

# **Addressing Gendered Trauma, Identity, and the Crime-to-Deportation Pipeline Among Southeast Asian Men**

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## **ABSTRACT**

Deportation continues to be a pressing concern for the Southeast Asian community. Since 1998, more than 17,000 Southeast Asians have received orders of removal, and over 1,900 have been deported. Notably, the majority of these deportation orders result from old convictions of “aggravated felony” crimes, and the majority of those facing deportation are men. This suggests not only an entrenched crime-to-deportation pipeline, but that Southeast Asian men may face specific issues that predispose them to crime, and for those without U.S. citizenship, deportation. An analysis of Southeast Asian refugee experiences and their intersection with the U.S.’ deportation and carceral systems reveals that Southeast Asian men navigate a complicated system of generational and refugee-related trauma, institutional racism, gender disparities, and socioeconomic inequality. Though these men do retain agency in their actions and choices, these factors often position them towards crime, and ultimately deportation. In recognition of these findings, this Note discusses the potential for community-based education on crime and deportation as a beneficial solution for Southeast Asian men and youth.

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## INTRODUCTION

Numbering more than one million, Southeast Asian refugees are the largest resettled refugee group in U.S. history.<sup>1</sup> However, 45 years post-resettlement, this group continues to struggle across numerous measures of health, education, and socioeconomic wellbeing, and often finds its issues

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1. Teresa Wiltz, *Southeast Asian Refugees and the Prison-Deportation Pipeline*, PEW (Apr. 5, 2016), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/04/05/southeast-asian-refugees-and-the-prison-deportation-pipeline>.

overlooked or excluded from America's refugee narrative.<sup>2</sup> In the last few years, the Trump Administration has brought to the forefront one of the most pressing issues affecting the Southeast Asian community—deportation. Since 1998, more than 17,000 Southeast Asians have received orders of removal, and over 1,900 have been deported.<sup>3</sup> These numbers drastically increased under the Trump administration, with deportations of Cambodian and Vietnamese Americans reaching the highest they have been in over a decade<sup>4</sup>—between 2017 and 2018 alone, deportations of Cambodians and Vietnamese increased by 279 percent and 58 percent, respectively.<sup>5</sup> Importantly, 80 percent of these deportations are based on old criminal records,<sup>6</sup> implying a significant crime-to-deportation pipeline.<sup>7</sup> In addition to being severely detrimental to the Southeast Asian community,<sup>8</sup> these deportations also highlight another troubling fact—that the number of men far outpace women in detentions and deportations.<sup>9</sup> What elements predispose Southeast Asian men to these outcomes? What are the impacts of these gendered detentions and deportations on the Southeast Asian community? Such questions suggest that a closer focus on the Southeast Asian male demographic is warranted.

Accordingly, this Note focuses on the Southeast Asian crime-to-deportation pipeline and takes the position that it should first be understood as

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2. SE. ASIA RES. ACTION CTR. & ASIAN AM. ADVANCING JUST.—L.A., *SOUTHEAST ASIAN AMERICAN JOURNEYS: A NATIONAL SNAPSHOT OF OUR COMMUNITIES*, 6 (2020) [hereinafter *A NATIONAL SNAPSHOT OF OUR COMMUNITIES*].

3. *Asian American Organizations Denounce Deportations of over 30 Cambodian Americans at Beginning of 2020*, SEARAC (Jan. 14, 2020), <https://www.searac.org/immigration/asian-american-organizations-denounce-deportations-of-over-30-cambodian-americans-at-beginning-of-2020>.

4. *Id.*

5. *CAPAC Discusses Alarming Rise of Southeast Asian Deportations Under Trump*, SEARAC (Nov. 14, 2019), <https://www.searac.org/immigration/capac-discusses-alarming-rise-of-southeast-asian-deportations-under-trump>.

6. *The Devastating Impact of Deportation on Southeast Asian Americans*, SEARAC (Apr. 15, 2018), <https://www.searac.org/wp-content/uploads/2018/04/The-Devastating-Impact-of-Deportation-on-Southeast-Asian-Americans-1.pdf> [hereinafter *The Devastating Impact of Deportation*].

7. See Kimberly Yam, *The Forgotten Asian Refugees Fed Into The U.S. Prison System*, HUFFINGTON POST (Jan. 29, 2018), [https://www.huffpost.com/entry/southeast-asian-prison-deportation-pipeline\\_n\\_5a1dd48ee4b0569950233065](https://www.huffpost.com/entry/southeast-asian-prison-deportation-pipeline_n_5a1dd48ee4b0569950233065).

8. See generally Nat'l Asian Pac. Am. Women's F. & SE. Asia Resource Action Ctr., *DREAMS DETAINED*, IN *HER WORDS: THE EFFECTS OF DETENTION AND DEPORTATION ON SOUTHEAST ASIAN AMERICAN WOMEN AND FAMILIES*, (Dec. 2018), [https://www.searac.org/wp-content/uploads/2018/09/dreams\\_detained\\_in\\_her\\_words\\_report-2.pdf](https://www.searac.org/wp-content/uploads/2018/09/dreams_detained_in_her_words_report-2.pdf) [hereinafter *DREAMS DETAINED*].

9. ASIAN AM./PAC. ISLANDERS IN PHILANTHROPY, *WIDENING THE LENS ON BOYS AND MEN OF COLOR: CALIFORNIA AAPI & AMEMSA PERSPECTIVES* 18 (2013), [https://aapip.org/sites/default/files/publication/files/aapip\\_bymoc-final.screen.pdf](https://aapip.org/sites/default/files/publication/files/aapip_bymoc-final.screen.pdf); SE. ASIA RES. ACTION CTR., *REVEALING THE ASIAN AMERICAN PACIFIC ISLANDER BOYS AND MEN OF COLOR FIELD—LIVING IN THE INTERSECTIONS & INVISIBILITY OF RACE AND GENDER* 7 (2019), <https://www.searac.org/wp-content/uploads/2019/11/SEARAC-AAPI-BMOC-Report-2019-Digital.pdf> [hereinafter *ASIAN AMERICAN PACIFIC ISLANDER BOYS AND MEN OF COLOR FIELD*].

a manifestation of trauma from Southeast Asian refugees' migration, resettlement, and adjustment experiences. This Note then argues that given Southeast Asian men's higher detention and deportation numbers, reducing the crime-to-deportation pipeline requires a specific focus on the unique and gendered issues that these men face. By contextualizing the social, cultural, and environmental experiences of Southeast Asian men as they intersect with the historical traumas of their community, this Note explores the gendered ways in which these men respond to their community's trauma, and how this may predispose them to crime, violence, and ultimately, deportation. Yet, despite such traumas, one element that remains constant is the agency of Southeast Asian men. As such, this Note concludes with a proposal that one solution to improve the outcomes of these men is preventative, community-based education focused on crime and deportation. Such education will help Southeast Asian men live cognizant of the deportation system, giving them agency over their behaviors and greater ability to navigate the gendered systems of trauma in which they live.

In this Note, "Southeast Asian" will refer to refugees, immigrants, and individuals from three countries: Vietnam, Laos, and Cambodia.<sup>10</sup> "Trauma" will be a broad term encompassing conditions related to the refugee experience, assimilation, or the lived community experiences of refugees and their families. This term will also encompass diagnosable conditions such as Post-Traumatic Stress Disorder (PTSD), depression, and anxiety, as well as the effects of larger societal constructs such as the model minority myth and perpetual foreigner stereotype. "Non-citizen" will refer collectively to refugees, immigrants, green card holders, and legal permanent residents who do not have full U.S. citizenship. Additionally, for the sake of simplicity, this Note will refer collectively to non-naturalized Southeast Asian immigrants and refugees, as well as those who are naturalized or are native born descendants of those refugees, as "Asian Americans," or categorically as "Asian and Pacific Islander (API)," except where otherwise specified. This Note does not suggest that the experiences of each Southeast Asian national and racial group are the same, and recognizes that they each have unique trajectories and circumstances; however, for the purposes of this analysis, they will be discussed collectively in general, and specifically when necessary.

Part I of this Note will discuss the history of the Southeast Asian refugee experience. Part II will cover the development and current state of U.S. deportation policy, as well as the Southeast Asian crime-to-deportation pipeline. Part III will discuss the detrimental impacts of detention and deportation on the Southeast Asian community. Part IV will contextualize the experiences of the Southeast Asian community through the lens of trauma, including refugee trauma, resettlement trauma, mental health trauma, and traumas of identity in America. Part V will then discuss the links between Southeast Asian men and trauma, and how these relationships impact the

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10. This grouping also includes the affected ethnic groups within these countries such as the Mien, Hmong, and Vietnam's ethnic Chinese.

crime-to-deportation pipeline. Finally, Part VI will discuss the potential for crime and deportation focused education to help mitigate this pipeline for Southeast Asian men.

## I. SOUTHEAST ASIAN REFUGEES

### A. *Refugee Experience*

The arrival of Southeast Asian refugees in the U.S. began around 1975 after the end of the Vietnam War, with roughly two thirds coming from Vietnam, and the remaining third from Laos and Cambodia.<sup>11</sup> Importantly, the U.S. accepted these refugees not only for humanitarian reasons, but in recognition of the fact that its military actions were a direct cause of the violence and displacement these refugees faced.<sup>12</sup> In fact, many refugees fled the violence and persecution that resulted from supporting or sympathizing with U.S. anti-communist efforts in their home countries.<sup>13</sup> This population therefore represents a unique group of individuals who entered the U.S. largely by necessity rather than choice, and as a result, often had little time to prepare before departing, let alone develop plans for when and where they might arrive.<sup>14</sup>

Southeast Asian refugees came to the U.S. in three distinct waves, the first arriving in 1975.<sup>15</sup> This first wave, consisting largely of upper and middle class civil servants,<sup>16</sup> was evacuated and resettled in the U.S. through the 1975 Indochina Migration and Refugee Assistance Act (IMRAA), which allowed the U.S. to admit roughly 130,000 Vietnamese and Cambodian refugees on grounds of persecution for “race, religion, or political opinion.”<sup>17</sup> However, in response to the growing number of Southeast Asian refugees,<sup>18</sup> Congress sought a more regular and flexible migration and resettlement policy, and unanimously passed the 1980 Refugee Act, which allowed an annual quota of 50,000 refugees to be resettled and given assistance and welfare benefits in

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11. TIMOTHY P. FONG, *THE CONTEMPORARY ASIAN AMERICAN EXPERIENCE: BEYOND THE MODEL MINORITY* 33 (3d ed. 2008).

12. *Id.* at 34.

13. See RONALD TAKAKI ET AL., *FROM EXILES TO IMMIGRANTS: THE REFUGEES FROM SOUTHEAST ASIA*, 29, 35, 46–47 (1995) (most Vietnamese refugees had supported the U.S.-allied South Vietnamese government which was overthrown by the North Vietnamese, many Laotian refugees had supported the U.S.-backed anticommunist Royal Lao which lost to the communist Pathet Lao, and Cambodian refugees fled because of the Khmer Rouge, where anyone suspected of having American or Western sympathies was at risk of execution).

14. *Id.* at 23–24.

15. FONG, *supra* note 11, at 35.

16. TAKAKI, *supra* note 13, at 29.

17. Theresa Tayabas & Than Pok, *The Arrival of the Southeast Asian Refugees in America: An Overview*, in BRIDGING CULTURES: SOUTHEAST ASIAN REFUGEES IN AMERICA 5 (Asian American Mental Health Training Center, 2<sup>nd</sup> ed., 1983).

