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Steven W. Bender

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# KNOCKED DOWN AGAIN: AN EAST L.A. STORY ON THE GEOGRAPHY OF COLOR AND COLORS\*

Steven W. Bender\*\*

*Hector knocked up 3 girls in the gang. There are 27 girls in his gang. What is the exact percentage of girls Hector knocked up?*<sup>1</sup>

Derogatory racial images have long been a mainstay of media productions from cinema to song. Racial and ethnic humor drawing on stereotypical visions of racial groups is a staple of comedy, particularly on television, film, and in stand-up routines. Consistent with the scruples of a supposedly colorblind society, such depictions must meet prevailing standards of decorum.<sup>2</sup> Today, white comedians can't use the n-word, even in jest,<sup>3</sup> and pa-

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\* This article's title is drawn from two notable film comedies, Judd Apatow's *KNOCKED UP* (Universal Pictures 2007) and Steve Martin's *L.A. STORY* (Carolco Pictures 1991), both set in Los Angeles with Latino/as and African Americans invisible in the latter aside from a black rapping waiter at a trendy restaurant and brief glimpses of black and Latino bellhops at the oceanfront hotel El Pollo del Mar (Chicken of the Sea). As discussed below, Latino/as are included in the storyline of *Knocked Up* only through derogatory references. This article's title is also drawn from the gangland odyssey *COLORS* (Orion Pictures 1988), also set in Los Angeles, which captures in its title the warfare among Los Angeles-based gangs bearing different colors of association.

\*\* James and Ilene Hershner Professor of Law and Director of Portland Programs, University of Oregon School of Law. This article benefited from a faculty summer research stipend from the Walker-Wiener Research Endowment Fund and I am grateful for that support. I also appreciate the comments and corrections offered by Keith Aoki, Richard Delgado, Gil Carrasco, Kevin Johnson, Michael Olivas, and Hari Osofsky on earlier drafts, and the help of my research assistant Matt Snell.

<sup>1</sup> STEVEN W. BENDER, *GREASERS AND GRINGOS: LATINOS, LAW, AND THE AMERICAN IMAGINATION* 37 (2003) (quoting mock East Los Angeles High School Math Proficiency Exam); see also *infra* notes 66-67 and accompanying text.

<sup>2</sup> Cf. JOHN L. JACKSON, JR., *RACIAL PARANOIA: THE UNINTENDED CONSEQUENCES OF POLITICAL CORRECTNESS* 81-109 (2008) (observing that today's climate of political correctness where overt statements betraying racial biases are unacceptable has not dispelled racism; rather, cues and codes of the persisting racial order are now submerged, prompting "racial paranoia").

<sup>3</sup> One example of this is Andy Dick's stab at reenacting a recent, distressing event in our racial history. Michael Richards, best known for his role as Cosmo Kramer in the 1990s NBC television sitcom *Seinfeld* (Castle Rock Entertainment), incited controversy when he castigated hecklers in a West Hollywood comedy club, repeatedly calling one of them a "nigger" and suggesting lynching with his threat, "Fifty years ago we'd have you upside down with a f\*\*\*ing fork up your ass." TMZ, 'Kramer's' Racial Tirade, <http://us.video.aol.com/player/launcher?pmmsid=1772645> (last visited Mar. 5, 2009) (embedded video clip); see also Paul Farhi, 'Seinfeld' Comic Richards Apologizes for Racial Rant, WASH. POST, Nov. 21, 2006, at C1. One of the hate speech victims recounted that Richards was upset with their disruption while ordering drinks and began his tirade by saying "Look at the stupid Mexicans and blacks being loud up there." *The Situation Room* (CNN television broadcast Nov. 22, 2006), transcribed at <http://transcripts.cnn.com/TRANSCRIPTS/061122/sitroom.03.html>. A few weeks later at another Los Angeles comedy club, comedian Andy Dick tried to comically replicate the Richards outburst by yelling, "You're all a bunch of niggers," but ended up angering the

tently offensive racial references must arrive in more acceptable wrapping. Archie Bunker, in the 1970s series *All in the Family*, might rail unrelentingly at blacks, Latino/as, and other subordinated groups, but his son-in-law would soften the blow by confronting Archie's racist banter and attitudes.<sup>4</sup> More recent conventions include the equal opportunity offender—by purporting to offend all groups with racist, sexist, and homophobic humor, the comedian thereby secures a limited license to engage in blatantly offensive depictions. Intraracial humor gains even more cover—such as when Mexican American comedian Paul Rodriguez opened his short-lived 1984 primetime sitcom *A.K.A. Pablo* by remarking he carried the “Mexican Express Card,” a knife,<sup>5</sup> or, in a variation on intraracial humor, when Chris Rock distinguishes “black people,” whom he loves, from “niggas,” in order to denigrate the latter.<sup>6</sup> Interracial jabs from a speaker of color apparently are also acceptable—as when a black comedian excoriates Mexican Americans or when in *The 40-Year-Old Virgin*, a film from the Judd Apatow comedy factory, a Pakistani American asks his black coworker, an expectant father, “When your child is born, is he already on parole?”<sup>7</sup>

