal immigration was occurring) (Gallup Study, 1976). A preliminary report from the Domestic Council Committee on Illegal Aliens suggested “that the principal impact of illegals is in the labor



market rather than on social services, [and] that language ability is an important determinant in the type of employment” (Ford, 1976: p. x). Signifying that while the use of social services (e.g., education) may not be the primary impact from unauthorized immigration, educational advancements may improve their labor market opportunities.

In 1975, the Texas state legislature revised their education policies, restricting free public education to children who were lawfully present in the United States. The law did not outright forbid unauthorized immigrant children from attending school, instead it targeted funding for school districts effectively refusing to fund the education of undocumented children and placing the economic burden on undocumented families to pay tuition (Flores, Kane, & Velarde-Munoz, 1977). The practice was legally challenged in *Plyler v. Doe* (U.S. Supreme Court, 1982), during which the Supreme Court upheld the standard that undocumented children should be eligible for the same free education as citizens or lawfully admitted immigrants, under the Equal Protection Clause of the Fourteenth Amendment.

In his dissenting opinion, Chief Justice Burger (joined by Justice White, Justice Rehnquist, and Justice O’Connor) did not dispute the application of the Fourteenth Amendment to unauthorized immigrants, however, he does suggest that the clause does not require equal treatment of persons in different legal categories who are "within the jurisdiction" of a state. His argument, which is framed in *abstract liberalism*, suggests that entitlement to Equal Protection in situations that are beyond a person’s “control” or “responsibility” cannot be equally applied to all situations. In his statement, Justice Burger reasons “[t]he Equal Protection Clause protects against arbitrary and irrational classifications, and against invidious discrimination stemming from prejudice and

hostility; it is not an all-encompassing "equalizer" designed to eradicate every distinction for which persons are not "responsible" (U.S. Supreme Court, 1982). Suggesting the Equal Protection Clause cannot be 'fairly' applied to all situations in which a person is not 'responsible', he points to the contradiction that the legislature continues to exercise its authority to restrict immigrants based on situations that are beyond their control, for instance having poor health or becoming a public charge. Secondly, he also argued that education is not any higher a priority of "fundamental" government service "than food, shelter, or medical care," yet unauthorized immigrants are generally excluded from these services as well.

During the 1980s and 1990s, the large-scale expansion of the private prison industrial complex was also mirrored within immigrant detention practices. Reagan's extensive development of criminal detention negatively impacted immigrants through a discrete mandatory detention statute in the Anti-Drug Abuse Act (1988) that required detention of any noncitizens for "aggravated felonies" -which soon expanded to include nonviolent misdemeanors (like check fraud) (Tosh, 2019). In addition to triggering a civil deportation process, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and the 1996 Antiterrorism and Effective Death Penalty Act (AEDPA) limited judicial discretion within immigration cases by restricting avenues for relief from deportation, and also reduced administrative barriers for expediting immigrant deportation (Luan, 2018). This dramatic escalation of the criminalization (detention and removal) of unauthorized immigrants coincided with the post-Immigration Reform and Control Act (1986) time period, when political rhetoric frequently blamed IRCA for failing to "stop illegal immigration" (Schneider & Ingram, 2005).

IRCA made two important shifts within immigration policy, first it focused on enforcement by punishing employers who hired unauthorized immigrants and secondly, it created an amnesty program to integrate existing unauthorized immigrants living in the country (at the time). Although the law contained elements that were meant to reduce illegal immigration (employer sanctions), minimal enforcement was taken and ultimately it did not reduce migration flows (Schneider & Ingram, 2005). An important feature missing from IRCA's framework for reducing unauthorized immigration was that it did not include any solutions to increase legal immigration avenues as recommended by the U.S. Select Commission on Immigration and Refugee Policy (1981). The implementation of IRCA at the federal level and its focus on employer sanctions resulted in job discrimination against workers who appeared foreign. The United States General Accounting Office (1990) report found widespread evidence of employer-based discrimination against "foreign-looking" or "foreign-sounding" individuals regardless of their legal status or citizenship (Bowsher, 1990). After conducting a national survey of 4.6 million employers, the study revealed significant patterns of discrimination post-IRCA, that also concentrated in areas with larger Hispanic and Asian populations indicating how illegality is racialized in society (U.S. General Accounting Office, 1990).

California Proposition 187 (1994), also known as the Save Our State (SOS) initiative, was designed to exclude unauthorized immigrants in California from accessing most public services, including education (Park, 1996). Initially the ballot initiative was approved by voters, however, legal challenges resulted with the Supreme Court striking down the law as unconstitutional. However, Prop 187 and the ensuing Supreme Court case provided an important roadmap for politicians to introduce future

federal legislation such as the IIRIRA which subsequently prohibited states from providing higher education benefits (federal aid) to immigrants who were not lawfully present in the country (H.R.2202, 1996).

Jacobson (2008) argues –similar to Bonilla-Silva (2018)– that contemporary political debates over immigration and public resources utilize a framework of “color-blind conservatism”. This functions as a political tactic to deny racist intentions while simultaneously supporting policies that result in racially oppressive outcomes. Documenting contemporary racial consciousness in relation to policy, he identifies three mechanisms of color-blind conservatism (i.e., racialization bridge, association bridge, and defense bridge) that worked to shift the racial terrain by justifying, repositioning, or obscuring racially oppressive policy actions. Interestingly, one interview predicts an armed racial conflict erupting, describing a race war in militaristic language that is mirrored in other participant statements regarding the need for nationalist defense against ‘invasions of foreigners’.