18. TAKAKI, *supra* note 13, at 43, 78 (stating that between 1977–1979, over 277,000 refugees escaped from Vietnam, and after 1975, more than 100,000 Hmong had fled Laos).

the U.S.<sup>19</sup> After the passing of this Act, the number of Southeast Asian refugees dramatically increased.<sup>20</sup>

The second wave of refugees, who arrived between 1979 and the mid 1980s, fled as communist rule in Southeast Asia continued to escalate.<sup>21</sup> These refugees first escaped through jungles or on overcrowded boats to places like Malaysia, Singapore, Hong Kong, and the Philippines, facing numerous obstacles such as minefields, starvation, pirates, and attacks from communist soldiers.<sup>22</sup> Many then spent years in dangerous and overcrowded refugee camps before finally finding their way to the U.S.<sup>23</sup> Whereas the first wave of refugees had been relatively educated, the second wave was much less so, instead being composed of many more poor and illiterates who suffered from more serious health issues and traumas as a result of their difficult and prolonged escapes.<sup>24</sup>

The third wave migrated primarily in the later 1980s and 1990s, and in contrast to the first two waves, consisted mostly of relatives of refugees, former internees of communist re-education camps, and Amerasians.<sup>25</sup> While over 1.1 million Southeast Asian refugees have been resettled in the U.S. today,<sup>26</sup> this number must always be remembered within its larger context: at least 100,000 Vietnamese died just trying to escape by boat alone; thousands of ethnic Hmong in Laos were killed or displaced, and between one and three million Cambodians (a third of the population) died during the Khmer Rouge.<sup>27</sup>

## B. *Resettlement Experience*

The first wave of refugees were quickly resettled through an ad hoc system managed by an interagency task force of 12 federal agencies.<sup>28</sup> Refugees were processed through one of four reception centers<sup>29</sup> and provided some temporary services such as classes in child care, college assistance, and English training.<sup>30</sup> From there, they were assigned to a National Voluntary

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19. FONG, *supra* note 11, at 36; *Refugee Act of 1980*, Nat'l Archives Foundation, <https://www.archivesfoundation.org/documents/refugee-act-1980> (last visited Apr. 14, 2020).

20. A NATIONAL SNAPSHOT OF OUR COMMUNITIES, *supra* note 2, at 4.

21. Stacy M. Kula & Susan J. Paik, *A Historical Analysis of Southeast Asian Refugee Communities: Post-war Acculturation and Education in the U.S.*, 11 J. SE. ASIAN AM. EDUC. & ADVANCEMENT 1, 11–12 (2016).

22. Tayabas & Pok, *supra* note 17, at 6–7.

23. *Id.*

24. *Id.* at 11.

25. FONG, *supra* note 11, at 36; Hataipreuk Rkasnuam & Jeanne Batalova, *Vietnamese Immigrants in the United States in 2012*, MIGRATION POL'Y INST. (Aug. 25, 2014), <https://www.migrationpolicy.org/article/vietnamese-immigrants-united-states-2012>.

26. A NATIONAL SNAPSHOT OF OUR COMMUNITIES, *supra* note 2, at 5.

27. FONG, *supra* note 11, at 35–36.

28. Robert E. Marsh, *Socioeconomic Status of Indochinese Refugees in the United States: Progress and Problems*, 43 SOC. SEC. BULL. 11, 12 (1980).

29. *Id.* at 12 (these centers were located at Fort Chaffee, Arkansas; Eglin Air Force Base, Florida; Fort Indiantown Gap, Pennsylvania; and Camp Pendleton, California).

30. *Id.*

Resettlement Agency that would match them with a sponsor for up to two years, who would ideally aid them in adjusting to U.S. life.<sup>31</sup> However, the Federal government, fearing the negative economic and social service impacts of too many refugees competing with U.S. citizens for jobs, as well as wanting to speed their assimilation into American society as quickly as possible, intentionally scattered Southeast Asian refugees across the country rather than resettling them in groups or ethnic enclaves of their own choosing.<sup>32</sup>

By the time the 1980 Refugee Act was passed, the trend of secondary migration had become firmly entrenched, with 45 percent of the first wave of refugees having moved states by 1980.<sup>33</sup> Secondary migration—when refugees leave their original resettlement placements in favor of another location—was an adjustment strategy driven by numerous factors including a desire for a better climate and wanting to be closer to ethnic communities and family networks.<sup>34</sup> Specifically, secondary migration saw the most movement of refugees to California, which holds close to 40 percent of the U.S.’ Southeast Asian population today.<sup>35</sup> However, secondary migration also highlighted the underlying issues with the U.S.’ resettlement plan, including assumptions that Southeast Asian refugees would be able to adequately fend for themselves in a new country with relatively little assistance. The U.S.’ resettlement plan also overlooked the important role of an ethnic community in adapting to a foreign culture and healing from past trauma. Consequently, the plan lacked adequate support funding despite the economic and health-related needs of many of these refugees, placed refugees in poor, violence-ridden urban areas, and as a result, predisposed these populations to increased discrimination, alienation, and difficulties in achieving upward mobility.<sup>36</sup>

## II. DEPORTATION POLICIES & THE CRIME-TO-DEPORATATION PIPELINE

### A. *Deportation Policies*

Article 14 of the United Nations Universal Declaration of Human Rights states that “everyone has the right to seek and to enjoy in other countries asylum from persecution.”<sup>37</sup> Furthermore, under Article 33 of the 1951

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31. *Id.*

32. *Id.* at 12–13; Linda W. Gordon, *Southeast Asian Refugee Migration to the United States*, 5 *CTR. FOR MIGRATION STUD. SPECIAL ISSUES*, 153, 163 (1987); Carol A. Mortland & Judy Ledgerwood, *Secondary Migration Among Southeast Asian Refugees in the United States*, 16 *URB. ANTHROPOLOGY AND STUD. CULTURAL SYS. AND WORLD ECON. DEV.* 291, 293–95 (1987).

33. Gordon, *supra* note 32, at 165 (citing REGINALD P. BAKER & DAVID S. NORTH, *THE 1975 REFUGEES: THEIR FIRST FIVE YEARS IN AMERICA* 59 (1984)).

34. *Id.*; Mortland & Ledgerwood, *supra* note 32, at 304–06.

35. Gordon, *supra* note 32, at 164.

36. See Gary Kar-Chuen Chow, *Exiled Once Again: Consequences of the Congressional Expansion of Deportable Offenses on the Southeast Asian Refugee Community*, 12 *ASIAN AM. L.J.* 103, 112–15 (2005); Yam, *supra* note 7.

37. G.A. Res. 217 (III) A, U.N. Universal Declaration of Human Rights, Art. 14 (Dec. 10, 1948).

Convention Relating to the Status of Refugees, no country may return a refugee “to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”<sup>38</sup> For Southeast Asian refugees fleeing the terrors of the Vietnam War, such policies would seem to suggest a safe future once admitted to the U.S. However, in 1996, two new U.S. policies—the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)—together with the prior regulations they altered, enacted several provisions that greatly expanded the range of deportable offenses for non-citizens, and consequently brought up new fears of deportation for many Southeast Asian immigrants and refugees.

### 1. AEDPA & IIRIRA

At its core, deportation is nothing more than a system of enforcement, with no independent agenda of its own.<sup>39</sup> Yet, as a form of post-entry social control,<sup>40</sup> its goals tend to circle around ideologies of safety and security: specifically, the idea of ridding the U.S. of serious alien criminals who would otherwise be “savaging our society.”<sup>41</sup> Indeed, the crux of current deportation policy lies in its expansive definition of an “aggravated felony,” which determines whether an individual’s crime renders them eligible for deportation. The “aggravated felony” distinction originated in the Anti-Drug Abuse Act of 1988, which created a deportable class of alien offenders for those convicted of murder, drug-trafficking, and weapons-trafficking.<sup>42</sup> The Immigration Act of 1990 added money laundering, crimes of violence, and controlled substance trafficking to this category,<sup>43</sup> made aliens convicted of aggravated felonies ineligible for withholding of deportation,<sup>44</sup> and barred them from demonstrating “good moral character” in order to secure other forms of relief.<sup>45</sup> Four years later, Congress passed the Immigration and Nationality Technical Corrections Act (INTCA) of 1994, which further

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38. G.A. Res. 429 (V), Convention Relating to the Status of Refugees, Art. 33 (July 28, 1951).

39. DANIEL KANSTROOM, *AFTERMATH: DEPORTATION LAW AND THE NEW AMERICAN DIASPORA* 29 (2012).

40. *Id.* at 31 (post-entry social control (one of two broad deportation goals—the other being border control) focuses on regulating the conduct of those legally present but who have engaged in a prohibited act).

41. *Id.* at 38–40 (citing a quote from former Senator Al D’Amato, and noting that while crime is a central justification of deportation, governmental actions such as continuing to push deportation initiatives in the face of jurisdictional opposition and concerns over racial profiling and negative impacts are reason to question whether the goal is really just crime control, or something more).

42. Terry Coonan, *Dolphins Caught in Congressional Fishnets - Immigration Law’s New Aggravated Felons*, 12 GEO. IMMIGR. L.J. 589, 592 (1998).

43. *Id.* at 594; see also Immigration Act of 1990, 8 U.S.C. § 501(a)(3) § 101(a)(43).

44. See Immigration Act of 1990, 8 U.S.C. § 515(a)(2) § 243(h)(2).

45. Coonan, *supra* note 42, at 596; see Immigration Act of 1990, § 509 § 101(f)(8).

expanded the aggravated felony category to include offenses such as convictions relating to firearms and explosives, theft and burglary with sentences of five years or more, the demand or receipt of ransom, racketeering offenses of five years or more, and fraud resulting in losses of \$200,000 or more.<sup>46</sup>

In 1996, Congress passed AEDPA with the intent of deterring and punishing terrorism.<sup>47</sup> Section 440(e) of AEDPA continued to expand the ever growing category of aggravated felonies, adding crimes such as gambling offenses, sentences of 18 months or longer for passport alteration or forgery, obstruction of justice, and failure to appear in court for felonies with sentences of two years or more.<sup>48</sup> By some estimates, between 1992 to 2006 alone, there have been more than 300,000 non-citizens deported after being categorized as aggravated felons.<sup>49</sup>

Six months after the passage of AEDPA, Congress then passed IIRIRA, which included a number of significant provisions specifically related to immigration.<sup>50</sup> IIRIRA further expanded the definition of an aggravated felony to include the crimes of rape and sexual abuse of minors.<sup>51</sup> Additionally, it significantly widened the existing classes of offenders by dropping the five-year requirement for crimes of violence, theft and burglary, racketeering and gambling, forgery and vehicle trafficking, alien smuggling, obstruction of justice, bribery, and perjury down to sentences of one year or longer.<sup>52</sup> IIRIRA also lowered the monetary thresholds for crimes of money laundering from \$100,000 to \$10,000,<sup>53</sup> and crimes of fraud and tax evasion from \$200,000 to \$10,000.<sup>54</sup> Importantly, whereas previous expansions of the “aggravated felony” category only applied on or after the date of implementation, section

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46. See Immigration and Naturalization Technicality Corrections Act of 1994, Pub. L. No. 103-416, 108 Stat. 4305, § 222, § 101(a)(43) (the full list of additional offenses are: convictions for explosives or firearms, theft or burglary sentences of five years or more, demand or receipt of ransom, child pornography, racketeering offenses of five years or more, management of prostitution, slavery or involuntary servitude, espionage, sabotage, or treason, fraud resulting in losses of \$200,000 or more, tax evasions where losses exceed \$200,000 or more, alien smuggling, document fraud with a sentence of five years or more, and failure to appear for service of sentence).

47. Coonan, *supra* note 42, at 600.

48. See Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132 110 Stat. 1214, § 440(e), § 101(a)(43) (the full list of additional offenses are: gambling offenses, transportation for prostitution, offenses of at least 18 months for forging, counterfeiting, or altering a passport, improper entry or reentry or misrepresentation of facts by one previously deported for an aggravated felony, offenses of five years or more for trafficking in vehicles with forged or counterfeit identification numbers, offenses of five years or more for perjury or obstruction of justice, failure to appear for felonies with sentences of two years or more).

49. *New Data on the Processing of Aggravated Felons*, TRAC IMMIGR. (Jan. 5, 2007) <https://trac.syr.edu/immigration/reports/175>.

50. Coonan, *supra* note 42, at 601.

51. See Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 321(a)(1), § 101(a)(43)(A).

52. See Illegal Immigration Reform and Immigrant Responsibility Act, 8 U.S.C. § 321.

53. *Id.* § 321(a)(2), § 101(a)(43)(D).

54. *Id.* § 321(a)(7), § 101(a)(43)(M).