While colorblind etiquette places some limits on explicitly racial humor, especially as delivered by whites, close cousins of racial humor are fair game in the prevailing political and social climate. In the wake of the September 11th attacks, Muslims are the target du jour of derision from hate radio to humor.<sup>8</sup> Blatant homophobic humor<sup>9</sup> and sexism<sup>10</sup> are commonplace reminders of the gendered and sexualized pecking order. Similarly, new proxies for racialized humor have emerged at a time when hate radio and social discourse are rife with anti-immigrant and anti-Mexican sentiment. It is open season for conservative radio hosts, their callers, and even political candidates to attack “illegal aliens” as a proxy for vilifying Mexican Ameri-

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audience and apologizing. Maria Elena Fernandez, *Racial Slur Used Again, Rued Again*, L.A. TIMES, Dec. 6, 2006, at B4. See generally JABARI ASIM, THE N WORD: WHO CAN SAY IT, WHO SHOULDN'T, AND WHY (2007) (detailing the history of the word “nigger,” and the implications of contemporary usage of the term).

<sup>4</sup> See *All in the Family* (CBS television broadcast); cf. ASIM, *supra* note 3, at 175-76 (observing that Archie's popularity overwhelmed the show's intent to lampoon racist attitudes).

<sup>5</sup> *A.K.A. Pablo* (ABC television broadcast 1984).

<sup>6</sup> CHRIS ROCK, *Niggas vs. Black People*, on ROLL WITH THE NEW (DreamWorks Records 1997). Relevant to my geographic theme, this recording also signals the racial connotations of Anytown, USA's Martin Luther King, Jr. Boulevard as an unsafe place where “there's some violence going down.”

<sup>7</sup> THE 40-YEAR-OLD VIRGIN (Universal Pictures 2005). The film was directed by Judd Apatow and co-written by Apatow and actor Steve Carell.

<sup>8</sup> Vilification of Muslims and Arab groups, of course, predated the September 11th attacks. See generally JACK G. SHAHEEN, REEL BAD ARABS: HOW HOLLYWOOD VILIFIES A PEOPLE (2001) (reviewing hundreds of films which depict Muslims and Arabs negatively).

<sup>9</sup> See, e.g., KNOCKED UP (Universal Pictures 2007) (featuring dialogue between male characters such as “I always aim right,” with the reply “Right into a dude's ass,” and “We got pinkeye,” with the rejoinder, “From giving each other butterfly kisses or something?”).

<sup>10</sup> Katherine Heigl, who played the female lead in *Knocked Up*, generated controversy when, in an interview, she called the film “a little sexist.” See Leslie Bennetts, *Heigl's Anatomy*, VANITY FAIR, Jan. 2008, at 74, 76 (“It paints the women as shrews, as humorless and uptight, and it paints the men as lovable, goofy, fun-loving guys.” (quoting Heigl)).

cans and other Latino/a groups. Rather than singling out Mexican immigrants, these tirades can hide behind a racially neutral cover by portraying generic “aliens” as criminally treacherous, as terrorists, as lazy, as public charges, and as subverting our “American” culture and morals.<sup>11</sup> But when “illegals,” “immigrants,” or “aliens” are mentioned, most listeners appreciate that Mexicans are the subjects of conversation. In the same way, condescending references to “welfare moms” and “welfare queens” abusing government entitlement programs have served as code for single, African American mothers since the 1980s, especially in the political arena.

Another proxy for racial humor served as the closing laugh in the Apatow-penned, smash comedy<sup>12</sup> *Knocked Up*—the geographic proxy for race. Returning with their newborn baby from a Southern California hospital, character Alison Scott asks Ben Stone, “I hope your apartment’s big enough for the three of us?”<sup>13</sup> He replies, “That’s why I got one in East L.A.,” but adds that, “The only thing is we have to decide if we’re gonna be Crips or Bloods before we get there.”<sup>14</sup> Alison offers, “Well, I look good in red,” and Ben rejoins, “I look good in blue; the fighting continues.”<sup>15</sup> Apatow further taps this potentially rich comedic vein with other geographic references in his films. Most notably, in *The 40-Year-Old Virgin* actor Seth Rogen describes a weekend jaunt to Tijuana, Mexico, where he attended a show everyone said he should check out—“a woman f\*\*\*ing a horse.”<sup>16</sup>

Mexicans and East Los Angeles aren’t the only geographical proxy in the cultural landscape. South Central L.A. (now known as South Los Angeles) is culturally kindred with East L.A. for its invocation of black America in the media and public imagination.<sup>17</sup> With similar geographic roots, the

<sup>11</sup> See JACKSON, *supra* note 2, at 197 (describing how rhetorical attacks on immigrants often are couched in cultural terms rather than overtly racial terms, helping disassociate the attackers from “old-time racism”).