Political rhetoric focusing on “foreigner invasions” effectively triggers psychological anxieties around White demographic decline (Hage, 1998). Jacobson concludes that political strategies within color-blind racist frameworks rely on rhetoric positioning unauthorized immigrants as both illegal *and* criminal in order to gain widespread support of strict immigration enforcement policies. In this framing for example, the denial of public services through Prop 187 becomes a logical, fair, and necessary consequence for breaking the law. Conflating unauthorized immigrants with criminality produces a “rhetoric of injury” that positions citizens (tax-payers) as the victims (Gutierrez-Jones, 2001). Triggering an intense response of widespread support through

multiple avenues, from nativist perceptions of a growing racialized threat -to “color-blind” frameworks that focus on economic burdens to abdicate responsibility for racialized policy implications (Chavez, 2013).

The negative messages from legal regimes and their enforcement practices are consistently reinforced through media representations that stigmatize unauthorized immigrants as dangerous criminals in order to justify their expulsion. Scholars argue that identity construction for unauthorized Latinx immigrants is conditioned within the context of negative messaging from both formal institutions (e.g., law enforcement) and public discourses (e.g., political, media) that perpetuate Latinx communities as criminal, “devalued and unworthy” (Menjívar, 2016). Conservative media often perpetuates political rhetoric of immigrant “caravans”; offering viewers a visual wave of foreigners to draw out fear-based responses (Chavez, 2013; Hage, 1998) and bypasses discussing the complexities around global issues that drive migration. Unauthorized immigrants are blamed for their position in society, and conservative rhetoric implies their precarious legal status is a personal choice which requires accountability through rule of law and punishment. The psychological minoritization of unauthorized immigrants through “illegality” and constant threat of deportation can produce strong “subjectification” effects (Chavez, 1992), which can influence how immigrants view themselves. According to Butler, this can be expressed through a *performance* of identity, illustrated through the actions taken by immigrants in order to prove themselves as hardworking and “deserving” of citizenship (Lipsitz, 2001).

The political mobilizations against Prop 187 framed unauthorized immigrants as essential individuals -already integrated and contributing (unseen) members of society

(See Figure 2). The rationale of this argument appeals to the audience’s emotional social connections, but despite repeated imagery of hands meant to be symbolic of both community and utility, the ads themselves inadvertently reinforce the dominant White narrative (that says unauthorized immigrants have no right to be here). However, social constructions imagining immigrants’ potential through “deservingness” measures are counter-productive to social justice movements that seek to decriminalize immigration (Sirriyeh, 2020).

Figure 2  
Political Advertisements in Opposition of Prop 187



Note: The Los Angeles Organizing Committee to Defeat Proposition 187

Meanwhile, senate majority leader and Republican presidential hopeful Bob Dole (R-KS) publicly endorsed Prop 187 while campaigning in California, arguing that providing education to illegal immigrant children is "one of the most expensive mandates of all time," and has deprived (wronged) children who are lawfully present from a better-quality education (La Ganga, 1996). The “rhetoric of injury” here assumes that funding allocated for the education of unauthorized immigrant children, in their absence would still have been used to improve education. Manijeh K. Nikakhtar, a professor from UCLA offered strong support for Dole’s position, arguing, "I'm a *legal* immigrant, I work hard

and I want the money to be spent on our own kids" (La Ganga, 1996). The *cultural racism* framework can be applied to situations of conflict within one's own racial and ethnic group created by legal stratification. For instance, ascribing a culture of illegality/criminality among unauthorized populations creates a racialized stigma. The professor from UCLA distinguishes his own worthiness through identifying himself as a "legal immigrant" who "work[s] hard," in contrast with 'illegal' immigrants. Bridging the consequences from immigration policies with the creation of legal hierarchies within groups, through which neoliberal paradigms exclusively validate immigrant rights (and assumed morality) based on legal status -and inadvertently acts as an axis of social stratification.

Glen Spencer, the president of *Voices of Citizens Together*, an anti-immigration group which lobbied in support of Proposition 187, spoke before the House Oversight Committee offering public testimony to seemingly provoke a racialized hysteria based on the rising threat of "Mexican nationalism" in the United States southwest (U.S. House of Representatives, 1997). Spencer described the significance of Prop 187 as a legitimate and necessary legal attempt to stop the "invasion of California" from illegal immigrants, mostly Mexican. Arguing the recent surge in naturalization applications was an intentional racialized counterattack to Prop 187 – described as a power grab to increase Latinx political control in the state. He depicts a dangerous political reaction from the Latinx community (perceived as a *threat* to White political control):

"Following the passage of 187, we saw an enormous backlash. In January of 1995 meeting at the University of California at Riverside, Latino leaders, some 400 strong, met to determine how they were going to deal with this issue. At that

meeting--and we have it on videotape--Art Torres, who is now the Chairman of the California Democratic Party said as follows, quote, ``Proposition 187 was the last gasp of white America in California". The meeting then went on to determine that what had to happen was the Latinos had to get the power of the vote to stop proposition 187 from ever happening again." (U.S. House of Representatives, Testimony of Glenn Spencer, 1997).