321(b) of IIRIRA stated that this definition of “aggravated felony” would apply “regardless of whether the conviction was entered before, on, or after the date of enactment of this paragraph.”<sup>55</sup> Because of this retroactivity, an individual today can now be deported for an offense committed decades ago. Lastly, IIRIRA imposed a permanent ban on reentry for any alien convicted of an aggravated felony.<sup>56</sup>

Together, these policies have established an exceptionally—and perhaps unnecessarily—broad umbrella of deportable crimes that pose serious concerns for Southeast Asian non-citizens and their families. Far from a neutral policy, deportation laws have instead become a means of punishment; one both exceedingly harsh and disproportionate in effect.<sup>57</sup>

## 2. Current State of Deportation

Previously, the only major obstacle to large scale deportations of Southeast Asian non-citizens was the U.S.’ lack of repatriation agreements with Vietnam, Cambodia, and Laos.<sup>58</sup> However, on March 22, 2002, Cambodia signed a repatriation agreement with the U.S.,<sup>59</sup> and on January 22, 2008, Vietnam also signed a repatriation agreement.<sup>60</sup> Vietnam’s agreement renews every three years unless one party opts out, and importantly, states that it does not apply to Vietnamese citizens who arrived in the U.S. prior to July 12, 1995—the date the two countries re-established diplomatic relations.<sup>61</sup> Laos remains the only country of the three without a repatriation agreement.<sup>62</sup> While repatriation agreements are not necessarily required for a country to accept deportees, they make deporting individuals faster and easier.<sup>63</sup>

Today, the U.S. continues to push all three countries to take back more deportees. In early 2020, it was revealed that the Trump administration was in talks with Laos to negotiate a repatriation agreement,<sup>64</sup> and that the U.S.

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55. *Id.* § 321(b) § 101(a)(43).

56. *Id.* § 301(b) § 212(a)(9)(A)(i).

57. Donald Kerwin, *From IIRIRA to Trump: Connecting the Dots to the Current US Immigration Policy Crisis*, 6 J. MIGRATION & HUM. SEC. 192, 194 (2018).

58. Chow, *supra* note 36, at 128.

59. Memorandum Between The Government and The United States and The Royal Government of Cambodia for the Establishment and Operation of A United States—Cambodia Joint Commission on Repatriation (2002), <http://searaid.org/wp-content/uploads/2018/08/US-Cambodia-Repatriation-Agreement.pdf>.

60. Agreement Between the Government of the United States of America and The Government of the Socialist Republic of Vietnam on the Acceptance of the Return of Vietnamese Citizens 2–3, 5 (2008) [hereinafter Vietnam Repatriation Agreement].

61. *Id.* at 2–3.

62. Riham Fashir, *What you need to know about Trump’s plan to deport Hmong, Lao immigrants*, MPR NEWS (Feb. 10, 2020, 11:52 PM), <https://www.mprnews.org/story/2020/02/10/what-you-need-to-know-about-trump-plan-to-deport-hmong-lao-immigrants>,

63. *Id.*

64. Letter from Betty McCollum, U.S. Rep. for Minn. 4th Cong. Dist. to Michael R. Pompeo, Sec’y of St. (Feb. 3, 2020), <https://mccollum.house.gov/sites/mccollum.house.gov/>

had begun funding a reintegration program to facilitate the deportation of Lao nationals, suggesting a possible increase in deportations of this group.<sup>65</sup> Additionally, the U.S. has deemed all three countries “recalcitrant,” meaning that they have been uncooperative, non-compliant, or have significantly delayed efforts to repatriate their citizens.<sup>66</sup> In September 2017, Cambodia was one of four countries hit with visa sanctions to pressure more cooperation as a consequence of their recalcitrance, and on July 9, 2018, Laos was one of two additional countries given similar sanctions.<sup>67</sup> The Trump administration has also attempted to unilaterally reinterpret Vietnam’s 2008 repatriation agreement to include those who arrived before the July 1995 date, despite prior understandings to the contrary.<sup>68</sup>

In addition to causing heightened fears of deportation across the Southeast Asian community, these actions have also created a situation where thousands of Southeast Asians (at least 16,000) who have received final orders of deportation have been left uncertain on how to move forward with their lives.<sup>69</sup> Because of the recalcitrant nature of these countries, many who receive a final order of removal are not immediately deported, and hence move on and rebuild their lives in the U.S.<sup>70</sup> These individuals may spend days, months, or years in the U.S. before actually being deported, but live day-to-day with the fear of what may happen to them and their families.<sup>71</sup>

### B. *The Crime-to-Deportation Pipeline*

As Professor Susan L. Pilcher notes, “the aggravated felony classification is, with the exception of terrorism-related categories, the most harsh and inflexible category in immigration law. It virtually always eliminates all opportunities for individualized consideration, even long into the future.”<sup>72</sup> Thus, regardless of how long an individual has been in the U.S., how much they have achieved, or whether they are a legal permanent resident or green card holder, the committing of any offense deemed an aggravated felony is

files/documents/20.0203%20tr\_DOS\_Laos%20repatriation.pdf

65. Agnes Constante, *U.S. funding reintegration program in Laos for Laotian and Hmong refugees*, NBC NEWS (Feb. 13, 2020, 10:10 AM), <https://www.nbcnews.com/news/asia/asia-america/u-s-funding-reintegration-program-laos-laotian-hmong-refugees-n1136356>.

66. CONG. RES. SERV., IMMIGRATION: “RECALCITRANT” COUNTRIES AND THE USE OF VISA SANCTIONS TO ENCOURAGE COOPERATION WITH ALIEN REMOVALS (2020), <https://fas.org/sgp/crs/homesec/IF11025.pdf> [hereinafter *Recalcitrant Countries*].

67. *Id.*

68. Charles Dunst, *Trump Administration Quietly Backs Off on Deporting Vietnamese Immigrants*, N.Y. TIMES (Nov. 22, 2018), <https://www.nytimes.com/2018/11/22/world/asia/vietnam-trump-immigrants-deport.html>; Charles Dunst & Krishnadev Calamur, *Trump Moves to Deport Vietnam War Refugees*, THE ATLANTIC (Dec. 12, 2018, 10:20 AM), <https://www.theatlantic.com/international/archive/2018/12/donald-trump-deport-vietnam-war-refugees/577993>.

69. *The Devastating Impact of Deportation*, *supra* note 6.

70. *Id.*

71. *Id.*

72. Susan L. Pilcher, *Justice Without a Blindfold: Criminal Proceedings and the Alien Defendant*, 50 ARK. L. REV. 269, 305 (1997).

enough to permanently remove them from the U.S.<sup>73</sup> This has had significant impacts on Southeast Asians, who are three to five times more likely to be deported based on old criminal convictions compared to other immigrant groups.<sup>74</sup> In fact, 80 percent of all Southeast Asian final orders of deportation are based on old criminal records, compared to just 29 percent of all immigrants with deportation orders.<sup>75</sup>

These numbers are not coincidence; there is a clear crime-to-deportation pipeline for members of the Southeast Asian community.<sup>76</sup> This pipeline is broadly defined as the trajectory established by the convergence of factors such as marginalization, economic disadvantage, cultural and educational struggles, and mental health concerns that put Southeast Asian youth on a path towards criminal activity, and eventually deportation as a result of committing an aggravated felony.<sup>77</sup> Though this pipeline is influenced by a number of factors, many, including poverty, unaddressed trauma, alcoholism, domestic violence, and broken families, have direct relationships to criminal involvement.<sup>78</sup>

During the 1990s, the number of incarcerated Asian and Pacific Islander (API) individuals increased by 250 percent, and between 1977–1997,<sup>79</sup> arrests of API youth increased by 726 percent.<sup>80</sup> This rise in mass incarceration has also been tied to the growth of immigration detention and deportation.<sup>81</sup> While there is little disaggregated data to fully understand API criminalization statistics, multiple studies point to inordinately high rates of Southeast Asian incarceration. One study looking at API youth in Alameda County, California between 1991 and 2000 showed that Laotians and Vietnamese had the third and fourth highest arrest rates, respectively, and that Vietnamese youth were most likely to be arrested, adjudicated, and institutionally placed.<sup>82</sup> Another study on API youth incarcerated between 1998 and 2002 in

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73. Coonan, *supra* note 42, at 612.

74. SE. ASIA RES. ACTION CTR., SOUTHEAST ASIAN AMERICANS AND THE SCHOOL-TO-PRISON-TO-DEPORTATION PIPELINE, (2018), [https://www.searac.org/wp-content/uploads/2018/04/SEAA-School-to-Deportation-Pipeline\\_0.pdf](https://www.searac.org/wp-content/uploads/2018/04/SEAA-School-to-Deportation-Pipeline_0.pdf) [hereinafter SCHOOL-TO-PRISON-TO-DEPORTATION PIPELINE].

75. *The Devastating Impact of Deportation, supra* note 6.

76. *See generally* SE. ASIA RES. ACTION CTR., ASIAN AMERICANS BEHIND BARS: EXPOSING THE SCHOOL TO PRISON TO DEPORTATION PIPELINE (2015), [https://www.searac.org/wp-content/uploads/2018/04/18877-AAPIs-Behind-Bars\\_web.pdf](https://www.searac.org/wp-content/uploads/2018/04/18877-AAPIs-Behind-Bars_web.pdf) [hereinafter ASIAN AMERICANS BEHIND BARS].

77. *See* SCHOOL-TO-PRISON-TO-DEPORTATION PIPELINE, *supra* note 74.

78. Stephanie Hoo, *The Unforgiven*, THE PROGRESSIVE, (Apr. 1, 2018), <https://progressive.org/magazine/the-unforgiven-after-the-vietnam-war-the-united-states-took>.

79. Angela E. Oh & Karen Umamoto, *Asian Americans and Pacific Islanders: From Incarceration to Re-Entry*, 3 AMERASIA J. 43, 44 (2005).

80. NAT'L COUNCIL ON CRIME AND DELINQ. & THE JOHN D. AND CATHERINE T. MACARTHUR FOUND. SYMP., ASIAN PACIFIC ISLANDER COMMUNITIES: AN AGENDA FOR POSITIVE ACTION 8 (2001), [https://www.nccdglobal.org/sites/default/files/publication\\_pdf/asian-pacificislander-communities.pdf](https://www.nccdglobal.org/sites/default/files/publication_pdf/asian-pacificislander-communities.pdf) [hereinafter AN AGENDA FOR POSITIVE ACTION].

81. ASIAN AMERICANS BEHIND BARS, *supra* note 76.

82. THAO LE, ISAMI ARIFUKU, CORY LOUIS, MOISHE KRISBERG, & ERIC TANG, NOT

California showed that Cambodians, Laotians, and Vietnamese were all over-represented compared to their percentages in the state population.<sup>83</sup> A third study on API youth in Oakland, California found that APIs were convicted at higher rates (28%) than Caucasian, African American, and Hispanic youth, and that Vietnamese and Laotian youth had among the highest juvenile arrest rates after African Americans.<sup>84</sup> The statistically high rates of crime among Southeast Asian youth and the large number of Southeast Asian deportations based on old criminal convictions establish the crime-to-deportation pipeline as a significant and critical element affecting the Southeast Asian community today.

### III. THE IMPACTS OF DETENTION & DEPORTATION

#### A. *Impact on Families and Children*

Detention and deportation have serious effects not only on the individual facing such charges, but also on their family and community. According to a study by the Center for American Progress, even the knowledge of deportations happening in one's community can put families on edge and heighten fears of separation.<sup>85</sup> Deportation has also been shown to be a gendered process, with far more men (as high as 80 percent to 90 percent in some groups) being arrested, detained, and deported, tearing families apart and leaving behind many single parent households run by women.<sup>86</sup> According to a report by the National Asian Pacific Women's Forum and the Southeast Asia Resource Action Center (SEARAC), the drawn out nature of deportation proceedings has forced some Southeast Asian women to even seek therapy for themselves and their children despite limited financial resources in order to deal with the "toxic levels of stress, anxiety, and constant mental and emotional exhaustion" caused by their husbands' deportations.<sup>87</sup> For mothers of detainees and deportees, the experiences of seeing their children detained can also bring back fear, anxiety, and trauma from their own refugee experiences.<sup>88</sup> Unsurprisingly, the financial impact is also significant, as detention or deportation can easily put a family into poverty as the household's income

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INVISIBLE: ASIAN PACIFIC ISLANDER JUVENILE ARRESTS IN ALAMEDA COUNTY 25–27 (2001), [https://www.nccdglobal.org/sites/default/files/publication\\_pdf/not-invisible.pdf](https://www.nccdglobal.org/sites/default/files/publication_pdf/not-invisible.pdf).