<sup>12</sup> In the year of its release, *Knocked Up* grossed an astounding \$148.8 million domestically, Pamela McClintock, *Thinking Outside the Box Office*, VARIETY, Jan. 7-13, 2008, at 10, and \$70 million in foreign markets, Dave McNary, *2007 Was Banner Year for O’Seas B.O.*, VARIETY, Jan. 7-13, 2008, at 17.

<sup>13</sup> KNOCKED UP, *supra* note 9.

<sup>14</sup> *Id.* Consider if the dialogue had been phrased less pointedly, as with, “That’s why I got one in a rough part of town, the only thing we have to decide is whether we’re Crips or Bloods before we get there.” Given the racialized nature of Crips and Bloods membership, see discussion *infra* notes 80-81 and accompanying text, perhaps the audience would have situated the apartment in a black neighborhood.

<sup>15</sup> KNOCKED UP, *supra* note 9.

<sup>16</sup> THE 40-YEAR-OLD VIRGIN, *supra* note 7. More typically, Mexican women are associated deviantly in the American imagination with donkeys. See BENDER, *supra* note 1, at 67-68, 117-18 (describing, among other examples, a film screened at UCLA depicting a Mexican woman having sex with a donkey). This heinous association is consistent with the stereotypical conceptions of the fertile Latina and the “dirty Mexican,” *id.* at chs. 5 & 8, although to the extent such donkey shows exist, they are catering to the desire of Anglo tourists running to the border for illicit entertainment.

<sup>17</sup> See *infra* note 83 and accompanying text for a discussion of the emerging demographic composition of South Los Angeles in which Latino/as now outnumber black residents. Query which U.S. cities and regions are proxies for Anglo populations—perhaps havens for the wealthy such as Beverly Hills, the Hamptons, and Aspen.

pathbreaking rap group N.W.A. came "Straight Outta Compton" in Southern California.<sup>18</sup> Rappers also situated the neighboring city of Long Beach, often referred to as the "LBC,"<sup>19</sup> in the mainstream cultural vision as a black community.<sup>20</sup> The Los Angeles neighborhood of Watts and "Oaktown" (Oakland, California) on the West Coast and Harlem on the East Coast are additional proxies for blacks, as is Spanish Harlem for Puerto Ricans, and a city's Chinatown or Koreatown for Asians. When Ben told Alison he "just walked three f\*\*\*ing miles through Koreatown"<sup>21</sup> (located a few miles west of downtown Los Angeles), those miles presumably seemed more onerous, maybe even dangerous, just as a walk through the cinematic barrio might be.

My discussion, however, focuses on my childhood home of East Los Angeles, where I lived with my Mexican American mother and, later, my Mexican American stepfather, who joined us in 1967. Despite its limited territory, East Los Angeles amply illustrates a vicious cycle between racially charged humor and stereotype on one hand, and poverty and segregation on the other. As discussed below, East L.A.'s status as a proxy for Mexicans has as its source the ongoing history of segregation of Mexican Americans and other Latino/as. Beginning in the 1930s and carrying into the twenty-first century, East L.A. has been a haven for Mexican Americans, whose disproportionate poverty was manifested in substandard schools that reflected traditional localized methods of school finance.<sup>22</sup> Startling dropout and unemployment rates fueled a despair sometimes soothed by gang membership, in turn earning East L.A. the societal distinction of gangland territory and proxy for society's often negative views of Mexican Americans. Against the backdrop of this cycle of despair, this article offers some potential pathways to hope for our most racialized neighborhoods, mindful that they stand as gateways to hope and reform elsewhere.

This East L.A. story is one of color and colors—the skin "colors" of brown, black, and white; the gang colors of red and blue; and finally, the color of money that lured subprime lenders to the barrio. Together, they provide a backdrop for this American story in Hollywood's shadow.

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<sup>18</sup> N.W.A., *Straight Outta Compton*, on *STRAIGHT OUTTA COMPTON* (Ruthless Records/Priority Records 1988).

<sup>19</sup> LBC has been attributed as an acronym for Long Beach/Compton, Long Beach, California, Long Beach City, and even Long Beach Crips.