Spencer continued his testimony before the House Oversight Committee, describing the growth of "Mexican nationalism" as the official "re-conquista" of the U.S. Southwest. His testimony provides one example of a larger narrative that constructs, rationalizes, and stigmatizes the threat of Latinx reconquest through media and public discourses (Chavez, 2013). Conservative rhetoric notably describes efforts within Latinx political movements as a "radical Latino" force seeking to reclaim land in the U.S. Southwest through immigration reform (Bebout, 2012; p. 291).

Following the repeal of Proposition 187 in the Supreme Court, Jacobson (2008) found that a majority of the initiative's supporters denied racial prejudice had anything to do with their support of the legislation. While some acknowledged that racism might motivate a small number of people, most re-affirmed perceptions of a color-blind society. This willful denial of racial consciousness --by White individuals who are historically privileged within racist social structures-- negates the lived inequalities experienced by people of color and promotes the myth of color-blind racial progress. Although the Supreme Court ruling in *Plyler v. Doe* preserved unauthorized students' access to primary education, other legislative actions were still taken to discourage unauthorized immigrants from accessing higher education. In 1965, Title IV of the Higher Education



Act excluded unauthorized students from accessing federal financial aid (i.e., Federal Pell Grant, Federal Work-Study, or Subsidized Loans) to fund their college education (Drachman, 2006). While it did not directly ban unauthorized youth from attending colleges or universities, it did create substantial financial barriers for them.

During a hearing before the U.S. House Subcommittee on Immigration (2007) which was convened to discuss comprehensive immigration reform through the DREAM Act, Congressman King (R-IA) made a statement opposing unauthorized students accessing the “benefits” of in-state tuition at universities (U.S. House of Representatives, 2007). Through an *abstract liberal* frame, King suggests that granting unauthorized students in-state tuition unfairly disadvantages citizen students who have to pay out of state tuition. Chavez (2013) describes how nativist views of immigrant rights, granted by the Fourteenth amendment, have detracted from the value of U.S. citizenship. Who should have access to what first and based on what characteristics; King argues that citizens should be entitled to privileges that precede unauthorized students in practices of in-state tuition policies. This logic creates a false comparison, where the true motive of managing “disadvantages” through financial access to higher education becomes obscured by focusing on legal status and citizen/immigrant social hierarchies.

Congressman King also employed a *minimization of racism* frame, through diminishing the experiences of asylum seekers who testified before the House committee, while privileging a nativist myth of how to maintain American exceptionalism.

“All of our hearts go out to people who are not in control of their own destiny, and I recognize that the witnesses here before us on this panel represent that cross-section of those who are not in control of their own destiny. By the same

token, the United States of America needs to be in control of its destiny as well....

What should the population of the United States be in 25 years or 50 years? Who should be allowed to come to the United States, and who should be sent back to the country of their origin?" (U.S. House of Representatives, 2007).

The idea of a person 'not in control' of their own destiny is detached and incomplete way of framing the conditions under which people seek asylum. Drug trafficking organizations for instance oversaw the rise of violent crime, extortion, and kidnapping, and as homicide rates escalated in Mexico -roughly 1.6 million people were internally displaced as of 2011 (Cabot, 2014).

His argument hints at anxieties of demographic change, and he later implies that "American exceptionalism" will be lost if society does not uphold the "rule of law" through restrictive immigration policies which conveniently preserve a dominant White society. During his testimony, King rationalizes that his Congressional obligation is to the destiny of the United States, a destiny he believes needs to move "to a higher destiny, not a lower destiny", suggesting that immigration in fact diminishes the potential of American excellence. Congressman King was eventually removed from his Committee assignments in 2019 after repeated accounts of white supremacist remarks (Gabriel, Martin, & Fandos, 2020), and lost his re-election in 2020 (Sprunt, 2020).

Beaumier (2015) points to how the U.S. economy thrives on immigrant labor, suggesting that border controls were weaponized through state actors in order to concentrate and reproduce poverty within immigrant communities. Arguing employers hire undocumented workers because they can pay lower wages and workers have no legal protection from labor exploitation (due to their "illegality"). Therefore, exclusionary

immigration policies that are intolerant of the poor, low-skilled, and uneducated, have left generations of immigrants living in the U.S. stuck in perpetual poverty exactly because their undocumented status which restricts economic mobility and access to opportunity.

The immigration court system is also uniquely designed to disadvantage immigrants from receiving due process under the law. For instance, removals, or deportation proceedings are not adjudicated in criminal court despite potentially carrying criminal penalties -including detention (Eagly & Shafer, 2016). This is because deportation cases are classified as civil matters, not criminal, leaving financially vulnerable immigrants in precarious legal situations and without the right to a court appointed attorney. The American Immigration Counsel's special report found that nationwide only 37% of immigrants attained legal representation during their removal proceedings, and immigrants in detention were less likely (14%) to obtain legal counsel (Eagly & Shafer, 2016). The consequences of these class inequalities are reflected in the advantages of having financial resources to acquire an attorney, where immigrants with legal representation were 11 times more likely to receive relief from deportation (Eagly & Shafer, 2016). The racialized construction of immigration enforcement would suggest these barriers are intentional.