83. Isami Arifuku, Delores D. Peacock, & Caroline Glesmann, *Profiling Incarcerated Asian and Pacific Islander Youth: Statistics Derived from California Youth Authority Administrative Data*, 4 AAPI NEXUS 95, 99–100 (2006).

84. NAT'L COUNCIL ON CRIME AND DELINQ. & API YOUTH VIOLENCE PREVENTION CTR., UNDER THE MICROSCOPE: ASIAN AND PACIFIC ISLANDER YOUTH IN OAKLAND 3 (2003), <https://www.issuelab.org/resources/2638/2638.pdf>.

85. JOANNA DREBY, CTR. FOR AM. PROGRESS, HOW TODAY'S IMMIGRATION ENFORCEMENT POLICIES IMPACT CHILDREN, FAMILIES, AND COMMUNITIES: A VIEW FROM THE GROUND 2 (2012), <https://www.americanprogress.org/wp-content/uploads/2012/08/DrebyImmigrationFamiliesFINAL.pdf>.

86. *Id.* at 9.

87. DREAMS DETAINED, *supra* note 8, at 11.

88. *Id.*

drops and the spouse who remains behind struggles alone to feed and clothe the children, keep the household afloat, and find enough work to get by.<sup>89</sup>

The impacts on the children of deportees are particularly severe. Children in single parent households are 4.2 times more likely to live in poverty than those in families with two parents, and single mother families have a poverty rate of 40.7 percent across the nation.<sup>90</sup> These outcomes suggest environments of high stress and vulnerability for the children of Southeast Asian deportees. In fact, mothers of Southeast Asian children whose fathers have been deported report negative changes in their children's mental health, as well as increased confusion and emotional frustration.<sup>91</sup> The fear and anxiety that result from separation has also been linked to detrimental effects across the child's lifetime, impacting everything from childhood development to academic success and future earnings.<sup>92</sup> Perhaps most troubling is that the confusion and stress of family separation can actually cause children to view immigration as equivalent to illegality, even when they are given definitions of immigration to the contrary, suggesting potentially far-reaching consequences for these children's perceptions of family and sense of self.<sup>93</sup>

#### B. *Impact on Detainees & Deportees*

Detainees and deportees also face significant challenges. For those who have been detained but have children, maintaining connections with them while detained, and reconnecting after release—sometimes years later—is one significant struggle.<sup>94</sup> Those who have been deported may face high levels of stigma upon returning to their country of origin, and may struggle with demoralization and the ability to find work.<sup>95</sup> Safety is also an issue; Congresswoman Betty McCollum of Minnesota's 4th congressional district—which has a substantial Hmong and Lao population—stated in her February 2020 letter to Secretary of State Michael Pompeo regarding the potential increase in deportations to Laos that the substandard conditions in the country “raise serious questions about the safety and well-being of any deportee.”<sup>96</sup> Furthermore, many Southeast Asian deportees have never been to the countries they are being deported to,<sup>97</sup> and even for those who have memories of their country of origin, it is no longer the country they once knew.<sup>98</sup> Deportation then is not being sent back home—it is permanent banishment to a country they do not know.

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89. DREBY, *supra* note 85, at 17.

90. *Id.* at 9–10.

91. DREAMS DETAINED, *supra* note 8, at 14.

92. DREBY, *supra* note 85, at 19.

93. *Id.* at 26–27.

94. DREAMS DETAINED, *supra* note 8, at 14–15.

95. DREBY, *supra* note 85, at 14.

96. Letter from Betty McCollum, *supra* note 64.

97. Hoo, *supra* note 78 (noting that many deportees were born in refugee camps or had otherwise never been to their ethnic country of origin).

98. Telephone Interview with Charlene Lin Ung, Author, *NAM MOI: A YOUNG GIRL'S STORY OF HER FAMILY'S ESCAPE FROM VIETNAM* (Apr. 10, 2020).

#### IV. INTERCONNECTED FACTORS OF SOUTHEAST ASIAN TRAUMA

It is clear that the trajectories of Southeast Asian Americans today are built on an extensive foundation of trauma. As Professor and author Viet Thanh Nguyen notes, “to be a refugee [is] to be a survivor of war as much as a combat veteran.”<sup>99</sup> Thus, if we accept that the traumas Southeast Asians face as survivors of war continue to affect them today, we notice reflections of such trauma not only in their migration and resettlement experiences, but in their long-term adjustment experiences and in the adaptations of their children.

##### A. *Refugee Trauma*

Southeast Asian refugees faced numerous traumas as a result of their refugee experience. A 2005 study of Cambodian refugees in Long Beach, California found that these refugees experienced an average of fifteen different traumas pre-migration, including starvation, forced labor, torture, and having a friend or family member murdered.<sup>100</sup> Among Vietnamese, those who were still in the country after the fall of Saigon lived in constant fear of the communist government, and many faced a number of debilitating traumas, from losing their life savings to being forced into countryside labor under the guise of re-education classes.<sup>101</sup> While the detrimental psychological effects of uprooting and resettling have been well documented across numerous populations,<sup>102</sup> so extensive was the trauma for these refugees that their resultant shock has been compared to that of disaster victims.<sup>103</sup> Thus, while migration predicates some level of resettlement and adjustment difficulty by nature, refugees in particular suffer much harsher effects given the abruptness and trauma of their uprooting.<sup>104</sup>

##### B. *Resettlement and Adjustment Trauma*

Upon arrival, refugees may face a host of additional factors that can contribute to trauma. Some may experience culture shock, which is severe anxiety from constantly being confronted with unfamiliar social norms and being perpetually on guard because of uncertainty over how to act.<sup>105</sup> For others who arrive seemingly unscathed, trauma may become apparent later

99. Viet Thanh Nguyen, *Just Memory: War and the Ethics of Remembrance*, 25 AM. LITERARY HIST. 144, 146 (2013).

100. Grant N. Marshall, Terry L. Schell, Marc N. Elliott, S. Megan Berthold, & Chi-Ah Chun, *Mental Health of Cambodian Refugees 2 Decades After Resettlement in the United States*, 294 JAMA 571, 575 (2005).

101. CHARLENE LIN UNG, *NAM MOI: A YOUNG GIRL'S STORY OF HER FAMILY'S ESCAPE FROM VIETNAM* 79 (2015).

102. Keh-Ming Lin & Minoru Masuda, *Impact of the Refugee Experience: Mental Health Issues of the Southeast Asians*, in BRIDGING CULTURES: SOUTHEAST ASIAN REFUGEES IN AMERICA 32, 33 (Asian American Mental Health Training Center, ed., 1981).

103. Judy Chu, *The Trauma of Transition: Southeast Asian Refugees in America*, in BRIDGING CULTURES: SOUTHEAST ASIAN REFUGEES IN AMERICA 15, 17 (Asian American Mental Health Training Center, ed., 1981).

104. Lin & Masuda, *supra* note 102, at 32, 34.

105. *Id.* at 34.

on in an effect known as psychological arrival, where individuals experience “delayed, severe, and often unexpected psychological turmoil” long after appearing to be re-established.<sup>106</sup>

The resettlement process was also particularly problematic for Southeast Asians because of the U.S.’ policy of scattering rather than grouping them in communities.<sup>107</sup> Notwithstanding the secondary migration initiatives many of these immigrants took to enclaves in places such as Long Beach, California and St. Paul, Minnesota,<sup>108</sup> the U.S.’ scattering policy had the effect of increasing these refugees’ emotional hardship by weakening their community support networks and contributing to the delayed development of services such as political and self-help organizations.<sup>109</sup> This lack of community, coupled with difficulty in establishing new connections and support systems, isolated and deprived many refugees of the necessary protections of community.<sup>110</sup> Many were also resettled in low income neighborhoods suffering from crime, violence, and a lack of resources.<sup>111</sup> It is widely understood that high levels of violence affect whole communities, and such environments, known as “traumatized communities,”<sup>112</sup> thus became further sites of trauma for their residents. Additionally, the limited understanding of these refugees by existing populations in these neighborhoods generated hostile receptions, which further exacerbated the negative conditions and contributed to the socio-economic stress that many Southeast Asians still face today.<sup>113</sup> For example, Southeast Asians who were initially resettled in East Boston faced years of harassment, verbal abuse, and physical attacks from their white neighbors, the trauma of which eventually forced many to leave the area.<sup>114</sup>

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106. *Id.* at 33–34.

107. Marie Weil, *Southeast Asians and Service Delivery—Issues in Service Provision and Institutional Racism*, in BRIDGING CULTURES: SOUTHEAST ASIAN REFUGEES IN AMERICA 145 (Asian American Mental Health Training Center, ed., 1981); *see also supra* Subpart II.B.

108. Kula & Paik, *supra* note 21, at 15.

109. Weil, *supra* note 107, at 146.

110. Lin & Masuda, *supra* note 102, at 35.

111. NKAUJ IAB YANG & QUYEN DINH, RISE, INTERGENERATIONAL TRAUMA AND SOUTHEAST ASIAN AMERICAN YOUTH IN CALIFORNIA 4 (2018), [http://www.equalmeasure.org/wp-content/uploads/2018/04/Rise\\_YangDinh\\_R1.pdf](http://www.equalmeasure.org/wp-content/uploads/2018/04/Rise_YangDinh_R1.pdf); Carl L. Bankston III & Min Zhou, *Valedictorians and Delinquents: The Bifurcation of Vietnamese American Youth*, 18 *DEVIANT BEHAV.* 343, 348 (1997).

112. Howard Pinderhughes, Rachel A. Davis & Myesha Williams, *Adverse Community Experiences and Resilience: A Framework for Addressing and Preventing Community Trauma*, *PREVENTION INST.*, 31 (2016), <https://www.preventioninstitute.org/sites/default/files/publications/Adverse%20Community%20Experiences%20and%20Resilience.pdf> (describing traumatized communities as characterized by deteriorated environments, dangerous public spaces, fragmented or disrupted social relations—particularly intergenerational relations, broken social networks, social norms that promote violence and unhealthy behaviors, and a low sense of collective political and social efficacy).

113. YANG & DINH, *supra* note 111, at 4.

114. Bratberg, M., *Southeast Asians in East Boston*, *GLOBAL B.*, <https://globalboston.bc.edu/index.php/home/immigrant-places/east-boston/southeast-asians-in-east-boston>.

The stress of changing, specifically lowering, one's relative socioeconomic status is also central to many of these refugees' experiences. Professor Judy Chu notes that a change in socioeconomic status is one of the most influential factors impacting the extent of refugee trauma among Southeast Asians.<sup>115</sup> Many of the first wave of refugees left behind successful careers as teachers, lawyers, and doctors, only to find themselves relegated to service and trade jobs in the U.S.<sup>116</sup> A particularly illustrative example is of a refugee who had been a respected biological scientist in Vietnam, but who, after escaping by boat to the U.S., found that the only way to provide for his family was working as a janitor.<sup>117</sup> Similarly, men who had occupied positions of status as soldiers and officers in the U.S.' "secret war" in Vietnam and Laos, upon arriving in the U.S. as refugees, found they were forced to start again from scratch.<sup>118</sup> Status change affected traditional elements of culture and livelihood as well; many Laotian refugees were forced to abandon traditional family lands where they had been self-sustaining, only to find themselves dependent on welfare and low-wage jobs in the U.S.<sup>119</sup> Furthermore, many older refugees who had been respected village elders and authorities now found themselves without power and dependent on others.<sup>120</sup> Such detrimental changes in status thus contributed to a difficult and traumatic experience for many in adjusting to life in America.

Similarly, role reversals proved to be another source of stress. While traditional Southeast Asian gender roles privileged men as authority figures and family providers, their unemployment or underemployment in unstable, low wage jobs upon resettling in the U.S. led many women to find work.<sup>121</sup> This provided women with increased occupational opportunities, but many men conversely experienced a downward mobility in status and employment.<sup>122</sup> Such gender role reversals, compounded by the sense of powerlessness and alienation many men felt from American societal institutions,<sup>123</sup> resulted in conflicts in cultural values, family dynamics, and interpersonal relationships.<sup>124</sup>

115. Chu, *supra* note 103, at 21.

116. TAKAKI, *supra* note 13, at 60–61.

117. Ruth E. Davis, *Refugee Experiences and Southeast Asian Women's Mental Health*, 22 WESTERN J. NURSING RES. 144, 156 (2000).