<sup>20</sup> See, for example, SNOOP DOGGY DOGG, *Gin and Juice*, on *DOGGYSTYLE* (Death Row Records 1993), which opens with the lyrics, "With so much drama in the LBC . . ." Any reference to the "inner-city" is proxy for both blacks and Latino/as, particularly when contrasted with suburbia that connotes white residents living in single-family homes with manicured lawns.

<sup>21</sup> *KNOCKED UP*, *supra* note 9.

<sup>22</sup> See discussion *infra* Part I on California's shift from a locally controlled property tax-based system to state control of education funding.

## I. BORN IN EAST L.A.

When Ben tells Alison they can move with their newborn to the new apartment he found in East L.A., but that they need to decide first whether they are going to be “Bloods” or “Crips,” no doubt the audience situates their new home as among brown-faced and stereotypically treacherous Mexicans. East L.A., an unincorporated area near downtown Los Angeles, was “once home to substantial numbers of Anglos and Jewish Americans, [but] the . . . area browned in the 1950s and 1960s as it became more Mexican, and more poor.”<sup>23</sup> As measured by the 2000 Census, ninety-seven percent of East L.A.’s population was Latino/a,<sup>24</sup> with about a quarter of its residents living below the poverty line. Factor in undocumented persons, who are not readily counted, and the tendency of some Latino/as to distance themselves ethnically from Mexicans and other Latino/as,<sup>25</sup> and the likelihood is that East L.A. is even more decidedly Latino/a.

Before their invalidation in 1948 by the United States Supreme Court as unconstitutional,<sup>26</sup> restrictive covenants routinely barred the occupancy of real estate, not merely by African Americans, but also by Mexican Americans and other racialized groups in the United States.<sup>27</sup> For example, a cove-

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<sup>23</sup> STEVEN W. BENDER, *ONE NIGHT IN AMERICA: ROBERT KENNEDY, CÉSAR CHÁVEZ, AND THE DREAM OF DIGNITY* 4 (2008). Born to Jewish American parents, see Lesley O’Toole, *Judd Apatow: He’s the Daddy*, INDEPENDENT (London), Aug. 22, 2007, available at <http://www.independent.co.uk/arts-entertainment/films/features/judd-apatow-hes-the-daddy-462552.html>, Judd Apatow lives in Pacific Palisades, an affluent hillside district of Los Angeles with an ocean view, see Stephen Rodrick, *Judd Apatow’s Family Values*, N.Y. TIMES, May 27, 2007, § 6 (Magazine), at 37.

<sup>24</sup> Press Release, U.S. Census Bureau, *Census 2000 Paints Statistical Portrait of the Nation’s Hispanic Population* (May 10, 2001), available at <http://www.census.gov/Press-Release/www/2001/cb01-81.html> (noting that East L.A. had the highest proportion of Latino/as for any place in the United States with 100,000 or more residents). Prompted by policies of United States intervention in the 1980s, Ibrahim J. Gassama, Robert S. Chang & Keith Aoki, *Foreword: Citizenship and its Discontents: Centering the Immigrant in the Inter/National Imagination (Part II)*, 76 OR. L. REV. 207, 224 n.65 (1997), immigrants from Mexico and Central America came to Los Angeles and East L.A. in substantial numbers, Joan Moore & James Diego Vigil, *Barrios in Transition*, in *MULTICULTURALISM IN THE UNITED STATES: CURRENT ISSUES*, CONTEMPORARY VOICES 355, 357-59 (Peter Kivisto & Georganne Rundblad eds., 2000). Query what is the demographic tipping point for a geographic proxy—is Miami now a proxy for Cuban and other Latin American residents? In 2000, Miami’s population was 362,470, and about two-thirds of Miami residents were Latino/a. U.S. Census Bureau, Miami (City) QuickFacts, <http://quickfacts.census.gov/qfd/states/12/1245000.html> (last visited Mar. 5, 2009).

<sup>25</sup> RODOLFO F. ACUÑA, *ANYTHING BUT MEXICAN: CHICANOS IN CONTEMPORARY LOS ANGELES* 8-10 (1996) (discussing this identity evasion among Latino/as).

<sup>26</sup> *Shelley v. Kraemer*, 334 U.S. 1 (1948) (holding that state court enforcement of racially restrictive covenants violated the Equal Protection Clause of the Fourteenth Amendment); see also *Barrows v. Jackson*, 346 U.S. 249 (1953) (complementing *Shelley* by holding that property owner who breached a racial covenant by selling to black buyers was not liable for damages).