Modern mass deportation policies continue to act as nation-state mechanisms for the dehumanization and removal of targeted immigrant groups (Chavez, 2013). Wherein policies like Operation Endgame (2003), Operation Streamline (2005) and the Secure Communities Act (2008) reinforce social "othering" through racialized criminalization and expulsions -by physical, social, and civic means (Epps & Furman , 2016). In practice, deportation policies have become instruments of racial dominance, which have continued

to legally validate nativist hostility toward ‘undesirable’ immigrant groups. Despite ICE’s public statements of prioritizing criminal “aliens”, data shows that 79% of individuals deported were non-criminal (Epps & Furman , 2016). It also reveals these deportation campaigns have disproportionately targeted Latinx immigrant communities for removal, raising concerns over ethical violations (including abuse of power) for racialized profiling.

The appearance of the nation-state as a fair and hospitable “country of immigrants” frees White Americans of experiencing guilt over their political support of cruel border enforcement policies such as the family separation policy, or the Migrant Protection Protocols (MPP) policy. Glimpses into the lived realities of strict border enforcement policies through news media coverage of immigrant children in cages for instance, may trigger discomfort and critique among wider audiences. And so, the retelling of history within the dominant narrative is essential for preserving ongoing practices of discrimination, and requires a repositioning that either ignores the consequences of their actions, or justifies them (Trouillot, 2015). This justification in conservative discourse is achieved through the frame of immigrant “illegality” (De Genova, 2004).

Yet from a global perspective, the consequences of recent U.S. border enforcement policies have received widespread criticism. The international community, healthcare providers, and scholars, who’ve made public statements against the practice of involuntary family separation as a means of border deterrence, cited violations of international law through inflicting distinct psychological trauma (Starr & Brilmayer, 2003; Brabeck, Lykes, & Hunter, 2014; UN News, 2018; Habbach, Hampton, & Mishori,

2020). And as of February 19, 2021, Human Rights First has documented at least 1,544 public reports of rape, kidnapping, torture, and other violent attacks that were carried out against asylum seekers forced to wait in Mexico under the MPP program (Human Rights First, 2021). Despite this documented evidence of harm as a result of immigration policies, the positionality of moral superiority (Gutierrez-Jones, 2001) through constructs of immigrant “illegality” (De Genova, 2004) allows the dominant group to rationalize these unfortunate (but necessary) consequences. While national security expansions in response to globalization, xenophobic rhetoric, and recently a global pandemic -have fueled the problematization of foreign “others” (unauthorized, refugee, asylum seeker, displaced, stateless) around the world (Ngai, 2004; Walia, 2021).

### PART III: REVIEW OF RESEARCH ON “LEGAL STATUS AND EDUCATIONAL ATTAINMENT”

This final analytic chapter provides a critical review of existing quantitative research on the effects of legal status on education attainment through a CRQI lens. This review focuses on quantitative research because of its power to influence policy (immigration and education). There is substantial nuance to these “numbers” that is largely left to researcher speculation. Without insights from qualitative, ethnographic, and community participatory research methods, the complexities of human experiences that underly these statistical analyses will be lost to the interpretations of social science researchers (who also view the world through their own racialized biases). Research on the effects of legal status on education attainment is particularly important because both

legal status and educational attainment can affect immigrants integration and intergenerational socio-economic mobility.

The critique encompasses eight quantitative studies (Cortes, 2013; Greenman & Hall, 2013; Terriquez, 2014; Diaz-Strong & Ybarra, 2016; Patler, 2018; Hsin & Ortega, 2018; Bean, Leach, Brown, Bachmeier, & Hipp, 2018; Hamilton, Patler, & Savinar, 2020) that were identified for this review. Studies focusing on the effects of legal status on education attainment were limited, so certain categories were left broad, such as Latin American (Latino\*, Mexican, Central American) 1.5- and second-generation immigrants at any stage in the education pipeline. Although, there were no time limitations set for the literature search, all of the studies identified here were published within the last ten years (2013-2020).

#### Emerging Research Themes

##### Legal Status & Citizenship Stratification

When measuring the effects of legal status on education attainment among Latinx 1.5 and second-generation populations, qualitative (Cebulko, 2014) and quantitative (Patler, 2018) research indicate that stratification occurs along both legal status and citizenship status. The nation-state enacts legal violence against unauthorized immigrants attempting to access higher education through multiple avenues, such as restrictions on access to social programs (federal financial aid, scholarships), restricted mobility, limited jobs prospects, and restrictions on benefits such as health insurance (Menjívar & Abrego, 2012). These restrictions have ensured unauthorized students are in positions of significant inequality *if* ever they attempt to pursue a higher education degree, which also happens to be fundamental for their socioeconomic upward mobility and integration.

Despite some opportunities legal status may afford, there are many different types of immigration status, and a growing body of research is supporting the concept of “liminal legality” (Menjívar, 2008; Roth, 2019; Hamilton, Patler, & Savinar, 2020) to describe Deferred Action for Childhood Arrival (DACA) and Temporary Protected Status (TPS) recipients -who are in a continuing state of limbo. They have become political pawns, being given contradictory messages of hope for social inclusion without any pathway to achieve it. Suggesting that because these temporary legal status authorizations do not provide pathways for citizenship or even permanent residency, legal noncitizens are still experiencing increased educational barriers which leads to stratified educational outcomes relative to their native-born (citizen) peers.