118. Donald A. Promnitz, *Southeast Asian Community Faces Uphill Battle for Mental Health*, THE BUS. J., (Feb. 25, 2019), <https://thebusinessjournal.com/southeast-asian-community-faces-uphill-battle-for-mental-health>.

119. TAKAKI, *supra* note 13, at 71–72.

120. *Id.* at 105.

121. Eugenia Hsu, Corrie A. Davies & David J. Hansen, *Understanding Mental Health Needs of Southeast Asian Refugees: Historical, Cultural, and Contextual Challenges*, 24 CLINICAL PSYCHOL. REV. 193, 197 (2004); Nazli Kibria, *Power, Patriarchy, and Gender Conflict in the Vietnamese Immigrant Community*, 4 GENDER & SOC'Y 9, 13–14 (1990).

122. *Id.*

123. Kibria, *supra* note 121, at 13–14.

124. Rita Chi-Ying Chung & Fred Bemak, *Revisiting the California Southeast Asian Mental Health Needs Assessment Data: An Examination of Refugee Ethnic and Gender Differences*, 80 J. COUNSELING & DEV., 111, 111 (2002).

There have also been reversals in the parent-child dynamic, as parental language barriers placed children in positions of authority as the guides and interpreters for their parents in American society.<sup>125</sup> The lack of education among many Southeast Asian refugee parents further contributed to resentment and anger in the parent-child relationship by increasing the dependence of these parents on their children as the primary communicators.<sup>126</sup> Like gender role reversals, these shifts in authority created additional disruptions in these refugees' traditional values, thus becoming another source of trauma.

### C. *Mental Health Trauma*

For Southeast Asians, mental health trauma is also a particular area of concern. Two of the most prevalent conditions are Post Traumatic Stress Disorder (PTSD) and depression. Among the Cambodian refugee population in Long Beach, California, as many as 62 percent have been diagnosed with PTSD, and 51 percent meet the criteria for major depression.<sup>127</sup> For this group, both PTSD and depression have been correlated with greater exposure to pre-migration and post-migration traumas, and factors such as poor English skills, unemployment, disability, and poverty.<sup>128</sup> Although some individuals may be receiving mental health treatment, refugee populations in general report lower utilizations of mental health services. Barriers Southeast Asians often face include cultural differences, negative stigmas of mental health services, financial cost, and a lack of translation services.<sup>129</sup> Traumatized refugees may also need mental health services years, even decades after the initial trauma of migration and adjustment,<sup>130</sup> further supporting the idea that mental health traumas within this community are deeply rooted and still in effect today. In fact, some refugees state that this trauma is something they never truly get over—they learn to manage it, but triggering events, such as the quarantining imposed by COVID-19, can easily bring back the trauma.<sup>131</sup> Ultimately, while each ethnic group's experiences differ depending on their specific circumstances,<sup>132</sup> the traumas of war, the refugee experience, and resettlement remain the same.

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125. Hsu et al., *supra* note 121, at 197.

126. Matthew Kwai-Sang Yau, *The Impact of Refugee Resettlement on Southeast Asian Adolescents and Young Adults: Implications for Occupational Therapists*, 4 OCCUPATIONAL THERAPY INT'L 1, 5 (1997).

127. Marshall et al., *supra* note 100, at 575.

128. *Id.* at 576.

129. Isok Kim & Wooksoo Kim, *Post-Resettlement Challenges and Mental Health of Southeast Asian Refugees in the United States*, 10 BEST PRAC. IN MENTAL HEALTH, 63, 70 (2014).

130. Marshall et al., *supra* note 100, at 577 (noting findings that among Cambodian refugees, there were high rates of past-year PTSD (62 percent) and depression (51 percent), even though an average of more than two decades had elapsed since these individuals' arrival in the U.S.).

131. Telephone Interview with Charlene Lin Ung, *supra* note 98.

132. Cindy C. Sangalang, Justin Jager & Tracy W. Harachi, *Effects of Maternal Traumatic Distress on Family Functioning and Child Mental Health: An Examination of*

#### D. *Traumas of Identity*

For Southeast Asians, the experience of trauma is further complicated by their identity as Asian minorities in America. Three concepts that provide important insights into the identity traumas these individuals face today include the model minority myth, the perpetual foreigner stereotype, and racial melancholia.

##### 1. The Model Minority & Perpetual Foreigner

For Asian Americans, racialization tends to take two primary forms: the model minority, and the perpetual foreigner.<sup>133</sup> Perhaps the more pervasive of the two is the model minority myth: the belief that the economic success, educational achievements, and social integration of some Asian Americans is proof that Asian Americans as a whole have transcended racism and discrimination.<sup>134</sup> In addition to simply being untrue,<sup>135</sup> such categorization is damaging and misleading, particularly for more disadvantaged groups.<sup>136</sup> First, it perpetuates the idea that Asian Americans are a monolith, which obscures the diverse realities faced by the different ethnic groups under this label. Second, it assumes that all Asian Americans are equally successful,<sup>137</sup> which is particularly detrimental for Southeast Asians who often do not fit the model minority image—at least 18 percent of Cambodian families and 27 percent of Hmong families live below the poverty line,<sup>138</sup> and Southeast Asians as a whole have some of the lowest educational attainments of all Asian American groups in the U.S.<sup>139</sup>

On a societal level, the model minority stereotype has far-reaching implications as well. As a result of the perception that all Asians are successful, governments and social service agencies often overlook Asian Americans

*Southeast Asian Refugee Families in the U.S.*, 184 *SOC. SCI. & MED.* 178, 179 (2017).

133. Angelo N. Ancheta, *Discrimination and Antidiscrimination Law*, in *RACE, RIGHTS, AND THE ASIAN AMERICAN EXPERIENCE* 45 (2d ed. 2006).

134. ROSALIND S. CHOU & JOE R. FEAGIN, *THE MYTH OF THE MODEL MINORITY*, 15 (2d ed. 2015).

135. See Pronita Gupta & Stefanie Ritoper, *Briefing Paper on the Health Impacts of Criminalization on Asian Pacific American Children, Youth and Families*, AAPIP 1, 4, 24 (2006) (citing literature pointing out that nearly half of all Asian Americans only have a high school diploma or less as their highest educational level, and APA juvenile delinquency rates directly contrast the model minority myth).

136. Grace Kao & Jennifer S. Thompson, *Racial and Ethnic Stratification in Educational Achievement and Attainment*, 29 *ANN. REV. SOC.* 417, 432 (2003).

137. *An Agenda for Positive Action*, *supra* note 80, at 3.

138. *School-to-Prison-to-Deportation Pipeline*, *supra* note 74.

139. *Three Reasons For Action*, ARISE (Jan. 2017), [https://d3n8a8pro7vhmx.cloudfront.net/ariseducation/pages/21/attachments/original/1487623066/ARISE\\_Fact\\_Sheet\\_\(1\).pdf?1487623066](https://d3n8a8pro7vhmx.cloudfront.net/ariseducation/pages/21/attachments/original/1487623066/ARISE_Fact_Sheet_(1).pdf?1487623066) (noting that 39.6 percent of Hmong adults, 38.5 percent of Cambodian adults, and 34.3 percent of Laotian adults lack a high school diploma, and Hmongs, Laotians, and Cambodians have the three lowest percentages (7.5 percent, 7.9 percent, and 9.2 percent respectively) of bachelor's degree attainment among Asian American groups).

when allocating assistance.<sup>140</sup> This stereotype also positions Asian Americans between whites and other people of color, making them vulnerable for scapegoating in times of crisis.<sup>141</sup> In this way, the model minority myth is weaponized as justification that hard work and the right values are enough to succeed in the U.S., and that the racism and oppression the Asian American community faces are unimportant.<sup>142</sup>

The flip side of the model minority is the perpetual foreigner stereotype. This is the idea that members of certain ethnic minority groups are “perpetual foreigners” regardless of their citizenship status, and are therefore denied full membership in the American identity embodied by white America.<sup>143</sup> This stereotype most often takes the form of racial microaggressions—questions such as “where are you from?” or “where did you learn English?”—and implies that the individual is less American or somehow inferior.<sup>144</sup> This can create an internal conflict between an individual’s ethnic and national identities,<sup>145</sup> and for Asian Americans specifically, has been shown to create feelings of belittlement, alienation, invalidation, and invisibility.<sup>146</sup> The duality of being expected to conform to the model minority image while always being treated as a foreigner in one’s own country creates a system that pigeonholes those who meet the model minority standard, ignores or sidelines those who do not, and disadvantages all merely on the basis of being Asian. While not all Southeast Asians are affected equally by these factors,<sup>147</sup> they are essential to contextualizing the stressors and traumas of being Asian in America.

## 2. Melancholia, the Model Minority, and Lasting Trauma

Professor David L. Eng and psychotherapist Shinhee Han note that for Asian Americans caught between dualities such as the model minority and perpetual foreigner labels, there is a melancholic preservation of unresolved grief in this sense of persistent exclusion from mainstream America.<sup>148</sup> “Melancholia,” derived from Freud, describes a sense of loss that persists as

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140. *An Agenda for Positive Action*, *supra* note 80, at 4.

141. CHOU & FEAGIN, *supra* note 134, at 17 (citing Mari J. Matsuda, *We Will Not Be Used*, in *WHERE IS YOUR BODY AND OTHER ESSAYS ON RACE, GENDER AND THE LAW*, 148–51 (1996)).

142. Derald Wing Sue, Jennifer Bucceri, Annie I. Lin, Kevin L. Nadal & Gina C. Torino, *Racial Microaggressions and the Asian American Experience*, *ASIAN AM. J. PSYCHOL.* 88, 98 (2009).

143. Que-Lam Huynh, Thierry Devos, & Laura Smalarz, *Perpetual Foreigner in One’s Own Land: Potential Implications for Identity and Psychological Adjustment*, 30 *J. Soc. CLIN. PSYCHOL.* 133, 134 (2011).

144. *Id.* at 134.

145. *Id.* at 135.

146. Sue et al., *supra* note 142, at 97.

147. Kim & Kim, *supra* note 129, at 66 (noting that factors such as nativity status may have a moderating effect on mental health outcomes related to constructs such as the perpetual foreigner stereotype. (i.e. a refugee who sees themselves as a foreigner may not feel as much dissonance as someone born in the U.S.)).

148. David L. Eng & Shinhee Han, *A Dialogue on Racial Melancholia*, 10 *PSYCHOANALYTIC DIALOGUES* 667, 671–73 (2000).

an element of the self.<sup>149</sup> Building upon this idea, Professor Anne Anlin Cheng has conceptualized a “melancholy of race,” in which melancholia becomes a metaphor for racialization and minority identity in America.<sup>150</sup> Cheng states that if American culture is a history of legalized exclusions, then it is also a history of forgetting and misremembering such exclusions.<sup>151</sup>

For minorities relegated to the edges of the dominant cultural narrative, the question of how to assimilate and construct identity in such a space creates an uneasy tension between inclusion and exclusion, and remembering and forgetting.<sup>152</sup> Eng and Han further explain that “[t]he process of assimilation is a negotiation between mourning and melancholia.”<sup>153</sup> They assert that the model minority stereotype functions as a melancholic mechanism that facilitates “the erasure and loss of repressed Asian American histories and identities.”<sup>154</sup> Because Asian Americans are unable to completely blend into the fabric of America, they must “mimic” the model minority stereotype to be recognized at all.<sup>155</sup> Yet, they must also not ask or make demands for political, economic, or social needs, because the model minority construction requires an image of passive self-sufficiency.<sup>156</sup> This insistence that Asian Americans conform to the model minority image while also never highlighting their own identities reminds us that the Asian immigrant is always seen as an “other,” and that, while no amount of assimilation can change her status as different and excluded, conformity and self-erasure are the only ways to be seen at all.

We see applications of melancholia throughout the larger experience of immigration. When an individual leaves their country of origin, they must mourn a host of losses, from homeland and family to language, identity, property, and status.<sup>157</sup> An individual typically finds closure to this mourning by investing in new objects (such as the “American dream”). However, given that the Asian immigrant experience often prevents individuals from properly assimilating, the lingering melancholia does not dissipate. Instead, it is passed on to subsequent generations, who must then reenact and live out this melancholia in their own identity negotiation and assimilation experiences.<sup>158</sup> The second generation thus lives with a “postmemory” of traumatic events. Although separated from the traumatic event itself—for example, the Vietnam War—they live with the memories of those who witnessed such experiences.<sup>159</sup> Indeed, Professors Rita Chi-Ying Chung and Fred Bemak assert

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149. Anne Anlin Cheng, *The Melancholy of Race*, 19 KENYON REV. 49, 50 (1997).