<sup>27</sup> Although covenants restricting occupancy on the basis of race or national origin are unenforceable, query the enforceability of covenants restricting sales or rentals to those known or suspected to be undocumented immigrants. In 2006, the town of Hazleton, Pennsylvania, enacted ordinances that required renters to obtain occupancy permits only available upon proof

nant burdening property in California's Alameda County in the 1940s pulled no punches in proscribing occupancy by those of Mexican descent: "No person or persons of the Mexican race, or other than the Caucasian race shall use or occupy any buildings or any lot, except that this covenant shall not prevent occupying by domestic servants of a different race domiciled with an owner, tenant, or occupant thereof."<sup>28</sup> Evidencing the segregationist ideals of the times, promotional responses to an inquiry in 1927 by the Los Angeles Chamber of Commerce included one from coastal El Segundo that boasted it "had no negroes or Mexicans," and another by Lynwood reporting that "Lynwood, being restricted to the white race, can furnish ample labor of the better class."<sup>29</sup> When the Supreme Court invalidated such abhorrent racially restrictive covenants, landowners turned to other techniques to foster segregation, such as zoning requirements to discourage lower-income residents and tacit agreements to discriminate among sellers, lenders, and brokers.<sup>30</sup> Local businesses did their part to make Latino/as feel unwelcome—from swimming pools that excluded them except on "Mexican day" (the day before the pool was drained and cleaned), to movie theaters that restricted them to the balcony seats, and restaurants that denied them entry altogether.<sup>31</sup> Local government went beyond zoning ordinances and touting

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of legal citizenship or residency, as well as a harboring ordinance that punished any landlord who harbored an "illegal alien" in a dwelling unit. *See Lozano v. City of Hazleton*, 496 F. Supp. 2d 477, 484-85, 529-33 (M.D. Pa. 2007); *see also* Ellen Barry, *City Vents Anger at Illegal Immigrants*, L.A. TIMES, July 14, 2006, at A1. A federal judge permanently enjoined enforcement of the ordinances because, among other things, they conflicted with federal immigration law, *Lozano*, 496 F. Supp. 2d at 529-33, and violated the constitutional guarantee of procedural due process, *id.* at 537-38. *See generally* Julia Preson, *Judge Voids Ordinance on Illegal Immigrants*, N.Y. TIMES, July 27, 2007, at A14. For example, the ordinances could result in eviction without notice to the tenant and failed to sufficiently describe the "identity data" required for landlords to verify their tenant's immigration status. *Lozano*, 496 F. Supp. 2d at 538. Still, the challenge to the Hazleton housing ordinances under the constitutional guarantee of equal protection failed because the legislation was found rationally related to the aim of preventing public safety problems allegedly caused by undocumented immigrants. *Id.* at 538-42. As applied to private covenants restricting the sale or rental of property to undocumented immigrants, these constitutional theories of preemption and procedural due process likely would be inapplicable. However, the federal Civil Rights Act of 1866, 42 U.S.C. §§ 1981-1982 (2006), might protect the undocumented in their making of contracts and purchase of real estate.

<sup>28</sup> *Matthews v. Andrade*, 198 P.2d 66, 66 (Cal. Dist. Ct. App. 1948). *See generally* Christopher Ramos, Comment, *The Educational Legacy of Racially Restrictive Covenants: Their Long Term Impact on Mexican Americans*, 4 SCHOLAR 149, 152-73 (2001) (examining the history of racially restrictive covenants designed to exclude Mexican Americans, their ongoing role in creating educational disparities, with a focus on San Antonio, Texas). Commentators have puzzled over the identity construction of Mexican Americans as a race or an ethnicity. This restrictive covenant overtly racializes Mexicans and reinforces the view of race as a social construction. *See generally* IAN HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (10th anniversary ed., rev. 2006) (a pathbreaking work on the social construction of race exploring the judicial experience of constructing white racial identity).

<sup>29</sup> RICARDO ROMO, *EAST LOS ANGELES: HISTORY OF A BARRIO* 85 (1983).

<sup>30</sup> *See generally* STEVEN W. BENDER, *TIERRA Y LIBERTAD: LAND, LIBERTY, AND LATINOS* (forthcoming 2009) (describing the shift in overt exclusionary tactics from race-based techniques to class-based strategies that are better insulated from legal challenge).

<sup>31</sup> *See BENDER, supra* note 1, at 144-45.