Patler (2018) identifies this theme of a “citizenship advantage,” finding that both legal noncitizens (68%) and undocumented youth (56%) were less likely to enroll in college compared to 2nd gen citizens (83%). Similar disadvantages across citizenship status are observed in half of the studies in this review. Unauthorized youth experience a wide range of barriers in accessing higher education, including financial limitations from a lack of access to financial aid or outside resources to pay for tuition, some also face responsibilities to support their family. This is precisely where CRQI would suggest qualitative work could fill the gap “between the numbers”, where none of this nuance is explained when just looking at college enrollment rates. Mixed education outcomes from several of the studies in this review reinforce the need not only for more accurate data on immigrant legal statuses but also for more comprehensive methods of inquiry that include community narratives.

## Race/Ethnicity in Immigration

Systemic barriers enacted by external color-blind racist paradigms are reinforced through internalized racism which persists with racialized and minoritized youth through education pipelines -of being limited (e.g., institutions, administrative authorities, teachers, and peers) and being limiting (e.g., internal adoption of prejudices, imagined possibilities, and intergenerational socialization of racial hierarchies). Immigrant integration issues stemming from legal status and race/ethnicity are largely conceptualized independently from one another, yet a CRQI framework would argue these characteristics are experienced simultaneously, which can further exhaust inequalities between different immigrant populations. These racialized experiences can have harmful implications for individuals from all legal statuses and immigrant generations.

Supporting this theory, Terriquez (2014) illustrates how Latinos compared to Whites, experience lower odds of attending all types of post-secondary institutions (e.g., community college, state/4-year, top tier university). Cortes (2013) also finds significant differences by race/ethnicity on the effects of IRCA, where Latin American youth (14.7%) were more likely than Southeast Asian youth (8.7%) to enroll in higher education. Similarly, Hsin & Ortega (2018) find significant racial/ethnic group mean variations between legal statuses. In addition, the issue of racialization effects on immigrants' education attainment, including how perceptions of "illegality" may continue to exacerbate intergenerational inequalities, is not a well-studied subject.



## Effects over Time

Although new research is emerging on immigrant legal status, there is still limited work that examines how and when inequality manifests across education pipelines.

Combined this work suggests that legal status acts as a stratifying force at multiple stages of educational development. Patler (2018), Greenman & Hall (2013), and Hamilton et al. (2020) examine changes from high school enrollment through high school completion (or noncompletion) and then access to higher education through college enrollment.

Improving on this research, college completion rates would be a crucial stage to add for analysis of the entire higher education pipeline. Cross-sectional administrative data also presents limitations for identifying the processes through which inequality develops across education institutions and generations. Researchers are increasingly calling for historical comparisons on education attainment to be made across immigrant generations (Waters and Jimenez, 2005; Telles and Ortiz, 2008; Bean, Brown, and Bachmeier, 2015), as there is limited empirical work that examines immigrant descendant's educational attainment beyond the second generation (Chiswick, 2004). CRQI would suggest that qualitative/ethnographic research could be incredibly helpful, interviewing practitioners (teachers, counselors, administrators), students, and parents to provide insight into these gaps in research.

## Opportunities for Future Research on “Legal Status and Educational Attainment”

Indeed, the quantitative findings laid out here -support the work by qualitative researchers (Abrego, 2006; Gonzales, 2011; Cobb, Meca, Xie, Schwartz, & Moise, 2017) which suggests that liminal legal status, lacking access to citizenship, and racialization

are negatively impacting Latinx individuals' educational experiences in the United States. While identifying three major themes in research on legal status and educational attainment, I also identified several research challenges that are important to consider for future CRQI research.

#### Data Availability & Measurement

First, we need to collect better national data on immigrant legal status. Although extensive qualitative research has explored the challenges facing unauthorized young adults (Cebulko, 2014; Cervantes, Minero, & Brito, 2015; Rodriguez, 2017; Negrón-Gonzales, 2014), there is still relatively little quantitative studies drawing comparisons between legal statuses (e.g., unauthorized, authorized, and native-born youth). This is largely due to limitations on availability of data. Some existing challenges with measuring legal status include self-report measures, proxy measures, population estimates, and capturing legal status diversity. A majority (6/8) of the studies identified for this literature review were unable to draw from nationally representative datasets, this is because administrative surveys from the U.S. government generally do not collect information on immigrant legal statuses. These questions are left out in part because of concerns over their legally precarious nature which may result in repressed participation or invalid findings (U.S. Government Accountability Office, 2006).

This limitation has led researchers to develop residual estimation techniques for studying unauthorized populations, even though the statistical techniques are still subject to error and researcher bias (Van Hook, Bachmeier, Coffman, & Harel, 2015). Conversely, recent findings by Bachmeier, Van Hook, and Bean (2014) indicate that nonresponse rates from surveys with legal status questions could be relatively

insignificant. They suggest that through standard imputation procedures to adjust for nonresponse rates, the government could collect more accurate data to better understand immigrant integration in the United States by including legal status measures in national surveys.