150. *Id.* at 50–52.

151. *Id.* at 50–51.

152. *Id.* at 54–60.

153. Eng & Han, *supra* note 148, at 693.

154. *Id.* at 674.

155. *Id.* at 676–78.

156. *Id.* at 678.

157. *Id.* at 679–80.

158. *Id.* at 680.

159. Yen Le Espiritu, *Toward a Critical Refugee Study: The Vietnamese Refugee Subject in U.S. Scholarship*, 1 J. VIETNAMESE STUD. 410, 425 (2006).

that, “the recollection and importance of traumatic events does not fade after resettlement and may continue to have an effect on [] psychological well-being.”<sup>160</sup> Studies also show that weaker parenting and family functioning as a result of parental trauma in Southeast Asian families are primary mechanisms for transmitting trauma across generations.<sup>161</sup> The implications of racial melancholia suggest that Southeast Asians, given their particularly traumatic migration experiences and non-conformity with the model minority stereotype, are particularly susceptible to becoming trapped in an ambiguous, conflicting struggle to construct identity in an environment of residual past trauma and pervasive racialization.

The model minority myth, the perpetual foreigner stereotype, and the undercurrents of racial melancholia framing the migration and assimilation experience have all had far-reaching and detrimental impacts on Southeast Asians today. Furthermore, the framework of racial melancholia helps us look critically at Southeast Asians’ assimilation experiences to ask: what is being lost or forgotten? What issues of trauma and identity manifest in this community’s trajectories? In this way, the daily struggles associated with assimilating, adjusting, and creating identity in America can also provide context as to why some Southeast Asians, particularly men, may be more vulnerable to the crime-to-deportation pipeline than others.

## V. SOUTHEAST ASIAN MEN, TRAUMA, & THE CRIME-TO-DEPORTATION PIPELINE

### A. *Gender Differences*

Across the Southeast Asian refugee experience, men and women are impacted differently.<sup>162</sup> Among Vietnamese women refugees, low income and lack of agency pre-migration have been associated with higher levels of stress, while for men, the financial burden of supporting a large family in America as well as the experience of multiple traumatic events were significant predictors of stress.<sup>163</sup> Among Cambodian refugees, the experience of multiple traumas and poor English skills were a predictor of stress for both genders; for men, a greater number of years spent in refugee camps was also associated with greater stress.<sup>164</sup> For Laotians, the experience of multiple traumas was predictive for both genders, but for men, stress was also associated with low English proficiency and the burden of the decision to leave Laos.<sup>165</sup> Additionally, when considering protective factors for mental health among Southeast Asian youth, only family connectedness was shown to provide protection

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160. Chung & Bemak, *supra* note 124, at 117.

161. Sangalang et al., *supra* note 132, at 179.

162. Chung & Bemak, *supra* note 124, at 111; Stanley Sue, Janice Ka Yun Cheng, Carmel S. Saad, & Joyce P. Chu, *Asian American Mental Health: A Call to Action*, 67 AM. PSYCH. 532, 534 (2012).

163. Chung & Bemak, *supra* note 124, at 115–16.

164. *Id.* at 115–17.

165. *Id.* at 17.

against extreme stress for young men, while for young women, family and school connectedness were both shown to have protective effects.<sup>166</sup> These differing experiences illustrate the reality that while Southeast Asian men and women share many similar traumas, they also have clear gendered differences. Therefore, a gender-specific approach is necessary to fully address the needs of each group.

### B. *Trauma, Crime, & Southeast Asian Men*

Generally speaking, inadequate resettlement support, coupled with the rise of mass incarceration and immigration-related detention and deportation, all make the Southeast Asian community vulnerable to the crime-to-deportation pipeline.<sup>167</sup> But what exactly sets this pipeline into motion for Southeast Asian men? Studies on crime and violence among Southeast Asian youth have pointed to several possible elements of causation. One explanation, based on the theory of segmented assimilation,<sup>168</sup> argues that violence and delinquency result from two phenomena: (1) the breakdown of social and family networks caused by the Vietnam War and the U.S.' policy of resettlement dispersal, and (2) the placement of these families in criminogenic and resource-poor environments.<sup>169</sup> While segmented assimilation is not a complete explanation,<sup>170</sup> factors such as acculturative dissonance between Southeast Asian children and their parents, and the parents' own refugee experiences, have been associated with increased levels of youth violence and delinquency.<sup>171</sup> Additionally, according to Zitsue Lee, the Asian Prisoner Support Committee (APSC)'s ambassador to Oakland's Chinatown, "The school to prison pipeline really starts in the home."<sup>172</sup> Indeed, some common themes among Southeast Asian male youth are feeling a lack of love and understanding both at school and at home, issues with language barriers (parents' lack of English proficiency), and not having a positive adult ally at home to help when they are having problems.<sup>173</sup> Further, these youth also

166. Carla T. Hilario, Dzung X. Vo Joy L. Johnson & Elizabeth M. Saewyc, *Acculturation, Gender, and Mental Health of Southeast Asian Immigrant Youth in Canada*, 16 J. IMMIGR. MINORITY HEALTH, 1121, 1126–27 (2014).

167. A NATIONAL SNAPSHOT OF OUR COMMUNITIES, *supra* note 2, at 11.

168. Vincent Chong, Katharya Um, Monica Hahn, David Pheng, Clifford Yee, & Colette Auerswald, *Toward an Intersectional Understanding of Violence and Resilience: An Exploratory Study of Young Southeast Asian Men in Alameda and Contra Costa County, California*, 14 AGGRESSION & VIOLENT BEHAV., 461, 463 (2009) (explaining that segmented assimilation asserts three potential pathways of assimilation: (1) parallel integration into the white middle class, (2) downward assimilation into poverty and racial discrimination, or (3) cohesion of a sustaining immigrant ethnic community).

169. *Id.* at 463.

170. *Id.* (noting that the links between acculturation and violence are not always consistent, and segmented assimilation may be an imperfect theoretical framework).

171. *Id.*

172. Saemmoolee Lee, *Refugee advocate with criminal past changes life, helps others*, OAKLAND NORTH (Dec. 12, 2017), <https://oaklandnorth.net/2017/12/12/refugee-with-criminal-past-changes-life-helps-others>.

173. YANG & DINH, *supra* note 111, at 6.

reported mental and emotional stress as a result of their parents' unresolved traumas from events such as the Vietnam War.<sup>174</sup> These ideas draw important connections between the pervasiveness of trauma in the lives of Southeast Asian males, and the centrality of such trauma in positioning these individuals towards the crime-to-deportation pipeline.

### 1. General Strain Theory

While such explanations alone do not fully explain why far more Southeast Asian males end up in the crime-to-deportation pipeline, we know that crime rates as a whole are similarly gendered, as males have higher rates of crime than females across the general population.<sup>175</sup> One theory that may help explain this gendered split is Robert Agnew's general strain theory (GST), which expands the social strain theory advanced by Robert Merton. Merton's theory of social strain argued that "Crime stems from the inability to achieve the goals of monetary success, middle-class status, or both."<sup>176</sup> However, Agnew asserts that there are actually several sources of strain, not just the failure to achieve aspirations, and a wide range of adaptations to such strain which together encompass a fuller range of factors that influence criminal or noncriminal adaptations.<sup>177</sup>

General strain theory pinpoints three sources of strain: (1) failure to achieve positively valued goals (including failures to achieve aspirations, expectations, or fair treatment), (2) the loss of positively valued stimuli (such as friends or loved ones), and (3) the presentation of negative stimuli (such as excessive demands or abuse).<sup>178</sup> Importantly, GST suggests that there are gender differences within the categories of strain.<sup>179</sup> In the first category, males and females may have different goals and conceptions of fairness. Research indicates that men are more concerned with extrinsic achievements, while women tend to favor relationships and purpose.<sup>180</sup> Men have also been shown to be more upset when experiencing work and financial problems and more concerned about the fairness of outcomes, rather than the fairness of procedures leading to those outcomes.<sup>181</sup> In the second category of strain there are gendered differences as well, as males are more likely to experience greater financial strain and issues in relationships with peers, while women are more likely to experience strain in the realm of the family and private sphere.<sup>182</sup>

In terms of disposition to criminal behavior, GST suggests that the gendered emotional responses to strain may predispose males to crime. The

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174. *Id.*

175. Lisa Broidy & Robert Agnew, *Gender and Crime: A General Strain Theory Perspective*, 34 J. RSCH. IN CRIME & DELINQ. 275, 277 (1997).

176. *Id.* at 275–76.

177. *Id.* at 276.

178. *Id.* at 277.

179. *Id.* at 278.

180. *Id.* at 279.

181. *Id.*

182. *Id.*

connection between strain and crime are the negative emotions felt as a result of strain, which create pressure on the individual to develop a corrective response. Crime is one such possible response.<sup>183</sup> Research shows that strain involving elements of perceived injustice or unfairness in particular have a relationship to promoting delinquent or criminal responses.<sup>184</sup> Men have been shown to be quicker to blame others for adverse treatment, view anger as an affirmation of their masculinity, and experience this anger as moral outrage.<sup>185</sup> These dispositions fit with the gendered differences formed among peer association development. Boys tend to interact in larger hierarchical groups, engage in more aggressive and competitive activities, and develop contexts of transgression and rule breaking supported by sustained gender group support as a form of bonding.<sup>186</sup> By contrast, girls are far less physical, rely more on interpersonal relationships and indirect modes of conflict engagement, and do not show as much gender group support for transgression.<sup>187</sup> In this context, GST suggests that males tend to respond to strain with anger, which increases the likelihood of a criminal response; females on the other hand tend to respond with depression, and are therefore not as predisposed to criminal activities as a form of response.<sup>188</sup> GST thus helps clarify that higher rates of male crime are not the result of men merely suffering from more strain than women, but rather the result of men experiencing different types of strain, responding to that strain with gendered emotions that lean more towards anger and aggression, and addressing such feelings in ways that have more disposition towards crime.<sup>189</sup>

## 2. Masculinity

From GST, we understand that men and women experience strain differently, and that men's responses are gender-specific and may be tied to constructions of masculinity. To look more closely at masculinity and crime, we can turn to James Messerschmidt's masculinity hypothesis. Messerschmidt's hypothesis states that when an individual does not have access to traditional avenues of masculinity such as a steady job, stable family life, occupational and educational achievement, or other traditional indicators of masculine success, violence and criminal behavior can become a resource for accomplishing and conveying masculinity.<sup>190</sup> In this sense, if a man does poorly in

183. *Id.* at 281.

184. Cesar J. Rebellon, Michelle E. Manasse, Karen T. Van Gundy, & Ellen S. Cohn, *Perceived Injustice and Delinquency: A Test of General Strain Theory*, 40 J. CRIM. JUST. 230, 235 (2012).

185. Broidy & Agnew, *supra* note 175, at 282.

186. Barrie Thorne & Zella Luria, *Sexuality and Gender in Children's Daily Worlds*, 33 SOC. PROBS. 176, 179–81 (1986).

187. *Id.* at 179–81.

188. Broidy & Agnew, *supra* note 175, at 281.

189. *Id.* at 287.