Mexican-free neighborhoods when school districts segregated Mexican children from Anglo children in the schools, thereby imposing racialized boundaries within cities.<sup>32</sup> As cities surrounding Los Angeles practiced these varying methods of racial segregation,<sup>33</sup> East L.A. and adjoining areas became a haven for Mexican Americans.<sup>34</sup>

The Mexican push into East L.A. accompanied an exodus from downtown, particularly near historic Olvera Street, known as the birthplace of Los Angeles. My mother's parents, who came to California from Mexico in 1918 (father) and 1921 (mother), lived for a time in an apartment near Olvera Street. About 1930, they left and purchased a home in nearby East L.A. in order to start a family. But their departure was also an example of a larger pattern of demographic and social change in the Olvera Street area—"greedy developers in concert with racist local officials, and other pernicious forces, drove Mexican American immigrants out of the downtown fringe and toward the East Los Angeles barrio."<sup>35</sup> In the late 1920s, this area was recast as an attraction for Anglo tourists. Marking the changed composition in the birthplace of Los Angeles, Olvera Street was billed non-threateningly as "A Mexican Street of Yesterday in a City of Today."<sup>36</sup> As one historian put it:

The lesson was clear: Mexicans were to be assigned a place in the mythic past of Los Angeles—one that could be relegated to a quaint section of a city destined to delight tourists and antiquarians. Real Mexicans were out of sight and increasingly out of mind. Physically farther away from the [downtown] center of power, Mexican immigrants remained close enough to provide the cheap labor essential to industry and agriculture. . . . Their children, how-

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<sup>32</sup> *Id.* at 145-47 (discussing desegregation efforts in Orange County that predated *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954), and culminated in the decision of *Westminster Sch. Dist. v. Mendez*, 161 F.2d 774 (9th Cir. 1947)).

<sup>33</sup> ROMO, *supra* note 29, at 62, 84 (discussing efforts of Los Angeles area communities to resist entry of Mexican residents).

<sup>34</sup> An additional factor may have been the forced deportations of hundreds of thousands of Mexicans and Mexican Americans, including many U.S. citizens, from the United States to Mexico in the early 1930s as the U.S. economy worsened. See Gilbert Paul Carrasco, *Latinos in the United States: Invitation and Exile, in IMMIGRANTS OUT!: THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES 190, 192-94* (Juan F. Perea ed., 1997). By the mid-1930s, Los Angeles had lost about one-third of its Mexican population, and those who remained were exposed and vulnerable. GREGORY RODRIGUEZ, MONGRELS, BASTARDS, ORPHANS, AND VAGABONDS: MEXICAN IMMIGRATION AND THE FUTURE OF RACE IN AMERICA 163-64 (2007). "Fearing they'd be targeted for repatriation, some families avoided visiting doctors, applying for relief, or even venturing into downtown areas. Blamed for both taking jobs away from native-born Americans and burdening the relief rolls, many Mexicans faced growing hostility from Anglos." *Id.* at 164.

<sup>35</sup> STEVEN W. BENDER, *COMPRENDE?: THE SIGNIFICANCE OF SPANISH IN ENGLISH-ONLY TIMES 72-74* (2008). See generally ACUÑA, *supra* note 25, at 23-30 (describing the history of Olvera Street, from its first Mexican inhabitants in the 1780s to political struggles over redevelopment in the 1980s and 1990s).

<sup>36</sup> PHOEBE S. KROPP, *CALIFORNIA VIEJA: CULTURE AND MEMORY IN A MODERN AMERICAN PLACE 208-09* (2006).



ever, made it much harder for the Anglo American community to designate Mexicans as relics of the past. These young people, born and educated in the United States, demanded to be included in the city's future as Mexican Americans.<sup>37</sup>

Complementing their displacement from the Olvera Street area in the early 1900s was the removal of Mexican American residents from the adjoining Chávez Ravine neighborhood in the early 1950s, initially in the name of urban renewal.<sup>38</sup> Residents were promised first choice of homes in a public housing project to be built on the site of their former homes with federal funds under the Federal Housing Act of 1949.<sup>39</sup> Some left voluntarily, while others lost their homes through contentious condemnation and eviction proceedings.<sup>40</sup> A change in city leadership and accusations of socialism hurled at the project during the Cold War doomed its construction, and the bulldozed Chávez Ravine became the field of dreams for the Los Angeles Dodgers baseball team, relocated from Brooklyn.<sup>41</sup>

Despite the removal by courts and legislatures of the most blatant legal underpinnings of segregation, the economic imbalance between poor areas in the United States, such as East L.A., and more wealthy suburban neighborhoods ensured continuing segregation in the educational system.<sup>42</sup> After

<sup>37</sup> GEORGE J. SÁNCHEZ, *BECOMING MEXICAN AMERICAN: ETHNICITY, CULTURE, AND IDENTITY IN CHICANO LOS ANGELES, 1900-1945*, at 226 (1993); *see also* WILLIAM DEVERELL, *WHITEWASHED ADOBE: THE RISE OF LOS ANGELES AND THE REMAKING OF ITS MEXICAN PAST* (2004).

<sup>38</sup> Matthew J. Parlow, *Unintended Consequences: Eminent Domain and Affordable Housing*, 46 SANTA CLARA L. REV. 841, 843-44 (2006).