Another issue with measurement that can arise from studying legal status is when immigrants are combined into one general category, again this is mostly due to limitations with data. For instance, when Diaz-Strong & Ybarra (2016) grouped refugees, asylees, students, and temporary authorization workers into one ‘documented’ immigrant category, they did not focus different legal status categories. Instead, they measured dummy variables that merely distinguished authorized and unauthorized immigrants from citizens. This binary framework for investigating legal status prohibits our ability to understand diversity within different legal status categories of “authorized” immigrant groups. CRQI concepts echo calls from the academic community for improved disaggregation of immigrant data that captures full legal diversity among immigrant populations (Van Hook, Bachmeier, Coffman, & Harel, 2015; Marcelli, Pastor, & Wallace, 2015; Massey, & Bartley, 2018). Broad categorizations overlook the unique challenges faced within each legal status group, and are problematic for identifying genuine effects of legal status -especially when legal status categories are not clearly measured or disaggregated.

Finally, by focusing on school enrollment measures, researchers could be missing important nuances regarding immigrants’ higher education timelines and completion rates. As evident with Patler (2018), Greenman & Hall (2013) & Cortes (2013) -who use educational enrollment measures for better understanding post-secondary education.

College enrollment by itself is not a sufficient measurement, especially if the degree is never completed. Yet only one study from this review measured college completion (Hamilton et al., 2020), and they did not distinguish between different post-secondary education attainment levels or indicate time to completion. Hsin & Ortega (2018) demonstrate in their work the importance for researchers to consider the differences between enrollment types (e.g., full-time, part-time) and institution levels (e.g., community college, 4-year universities) to fully capture socioeconomic differences across education attainment.

### Racial Categories & Generalizations

One major issue with immigration research on Latinx populations is the heterogeneity construction of racial/ethnic categories that often combines several different national origin groups into one larger pan-ethnic category of analysis. None of the studies identified in this review examined differences by country of origin, instead (mostly due to sample size limitations) researchers condensed racialized and minoritized groups together, including those arriving from different political contexts, and will likely miss important nuances within these larger pan-ethnic categories (e.g., Latino, Asian).

Recent research on the children of immigrants found evidence suggesting educational attainment disparities vary between and within different geographic, historical, and political immigrant sending contexts (Feliciano & Lanuza, 2017). Acknowledging these social constructions around race and research methodologies will be important for exploring intersectionality and better understanding how circumstances vary between different groups. CRQI concepts encourage the application of statistical analysis of race within historic contexts -this work can be used to create the foundational

“support of a causal [race] theory” (Zuberi, 2001: p.133), however, existing limitations within datasets have also prohibited researchers from actively testing theories of racialization with regard to legal status (Patler, 2018).

Looking at a five-year pooled estimate of the United States Census American Community Survey (ACS) from 2014-2018 illustrates how educational variations between countries of origin can be skewed when racial/ethnic categories are merged (See Table 1). Altogether, foreign born immigrants from the three Latin American countries in the “less than high school” education category show a 26% naturalization rate. However, when you look at the countries individually there are significant differences, for instance, you can see El Salvador’s (32%) naturalization rate is responsible for inflating Mexico (25%) and Guatemala’s (23%) rates. And again, in the graduate education level category, El Salvador’s (76%) higher rate raises the group mean for Mexico (69%) and Guatemala (72%). Previous research on brain drain from Latin America found that roughly 30% of the college educated population from El Salvador were living abroad in the U.S. Labor market (Özden, 2005). As seen in Table 1, foreign born immigrants from El Salvador experience the highest percentage of naturalized status in all four education attainment categories compared to other Latinx immigrants from Mexico or Guatemala.

Table 1  
Education Attainment by Country of Origin and Citizenship - Mexico, El Salvador, Guatemala

	Noncitizen	% Naturalized	%	Total	
<b>Education 1=Less than HS</b>					
Mexico	127,269	75%	43,148	25%	170,417
El Salvador	11,670	68%	5,522	32%	17,192
Guatemala	8,472	77%	2,600	23%	11,072
<i>Total</i>	147,411	74%	51,270	26%	198,681
<b>Education 2=HS/GED/2Yr</b>					
Mexico	81,146	59%	55,781	41%	136,927
El Salvador	7,375	48%	7,886	52%	15,261
Guatemala	4,507	52%	4,196	48%	8,703
<i>Total</i>	93,028	58%	67,863	42%	160,891
<b>Education 3=Bachelors</b>					
Mexico	6,252	40%	9,208	60%	15,460
El Salvador	705	35%	1,304	65%	2,009
Guatemala	473	38%	778	62%	1,251
<i>Total</i>	7,430	40%	11,290	60%	18,720
<b>Education 4=Graduate</b>					
Mexico	1,751	31%	3,961	69%	5,712
El Salvador	179	24%	558	76%	737
Guatemala	126	28%	332	72%	458
<i>Total</i>	2,056	30%	4,851	70%	6,907
<i>Total</i>	249,925		135,274		385,199

Note: U.S. Census American Community Survey (ACS), 5-year pooled estimate (2014-2018).