190. Jessie L. Krienert, *Masculinity and Crime: A Quantitative Exploration of Messerschmidt's Hypothesis*, 7 ELEC. J. SOCIO. (2003), [http://www.sociology.org/ejs-archives/vol7/2/01\\_krienert.html](http://www.sociology.org/ejs-archives/vol7/2/01_krienert.html); see generally, JAMES MESSERSCHMIDT, MASCULINITIES AND CRIME:

areas of masculine success, he must seek out alternative ways of validating his masculinity, such as through violence.<sup>191</sup> Additionally, those who use violence as a way to assert masculinity may become conditioned to see it as an acceptable avenue of expression, thus creating a system that perpetuates such actions.<sup>192</sup> While Messerschmidt's hypothesis is not a comprehensive description of the factors that predicate violence, it does support the general idea that "men who have access to fewer masculine resources are more likely to turn to violence."<sup>193</sup>

The notion that violence and delinquency can be an avenue toward achieving masculinity<sup>194</sup> is particularly relevant, as we see this reflected in a 2009 study by Chong et al. which found that among Southeast Asian male youth, violence served as an adaptive way to gain power and define themselves both as Asian Americans and as men.<sup>195</sup> Chong et al. discuss two realms in which Southeast Asian young men define their masculinity: the code of the streets, and the code of the family.<sup>196</sup> The code of the streets, first described by Elijah Anderson, refers to the informal rules governing behavior in poor, inner city communities suffering from violence, poverty, and crime. Specifically, the "code" is a way of negotiating respect and avoiding personal danger or disrespect.<sup>197</sup> In contrast, the code of the family, as defined in Chong et al.'s study, refers to achieving masculinity through means such as serving as the "breadwinner" and taking on responsibility.<sup>198</sup> While each pathway is different, they are both positioned around gaining power and respect, and are not mutually exclusive.<sup>199</sup> Importantly, participants in Chong et al.'s study emphasized the ways they were homogenized as undifferentiated Asians or negatively racialized as weak or nerdy, which made them targets for harassment and incited feelings of anger and violence.<sup>200</sup> Thus, the specific racialization of these men as Asian Americans creates experiences different from other men,<sup>201</sup> and violence can become a way to gain power and thereby address negative racialization and perceptions of un-masculinity.

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CRITIQUE AND RECONCEPTUALIZATION OF THEORY (1993).

191. Krienert, *supra* note 190.

192. *Id.*

193. *Id.* (noting that an empirical test of Messerschmidt's theory showed that "traditional masculinity and acceptable outlets alone are not significant indicators of a violent event.").

194. Brody & Agnew, *supra* note 175.

195. Chong et al., *supra* note 168, at 467.

196. *Id.* at 465.

197. Elijah Anderson, *The Code of the Streets*, 273 ATLANTIC MONTHLY 80, 81–82 (1994); see generally, ELIJAH ANDERSON, CODE OF THE STREET: DECENCY, VIOLENCE, AND THE MORAL LIFE OF THE INNER CITY (1999).

198. Chong et al., *supra* note 168, at 466.

199. *Id.*

200. *Id.* at 466–67.

201. Tao Liu, Y. Joel Wong, Cara S. Maffini, Nancy Goodrich Mitts, & Derek K. Iwamoto, *Gendered Racism Scales for Asian American Men: Scale development and psychometric properties*, 65 J. COUNSELING PSYCHOL. 556, 557 (2018).

Violence can even be an element of resilience and adaptation for these individuals in creating a sense of self in response to their environment.<sup>202</sup> For some Southeast Asian men, violence and delinquent behavior have become central aspects of their lives, serving important purposes in them navigate environments influenced not only by trauma, but also by gender and race.

### 3. Minority Masculinity Stress Theory

“Minority masculinity stress theory,” as put forth by Alexander Lu and Y. Joel Wong, helps further contextualize the racialized dimensions of masculinity for Southeast Asian men. For minority groups such as Asian Americans, masculinity is constructed by comparison and adherence to the dominant, hegemonic forms of masculinity.<sup>203</sup> However, Asian American men are often stereotyped as un-masculine and may suffer stress because of the awareness of their lack of hegemonic masculinity, or as a result of attempts to strongly adhere to it.<sup>204</sup> Building on Herbert Blumer’s conceptualization of symbolic interaction, which states that people internalize how others view them, Lu and Wong assert that conceptions of minority men as un-masculine are reinforced through symbolism within hegemonic masculinity norms.<sup>205</sup> This occurs through stereotyping, which (1) reinforces disconfirmations of the self as masculine, and (2) creates difficulties in the performance of identity in certain domains, which consequently causes minority men to experience increased stress.<sup>206</sup> When applied to Asian American men, being stereotyped as weak or unconfident conflicts with hegemonic ideas that men should be strong and assertive, creating a stress-engendering contradiction that undermines what might otherwise be positive racialized self-concepts.<sup>207</sup> These findings support the overarching correlations between gendered racism and masculine gender role stress<sup>208</sup> and echo the ideas of negative racialization and un-masculinity in Chong et al.’s study.<sup>209</sup> While the intersection of race and masculinity is stressful for Asian American men as a whole, such stress is particularly profound for Southeast Asian men, who must also deal with the unique traumas and stressors of their family and community environments.

### 4. Gangs

The intersections of trauma, masculinity, and Asian American racialization show that Southeast Asian men are uniquely positioned towards violence and criminogenic behavior as a result of attempting to negotiate their identity as both men and Southeast Asian Americans in an environment that often

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202. Chong et al., *supra* note 168, at 468.

203. Alexander Lu & Y. Joel Wong, *Stressful Experiences of Masculinity Among U.S.-Born and Immigrant Asian American Men*, 27 *GENDER & SOC’Y* 345, 346–47 (2013).

204. *Id.* at 347.

205. *Id.* at 365.

206. *Id.* at 349–50.

207. *Id.* at 351.

208. Liu et al., *supra* note 201, at 567.

209. *See generally* Chong et al., *supra* note 168.

works against them. Such criminogenic predisposition becomes particularly clear in outcomes such as gang involvement. One study of APIs in California showed that as many as 73 percent of those incarcerated were affiliated with gangs.<sup>210</sup> While there is no dominant theory that best explains the emergence, presence, and nature of Asian gang participation,<sup>211</sup> several overarching elements of Asian gang participation exist: alienation and marginalization in response to broken family structures and relationships; trauma from the experience of immigration; harassment by law enforcement; and racial discrimination. These elements together create an environment of tension and hostility.<sup>212</sup> For some, gangs represent a surrogate family of peers with similar backgrounds and cultures in which young men can find structure, acceptance, and protection.<sup>213</sup> Gangs may also provide a sense of family, safety, and identity, or provide a means of protection from harassment in school or in the community.<sup>214</sup> Southeast Asian youth may join gangs in order to survive in their difficult living environments, cope with the challenges of immigration, or create new social and economic opportunities not otherwise afforded to them by their communities or circumstances.<sup>215</sup> Research also shows that some Southeast Asian males such as Hmong Americans are actively “hypercriminalized” by schools and police as dangerous and deviant, the result of which is a pervasive characterization of criminalization and an automatic assumption of gang involvement.<sup>216</sup> Ultimately, while far from all Southeast Asian men participate in gangs or engage in violence, such activities are direct indicators of the ways in which gender, race, environment, and trauma can intersect and drive specific criminogenic outcomes for these men, which then positions them towards detention and deportation as a consequence of their actions.

## VI. CRIME & DEPORTATION EDUCATION AS A WAY FORWARD

Professor Nguyen, in his discussion of doubled ethical memory, asserts that “we must work through the past or else be condemned to act out because

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210. Arifuku et al, *supra* note 83, at 25–27.

211. Glenn T. Tsunokai & Augustine J. Kposawa, *Asian Gangs in the United States: The Current State of the Research Literature*, CRIME, L. & SOC. CHANGE 37, 42, 44–45 (2002) (noting that viewpoints regarding Asian gang affiliation tend to fall into two groups, one asserting that antecedent factors are similar to those of other ethnic groups such as African Americans and Latinos, and the other asserting that distinctive Asian qualities such as identity or cultural crises, war experiences, or unfamiliarity with the legal system facilitate gang involvement).

212. Mary H. Lai, *Toward an Integrative and Collaborative Approach to Asian American and Pacific Islander Youth Violence Research, Practice, and Policy*, 14 AGGRESSION & VIOLENT BEHAV. 454, 456 (2009); Geoffrey Hunt, Karen Joe, & Dan Waldorf, *Culture and Ethnic Identity Among Southeast Asian Gang Members*, 25 FREE INQUIRY 9, 19 (1997).

213. Bill Ong Hing, *Deporting Cambodian Refugees: Justice Denied?*, 51 CRIME & DELINQ. 265, 274–75 (2005).

214. Lee, *supra* note 172.

215. Lai, *supra* note 212, at 456–57.

216. Bao Lo, *Criminalization and Second-Generation Hmong American Boys*, 44 AMERASIA J. 113, 116 (2018).

of it.”<sup>217</sup> Applied here, we can understand that only by working through the traumas of the Southeast Asian community can we avoid reinforcing negative outcomes in the present, particularly for Southeast Asian men.

A. *Why Reducing the Detention and Deportation of Southeast Asian Men Matters*

One question we might ask is why a specific focus on the deportations of Southeast Asian men matters. The answer stems first from the idea that deportation is not a viable long-term solution for the Southeast Asian community. Deportations are essentially a band-aid on a broken bone; a superficial, short-sighted solution that fails to truly address the underlying problem. By separating and inflicting emotional, social, and economic stress on both deportees and their families, deportation only perpetuates the very problems that the crime-to-deportation pipeline symbolizes: poverty, conflict, inequality, and unresolved trauma. More specifically, the gendered nature of these detentions and deportations exacerbates community and family issues by removing the paternal figure from Southeast Asian families. There are many instances of detained and deported Southeast Asian fathers being separated at critical points in their children’s lives,<sup>218</sup> and the effects of an absent father during a child’s development can be highly detrimental.<sup>219</sup> The strain of having an incarcerated father can be especially problematic for sons, as research shows that “having a father incarcerated increases involvement in some types of delinquent behavior because of emotional strain that may be precipitated by weakened parental attachment.”<sup>220</sup>

Following Agnew’s strain theory, Lauren C. Porter and Ryan D. King elaborate that paternal incarceration might also represent the removal of a positively valued stimulus, which would create strain that induces negative anger and frustration, and by extension potential delinquency as a means of coping.<sup>221</sup> Furthermore, the detention and deportation of Southeast Asian men sends the message to others that despite positive change, one can still be punished for actions or mistakes that have arguably been long atoned for.

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217. Nguyen, *supra* note 99, at 150–53, 161 (defining doubled ethical memory as operating within two ends of a spectrum of remembrance: (1) “the ethics of recalling one’s own,” and (2) “the ethics of recalling others,” of which both are necessary to develop a nuanced and collective understanding of an event).

218. See DREAMS DETAINED, *supra* note 8, at 5 (noting that many incarcerated and deported Southeast Asian men have families with young children and newborns).

219. Benjamas Penboon, Aree Jampaklay, Patama Vapattanawong, & Zachary Zimmer, *Migration and Absent Fathers: Impacts on the Mental Health of Left-Behind Family Members in Thailand*, 28 ASIAN & PAC. MIGRATION J. 271, 291–92 (2019) (stating that the absence of a father may create behavioral problems in children such as inattentiveness and hyperactivity, as well as conduct problems due to a lack of fatherly guidance and discipline).

220. Lauren C. Porter & Ryan D. King, *Absent Fathers or Absent Variables? A New Look at Paternal Incarceration and Delinquency*, 52 J. RES. IN CRIME & DELINQ. 414, 433 (2014).

221. *Id.* at 420.

There are numerous examples of formerly incarcerated Southeast Asian men that illustrate that the commission of a crime is not indicative of that individual's life trajectory.<sup>222</sup> One notable example is Sear Un, who was convicted in 1998 for residential burglary.<sup>223</sup> After release, he remained in the U.S. for another two decades keeping a clean record, maintaining his mandated check-ins, and dedicating himself to his family and community, illustrating how he had successfully made amends and moved past his prior crime.<sup>224</sup> Nevertheless, in 2018, he would have been deported but for a last-minute pardon by California Governor Jerry Brown for demonstrating good moral character.<sup>225</sup> Un's pardon is the exception rather than the norm, but his story of crime and atonement is far from uncommon. Former convicts like Un who have learned from their mistakes are potential voices of reason that prevent younger Southeast Asian men from turning to crime. However, the push for the deportation of rehabilitated ex-convicts removes their knowledge and voices from the community. This reinforces the cycle of criminal involvement, as Southeast Asian boys and men see the punishment and harm of the criminal justice system but not the potential for recovery and change.