<sup>39</sup> *Id.* at 844 n.10.

<sup>40</sup> *Id.* at 844; *see* Arechiga v. Hous. Auth. of L.A., 324 P.2d 973, 974 (Cal. Dist. Ct. App. 1958); ERNESTO CHÁVEZ, "¡MI RAZA PRIMERO!" (MY PEOPLE FIRST!): NATIONALISM, IDENTITY, AND INSURGENCY IN THE CHICANO MOVEMENT IN LOS ANGELES, 1966-1978, at 29 (2002).

<sup>41</sup> Parlow, *supra* note 38, at 844-45 & n.17 (describing how the new mayor scuttled the project by branding its supporters as Communists); Frank Wilkinson, *Revisiting the "McCarthy Era": Looking at Wilkinson v. United States in Light of Wilkinson v. Federal Bureau of Investigation*, 33 LOY. L.A. L. REV. 681, 685 & n.14 (2000) (then-administrator of Los Angeles Public Housing Authority attributing the project's demise to McCarthyism). The abandonment of the public housing project left former residents in the lurch. Parlow, *supra* note 38, at 846 (revealing that displaced residents were forced into overcrowded, illegal, or transient housing); Thomas S. Hines, Op-Ed., *Field of Dreams*, L.A. TIMES, Apr. 20, 1997, at M1 (suggesting that although the residents were purportedly paid a "fair price," they had difficulty affording replacement homes elsewhere, and minimal relocation aid was supplied to them). Efforts to return Chávez Ravine to its former residents after the demise of the housing project proved unsuccessful, *Arechiga*, 324 P.2d 973, as did efforts to block the deal for construction of Dodger Stadium in the project's place, *City of L.A. v. Superior Court*, 333 P.2d 745 (Cal. 1959) (refusing to void the contract for relocation between the city and the owner of the Brooklyn Dodgers). *See also* CHÁVEZ, *supra* note 40, at 29 (revealing that Manuel and Arvina Arechiga, the Mexican American plaintiffs attempting to undo the condemnation in *Arechiga*, also owned a nearby rental house that was condemned to make way for the construction of the Golden State Freeway).

<sup>42</sup> Cf. Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841, 1852 (1994) (suggesting how race-neutral policies perpetuate segregation in a society with a history of racism even after removal of de jure discrimination).

the U.S. Supreme Court outlawed de jure segregation in education in the 1954 decision of *Brown v. Board of Education*,<sup>43</sup> white residents avoided integration by fleeing cities for the suburbs or, for those white families left behind, sending their children to private schools. The resulting inequality in school finance between poorer and wealthier neighborhoods helped fuel the 1968 school “blowouts” in East L.A. That March, thousands of Mexican American students walked out of high schools in East L.A. demanding cultural and structural reforms such as bilingual counselors, new high schools, expanded school libraries, and smaller class sizes.<sup>44</sup> The disparities also prompted legal challenges to the way schools were financed. In the 1970s, the U.S. Supreme Court ruled against Mexican Americans who challenged Texas’s local property tax-based system as a violation of the Equal Protection Clause,<sup>45</sup> but the California Supreme Court struck down a similar system in place in California as a violation of the state constitution.<sup>46</sup> The state court found that the local approach of the California system made “the quality of educational opportunity available to a student dependent upon the wealth of the district in which [the student] lives.”<sup>47</sup> This ruling led, in part, to the infamous Proposition 13 (styled as the People’s Initiative to Limit Property Taxation), a ballot initiative that amended the state constitution to, among other things, limit local control in setting property tax rates and implement a statewide property tax cap.<sup>48</sup> School finance in California shifted

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<sup>43</sup> 347 U.S. 483 (1954).

<sup>44</sup> See BENDER, *supra* note 23, at 70; see also WILLIAM DUNN, THE GANGS OF LOS ANGELES 184 (2007) (describing similar protests in 1969 of majority black schools in Watts and South Central (now known as South) Los Angeles that suffered tremendous budget disparities in relation to schools in white neighborhoods); LUIS J. RODRIGUEZ, ALWAYS RUNNING: LA VIDA LOCA: GANG DAYS IN L.A. 43, 174 (Touchstone ed., Simon & Schuster, Inc. 2005) (1993) (describing squalid conditions in Los Angeles area barrio schools in the 1960s).

<sup>45</sup> San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973). But see Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391 (Tex. 1989) (finding Texas school finance system with 700 to 1 ratio in taxable property value between wealthiest and poorest school districts and district spending per student ranging from \$2112 to \$19,333 violated state constitution requiring an “efficient” system to achieve “general diffusion of knowledge”).