Another issue with academic research into Latinx populations is that an overwhelming focus has been placed on Mexican-origin populations. Although Mexicans have historically made up the largest portion of Latinx immigrants in the United States, when researchers limit their focus to one country of origin, they are likely missing important variations within racialized and minoritized immigrant populations from different sending countries of origin. Not to mention, recent U.S. immigration trends have seen a decline in Mexican-origin migration. Mexicans now account for less than half the unauthorized population (Passel & Cohn, 2019), while Central American populations have grown 25% from 2007-2015 (Cohn, Passel, & Gonzalez-Barrera, 2017). CRQI concepts would urge future research to consider how racialization and unauthorized status might shape educational experiences for immigrants and their descendants. Also, to

consider how intersectionality frameworks might apply in different sending and receiving contexts.

### Heterogeneous Context of Reception

The context of immigrants' reception, such as state-level immigration policies/enforcement and individual-level variations between legal statuses, will likely *intersect* with other factors such as race, gender, sexual orientation, and class. An important theme that emerged from this research is the indistinct impact of state-level immigration policies on unauthorized populations. While there is some evidence that in-state tuition policies provide benefits, such as slightly higher college enrollment rates (Flores, 2010), there have also been mixed results when legal status is considered. For instance, Patler's (2018) study in California found minimal effects of in-state tuition policies on unauthorized youth's odds of college enrollment. This finding illustrates how barriers to post-secondary education persist for unauthorized youth, even in more friendly political receiving contexts like California. While Patler suggested that exclusion from federal financial aid may serve as a stronger barrier for college enrollment among lower income unauthorized families, CRQI would challenge future work to collaborate with qualitative fields of inquiry in order to explore these gaps in knowledge more directly.

Political and geographic contexts, such as conservative/liberal or a state's geographic proximity to the border can also influence and shape the everyday experiences of immigrants. With a large majority of the studies (75%) identified using samples from California, findings will not be generalizable for immigrant experiences across the United States. Ironically, California become a relatively immigrant friendly state, passing state-level legislation that offers unauthorized immigrants' access to

subsidized health insurance, financial aid, and student loans (Golash-Boza & Valdez, 2018). Therefore, immigrant populations sampled from this state likely miss diverging educational experiences of immigrants in more hostile political receiving contexts, like Arizona (i.e., Senate Bill 1070) or North Carolina (i.e., an anti-sanctuary city, House Bill 318) which have passed strict anti-immigrant legislation. Currently, there is a spectrum of different state-level laws across the country that effect who has access to higher education, even in less restrictive states, like Arkansas, Indiana, or Maine, which have opened in-state tuition policies to DACA students -will still have barriers for unauthorized students. A recent study found evidence of immigrant population variations within state-level political contexts that again justify the need for better understanding of diverse immigrant experiences across different receiving contexts (De Trinidad Young, Leon-Perez, Wells, & Wallace, 2018).

#### Heterogeneous Yet Invisible Legal Statuses

Out of the eight studies identified, only three had examined distinct legal status categories. Of these, one looked at an estimated IRCA population (Cortes, 2013) and the other two looked at DACA status individuals (Hsin & Ortega, 2018; Hamilton, Patler & Savinar, 2020), however, only Hamilton, et al. (2020) used self-identified legal status measures. This work makes an important step toward examining the effects of immigration policies, like IRCA and DACA, however, more work needs to be done to understand the impacts of diverse legal categories. For example, there are nearly 250,000 Salvadoran TPS recipients, who arrived in 2000, and have been raising children from different legal statuses (Wilson, 2020). Immigrant integration is examined through processes of economic and social inclusion, such as some work has been done to



understand TPS labor market outcomes (Orrenius & Zavodny, 2015), and other social integration experiences (Menjívar, 2017; Rojas-Flores, Hwang Koo, & Vaughn, 2019), yet little is known about the effects on education.

This gap in knowledge hinders integration efforts of TPS recipients and their children who have been in the United States for two decades. Immigrants navigate a wide range of experiences based on many intersecting factors, such as national origin, circumstances of immigration, race, and cultural capital. For instance, the integration experiences between a Dreamer who was raised in the United States and speaks English will be very different from an asylum seeker who may not have prior exposure to U.S. culture or English language. Menjívar (2008) highlights this key gap in research suggesting that more work needs to be done to better understand complexities around immigrant integration. Immigration policies are regarded as important elements which influence the context of reception that immigrants face, yet considerably less academic work has been done to examine how immigration policies act as axes of stratification within these different statuses.

## CONCLUSION

This thesis set out to demonstrate how nation-state officials weaponized governing structures (education and U.S. immigration policy) to promote and preserve White supremacy, as well as expose its underlying connections within settler colonialism. This research places “racist nativism” in context with the historic construction of immigrant “illegality” and contemporary “color-blind” immigration policies, specifically those that affect immigrants’ access to education. Tactics of racial domination in

education systems have extensive histories, from denying education, access to quality (equal) education, and now access to higher education – the dominant group continues to safeguard and reproduce educational inequalities. Both the pursuit of knowledge and knowledge production within higher education reflects a tradition of race-based systemic barriers which deny racialized and minoritized groups’ access. Moreover, the potential of intergenerational transmission of criminal punishment from parents’ illegality to their children (including access to life opportunities through education, employment, mobility, social benefits, etc.) suggests the enduring educational inequalities (based on immigrants’ illegality) are precisely racialized to hinder intergenerational socio-economic advancement.