### B. *Crime & Deportation Education as a Solution*

Most Southeast Asian deportations continue to result from aggravated felony charges, including convictions from as many as twenty years prior.<sup>226</sup> However, the crime-to-deportation pipeline arguably shows not that Southeast Asians are an inherently criminal group, but that the factors of trauma, race, gender, and environment can interact to predispose these individuals to behaviors that result in detention and deportation. In order to prevent the unnecessary deportations of Southeast Asian men, more attention must be given to their unique experiences at the intersections of trauma, gender, and race. Providing prisoner rehabilitation services, relaxing the aggravated felony category, treating the symptoms of mental health, and addressing income and poverty gaps are all necessary solutions. However, efforts should also be made to closely engage with the specific gendered connection between criminogenic activity and deportation.

One potential solution is educating Southeast Asian men and youth on crime and deportation. While it is outside the scope of this Note to define a

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222. Yam, *supra* note 7, (quoting Quyen Dinh, Executive Director of SEARAC, in regards to formerly incarcerated Southeast Asian men, stating that "many were released years or decades ago and found a new path forward, whether in a career, education, family, or faith").

223. Michelle Chen, *Southeast Asian Refugees are the Latest Victims of Trump's Deportation Crackdown*, THE NATION (Jan. 3, 2019), <https://www.thenation.com/article/archive/southeast-asian-refugees-deportation>.

224. *Governor Brown Demonstrates Commitment to Stopping Southeast Asian Deportations*, SEARAC (Dec. 24, 2018), [https://www.advancingjustice-alc.org/news\\_and\\_media/governor-brown-demonstrates-commitment-to-stopping-southeast-asian-deportations](https://www.advancingjustice-alc.org/news_and_media/governor-brown-demonstrates-commitment-to-stopping-southeast-asian-deportations); see also Chen, *supra* note 223.

225. Chen, *supra* note 223.

226. A NATIONAL SNAPSHOT OF OUR COMMUNITIES, *supra* note 2, at 11.

specific curriculum, such education could focus on three areas: (1) explaining the criminal justice and deportation systems, (2) drawing connections between gender, trauma, and the lived experience of Southeast Asian men, and (3) providing lasting support for these men moving forward. These areas of focus are driven by the recognition that a common theme in the stories of many deportees is a lack of familiarity with the specific consequences of their actions.<sup>227</sup> Additionally, bias on the part of law enforcement and inadequate services for proper legal assistance further compound the disconnect between Southeast Asians and an understanding of the criminal justice system.<sup>228</sup> However, education can be used to address these shortcomings and answer key questions about the deportation and criminal justice system. For instance: What is an aggravated felony, and what are the most common types? What happens if one is detained? Who is most at risk and why? Such information builds a critical bridge between criminal enactments and the repercussive consequences of detention and deportation, thereby making the often nebulous concept of deportation understandable and real. Building upon such knowledge, the second focus of this educational initiative would explain how the traumas these men face can translate to violence, crime, and potentially deportation. Finally, with the aim of fostering support and community, this initiative would prioritize providing long-term support for these men throughout their lives. By gaining a better understanding of the current state of deportations and the actions that put them at risk, Southeast Asian men and youth can operate with a sense of control—choosing to commit an aggravated felony with the knowledge of what it is and how it can lead to deportation is very different from committing a crime and being genuinely surprised at being summoned to court for a removal hearing.

Such knowledge alone may not necessarily fix the longstanding traumas Southeast Asian men face. Indeed, we know that trauma does not just disappear on its own, and intergenerational trauma may continue to impact the Southeast Asian community for years to come.<sup>229</sup> However, we also know that Southeast Asian men can act with agency to confront the challenges of being minority men, including whether or not to engage in criminogenic behavior.<sup>230</sup> Though the environment also plays a role in predisposing them to criminogenic behavior, Southeast Asian men are not merely passive reactants at the mercy of their circumstances. Rather, they must also take responsibility

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227. AN AGENDA FOR POSITIVE ACTION, *supra* note 80, at 10.

228. *Id.*

229. YANG & DINH, *supra* note 111, at 8 (stating that intergenerational trauma among Southeast Asian American youth may even intensify in the future if necessary and appropriate needs and challenges aren't addressed).

230. See Chong et al., *supra* note 168; Jason H. Lee, *Dislocated and Deprived: A Normative Evaluation of Southeast Asian Criminal Responsibility and the Implications of Societal Fault*, 11 MICH. J. RACE & L. 671, 699–703 (2006) (noting arguments such as soft determinism, which posits that “although human actions are caused, they are not compelled,” thus pointing to the individual agency of the individual as an ever-present option, even in difficult situations or circumstances).

for and control of their lives by understanding the ramifications of the choices they make, and how those choices relate to crime and deportation.<sup>231</sup>

A crime and deportation-focused education initiative acknowledges this agency, while also recognizing that it may be infeasible to simultaneously address all the relevant social, cultural, and economic factors that precipitate criminogenic outcomes. Additionally, while some violence and crime may be inevitable given the entrenched factors predisposing them to such conduct, education activates Southeast Asian men's agency as individuals by helping them think about the results of any actions they may take. As Chong et al. noted, violence is just one tool that Southeast Asian men use to navigate their environments, and these men are aware of the role and limitations of the use of violence in different contexts.<sup>232</sup> This suggests that while violence may be a necessary aspect of some parts of their lives, these men can also adapt or mitigate their use of violence.

However, knowledge alone cannot totally change behavior.<sup>233</sup> The critical element in generating lasting behavioral change through education is explaining to individuals why such changes need to be made, and how it is personally relevant to them.<sup>234</sup> Looking at social learning theory, which emphasizes self-efficacy in "engaging in a behavior and perceiving one's own ability to successfully execute those behaviors," Katherine R. Arlinghaus and Craig A. Johnston note that effective education must play a role in both components.<sup>235</sup> In practice, this means (1) learning what information individuals already know and what they consider important, (2) not overloading individuals with information, and (3) understanding that generating change requires patience and many small changes over time.<sup>236</sup> By implementing crime and deportation-focused education with these tenets in mind, generating positive change among Southeast Asian men may be more likely to succeed.

The next logical question is how to reach the Southeast Asian male population most at risk of deportation. Within the Southeast Asian community, there are some organizations, such as the Asian Prisoners Support Committee (APSC), that directly address elements of the crime-to-deportation pipeline by providing peer support, case management, community immersion, and prison education classes for APIs who are either incarcerated or reentering

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231. Lee, *supra* note 230, at 699–700 (arguing that while society shares part of the blame for Southeast Asians' increased criminal outcomes per an analysis under concepts such as the just desserts doctrine and rotten social background defense, these individuals must also retain part of the blame in recognition of the voluntary agency of their criminal choices).

232. Chong et al., *supra* note 168, at 468.

233. Katherine R. Arlinghaus & Craig A. Johnston, *Advocating for Behavior Change With Education*, 12 AM. J. LIFESTYLE MED. 113, 113 (2017) (while Arlinghaus & Johnston discuss this topic in the context of clinical care practices, the underlying concepts of using education to generate behavioral change are similarly applicable to changing behavior among Southeast Asians).

234. *Id.* at 114.

235. *Id.*

236. *Id.* at 115.

society.<sup>237</sup> Others, such as the Southeast Asian Young Men's Group (SEAYM), provide extracurricular, academic, and vocational services for Southeast Asian young men from immigrant and refugee families.<sup>238</sup> Partnering with these organizations would be a beneficial first step, as they directly serve the populations who are most likely to be at risk. However, while these organizations provide a good starting point, to truly improve the outcomes of the crime-to-deportation pipeline, such education must be widespread among all Southeast Asian males, not just those already behind bars or who happen to be involved with a community organization such as the SEAYM.

The long-term question, then, is how do we make a crime and deportation education program lasting and sustainable? One answer is to emphasize a community-based approach. Community-based approaches are central to creating sustainable crime prevention programs.<sup>239</sup> Specifically, sustainability requires processes such as community mobilization and framing the addressing of issues as a community-wide need rather than an individualized concern.<sup>240</sup> Indeed, research on violence and delinquency prevention in API communities highlights community mobilization and youth activism as effective prevention strategies,<sup>241</sup> so connecting to larger and more broadly focused Southeast Asian community and youth organizations is necessary for long-term sustainability. One such organization is the Southeast Asian Resource Action Center (SEARAC), which already works with many populations across the Southeast Asian community through media and policy advocacy on topics from deportation to social equality.<sup>242</sup> By partnering with organizations such as SEARAC to implement crime and deportation focused education for Southeast Asian men, initiative and agency is placed directly within the Southeast Asian community, thereby giving such education the best opportunity for sustainability, reach, and long-term effect.

Finally, this educational initiative would not stand on its own. Rather, as an initiative centered on education and prevention, it would complement existing services such as the APSC's "ROOTS" program<sup>243</sup> and the support services offered by SEAYM on topics such as youth violence, cultural and generational gaps, generational trauma. Because the crime-to-deportation pipeline ultimately ties back to trauma, successful solutions must acknowledge the interconnected social, community, and environmental factors, as

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237. *Programs*, APSC, <https://www.asianprisonersupport.com/programs-1> (last visited May 1, 2020).

238. *Southeast Asian Young Men's Group*, ASIAN COUNSELING AND REFERRAL SERVICE, <https://acrs.org/services/child-youth-development/seaym>.

239. Katharine D. Kelly, Tullio Caputo, & Wanda Jamieson, *Reconsidering Sustainability: Some Implications for Community-Based Crime Prevention*, 25 *CRITICAL Soc. POL'Y* 306, 321 (2005).

240. *Id.*

241. Lai, *supra* note 212, at 458.

242. *Policy Priorities*, SEARAC, <https://www.searac.org/policy-priorities> (last visited May 1, 2020).

243. See *ROOTS (Restoring Our Original True Selves)*, Asian Prisoner Support Committee, <https://www.asianprisonersupport.com/programs-1>.

well as mental and psychological factors.<sup>244</sup> A crime and deportation-focused education can play a beneficial role in this regard by recognizing and contextualizing the specific traumas Southeast Asian men face, providing them with the knowledge and agency to direct the effects of such trauma away from the crime-to-deportation pipeline, and providing integrated community support and implementation to ensure long-term success.

### CONCLUSION

Asian Americans have long been overlooked in American immigration policy, and Southeast Asians, even more so.<sup>245</sup> However, now more than ever, the crime-to-deportation pipeline and its effects on Southeast Asian men deserve heightened attention. The U.S. Immigration and Customs Enforcement has made clear that it is “committed to directing its enforcement resources to those aliens posing the greatest risk to the safety and security of the United States.”<sup>246</sup> But against the backdrop of the Trump administration demonizing and denigrating immigrants while stoking nationalist fears of dangerous “others,”<sup>247</sup> we have to wonder whether the Southeast Asians being detained and deported are truly those who pose “the greatest risk to the safety and security of the United States.”

An examination of the complicated identities of Southeast Asian men shows that they are individuals caught in an interconnected system of trauma, racism, gender, and socioeconomic inequality that positions them towards crime, and in the cases of those without U.S. citizenship, permanent deportation. In many ways, the Southeast Asian male is a direct embodiment of many of his community’s struggles,<sup>248</sup> particularly in terms of masculinity, ethnic identity, discrimination, and violence. However, educating Southeast Asian men on the connections between trauma, crime, and deportation may help address the crime-to-deportation pipeline. By capitalizing on the agency of these men while also recognizing the continued presence of violence and trauma in their lives, such education that contextualizes the links between trauma and crime, and the consequences of criminal actions and how they relate to deportation, would provide these men with greater agency and control over the choices they make for their futures. Thus, while not a stand-alone solution, such education can help mitigate the crime-to-deportation pipeline and positively impact Southeast Asian men and their communities.

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244. Pinderhughes et al., *supra* note 112, at 10.

245. DREAMS DETAINED, *supra* note 8, at 2, 26.

246. *Fiscal Year 2018 ICE Enforcement and Removal Operations Report*, U.S. ICE (2018), <https://www.ice.gov/doclib/about/offices/ero/pdf/eroFY2018Report.pdf>.

247. Laura Finley & Luigi Esposito, *The Immigrant as Bogeyman: Examining Donald Trump and the Right’s Anti-Immigrant, Anti-PC Rhetoric*, 20 HUMAN & SOC’Y 2–3 (2019).

248. Viet Thanh Nguyen, *The Remasculinization of Chinese America: Race, Violence, and the Novel*, 12 AM. LITERARY HIST. 130, 131 (2000) (referencing a literary metaphor of the Asian American male’s body as symbolic of its larger ethnic and national community).