Racist nativism, settler colonialism, and CRT concepts challenge researchers in the field of immigration policy to move beyond simplistic statistical analysis of race that ignore deeper historic foundations of racism. The acknowledgement of these historic truths becomes increasingly relevant as efforts across the country actively seek to silence the education of CRT in the United States. Examining the national progression of CRT education policies, twenty-one states have passed legislation to restrict education on racism and history, while nine have sought to incorporate CRT history or related concepts (Stout, and LaMarr LeMee, 2021). CRT scholars suggest a key issue is that immigration rhetoric largely fails to connect the consequences of social constructions around race and immigration policies -with the contemporary lived realities of immigrants in the United States (Douglas, Sáenz, & Murga, 2015). The significance of appearing ‘unbiased’ in the field of immigration policy research has resulted in a professional culture that avoids issues of race; which is mutually responsible for enabling racism to continue through

color-blind rhetoric. This permits the dominant White group a self-willed ignorance (Gandhi, 1998) of persistent racialized inequities.

From a globalization perspective, it will be challenging to advocate for immigration reform when so many Americans (consumers, corporations, and political parties) continue to benefit from the exploitation of ‘non-citizen’ labor, both domestically and internationally. While capitalist-driven businesses have the most direct benefits to gain from the continued exploitation of immigrant labor, it would also be naive to suggest that we all don’t benefit in one way or another. From the products we buy, the foods we consume, and the services we enjoy, in reality the exploitation and subjugation of individuals labeled as foreign “others” is part of the White American colonial legacy.

The first analytic chapter provided historical insights into the racialized experiences of Mexican American children in the formation of public schools in the U.S. southwest territories. Placing in context with the political and economic motives of White racial domination, this section presented analysis of racialized structural education inequalities that have persisted overtime. The second analytic chapter provided important connections between the construction of immigrant illegality and the lived consequences of a dominant society that insists on (and benefits from) maintaining the myth of color-blind racial progress. This work adds to literature in CRT through identifying color-blind racist rhetoric within contemporary immigration policies/politics, and demonstrates the sustained influence of White supremacy in nativist ideologies. Finally, the third analytic chapter revealed there is a substantial gap in quantitative research on the effects of legal status, in large part due to limitations with data collection. Perhaps the lack of administrative data on diverse immigrant legal statuses is the true “elephant in the room”

of immigration policy research. This would for instance, be a moot point if immigration policies were decriminalized and administrative data was collected on all immigrant statuses to understand how different categories might amplify or diminish an immigrants' social stratification in the United States. Importantly, more work needs to be done in the field of quantitative immigration research to test theories of racialization, using quantitative inquiry as a tool to demonstrate CRT social inequalities.

Society is structured, socialized, and stratified through education systems, and poor academic performance can place unauthorized students (and their family members) at unique risk for deportation. What has also been described as the “school-to-prison pipeline” becomes increasingly relevant for Latinx youth who are more likely than their White peers to experience this trajectory (Seroczynski & Jobst, 2016). Addressing the policy construction around immigrant illegality will be essential. Researchers have already made suggestions for shifting away from criminalized immigration policy frameworks by: (1) focusing on *earned* legalization pathways, (2) having Congress re-institute a statute of limitations on immigrant deportation, and (3) expanding judicial discretion to grant immigrants relief from removal and include considerations for time spent in the United States, absence of criminal offense, and familial ties to the United States (Jones-Correa & De Graauw, 2013).

The basic premise of these shifts would be that illegality is then focused on a person's behavior, versus criminalizing the person as a whole. Recently, Congressman Garcia (D-IL) re-introduced the New Way Forward Act into the House, this legislation would address goals 2, 3, and much more (H.R. 536, 2021). For instance, California recently signed into law AB 32 (2019), which prohibits the state going forward “from

entering into or renewing a contract with a private, for-profit prison”(California, AB-32, 2019), the New Way Forward Act would expand this phasing-out process of for-profit prisons to the federal-level. It would also decriminalize immigrant entry/ re-entry, end mandatory immigrant detention/ deportation, require probable cause immigrants’ arrest, limit categories of “serious crimes” that disqualify an individual from asylum, and would prohibit state and local officers from performing immigration-related functions. These are just some of the legislative reforms that would help to address the human rights issues facing immigrants today. In general, immigration policy needs to shift away from conceptualizing undesirable immigrants through ‘illegality’ frameworks that seek to criminalize their mobility and ensure intergenerational subordinate positions in society through the stratification of rights (citizenship) and resources (public benefits).

Immigration reforms and political messaging campaigns that have focused on immigrants’ essential roles have proven ineffective at combating the racialized motives of anti-immigrant rhetoric. By side-stepping the issue of racism, these campaigns inadvertently feed into the dominant narrative –legitimizing a racist immigration system (by not challenging the historic racist origins of policy) and reinforcing internalized racism (by requiring immigrants’ to justify their worthiness to stay). The dominant White narrative benefits from a color-blind society that obscures racist nativism and denies modern immigration policies are racially motivated (Huber et al., 2008). However, the origins of immigration policies matter, who designed them and for what purpose, as the consequences of creating immigrant illegality are still rippling outward today. This research serves to draw larger associations between the historic racialized motives in educational structures, the policy construction of immigrant “illegality”, and modern

“color-blind” policies that seek to punish unauthorized immigrants through their exclusion from higher education. I connect how White privilege is then further maintained through these color-blind tactics of racialized gaslighting that deny race has anything to do with immigration policies.

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