<sup>46</sup> In *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971), the California Supreme Court reversed the trial court’s dismissal of class action claims brought on behalf of students and their parents, concluded that the facts set forth in their complaint challenging the state’s school financing system stated valid causes of action under both the Federal Equal Protection Clause and similar state constitutional provisions, and remanded the case to be tried on the merits. The case made its way back to the California Supreme Court several years later, after the *Rodriguez* decision had been handed down. See *Serrano v. Priest*, 557 P.2d 929 (Cal. 1976), modified, 569 P.2d 1303 (Cal. 1977), cert. denied, 432 U.S. 907 (1977). Noting the effect of the *Rodriguez* decision, *id.* at 948-52, the court relied solely on the California Constitution’s equal protection provisions to treat education as a fundamental interest and thus uphold the trial court’s conclusion that the school financing system failed to survive a strict scrutiny standard of review. The 4-3 decision was closer than the 1971 decision, decided 6-1, as two recent judicial appointees of then-Governor Ronald Reagan joined the previous sole dissenter.

<sup>47</sup> *Serrano*, 557 P.2d at 957.

<sup>48</sup> CAL. CONST. art. XIII A; see William A. Fischel, *How Serrano Caused Proposition 13*, 12 J.L. & POL. 607 (1996).

to state control, but the poor in communities such as East L.A. failed to see any real change for the better.<sup>49</sup>

School retention rates in East L.A. are abysmal. As determined by the U.S. Census Bureau's 2006 American Community Survey, only forty-four percent of East L.A. residents twenty-five years and older are high school graduates and a mere four percent hold a bachelor's degree or higher.<sup>50</sup> A staggering fifty-six percent are dropouts.<sup>51</sup> As determined by a 2003 study of East L.A.'s Roosevelt High School, close to seventy percent of students beginning as freshmen failed to finish high school.<sup>52</sup> At East L.A.'s Garfield High School, far more seniors are exposed to military recruiters on campus than college recruiters.<sup>53</sup>

The roots of poverty in East L.A. run deep. In 1966, the *Los Angeles Times* featured the story, *Revolt in the Barrios*, that detailed how "high unemployment, low incomes, menial jobs and substandard housing" defined East L.A.<sup>54</sup> Robert Kennedy captured this despair when he suggested in a 1967 piece, *Crisis in Our Cities*, that the world through the eyes of a Mexican American "is a dark and hopeless place."<sup>55</sup> These were the conditions that prompted the 1968 school blowouts and which, in large measure, still exist in today's East L.A.

In 2006, East L.A.'s median household income was only \$35,736.<sup>56</sup> By contrast, the median household income in California was \$56,645.<sup>57</sup> The unemployment rate in East L.A. is similarly disproportionate—in December

<sup>49</sup> JON SONSTELIE, ERIC BRUNNER & KENNETH ARDON, PUB. POLICY INST. OF CAL., FOR BETTER OR FOR WORSE? SCHOOL FINANCE REFORM IN CALIFORNIA (2000), available at [http://www.ppic.org/content/pubs/report/R\\_2001SR.pdf](http://www.ppic.org/content/pubs/report/R_2001SR.pdf) (identifying the catalyst for the shift to state control as both Proposition 13 and Senate Bill 90). The shift from a localized to a state allocation of educational resources led more to spending reductions in high-spending school districts than spending increases in low-spending ones. *Id.* at 67-88. The pinch caused by dramatic revenue drops after Proposition 13 led to per pupil spending reductions from 1970 to 1997, *id.* at 89-103, a dramatic rise in student-teacher ratios, *id.* at 105-19, and to declining student achievement, *id.* at 121-38, all relative to the rest of the United States. In turn, private school enrollment increased, particularly from higher-income families. *Id.* at 144-45. See generally Laurie Reynolds, *Uniformity of Taxation and the Preservation of Local Control in School Finance Reform*, 40 U.C. DAVIS L. REV. 1835 (2007) (arguing against financing education using local property tax and instead urging a uniform statewide property tax).

<sup>50</sup> U.S. Census Bureau, East Los Angeles CDP, California – Population and Housing Narrative Profile: 2006, [http://factfinder.census.gov/servlet/NPTTable?\\_bm=y&-geo\\_id=16000US0620802&-qr\\_name=ACS\\_2006\\_EST\\_G00\\_NP01](http://factfinder.census.gov/servlet/NPTTable?_bm=y&-geo_id=16000US0620802&-qr_name=ACS_2006_EST_G00_NP01) (last visited Mar. 5, 2009) [hereinafter East L.A. Survey] (based on 2006 American Community Survey data set). Admittedly, older Latino/a immigrants coming to the U.S. without high school degrees constitute a portion of this figure, but that doesn't alter the conditions for despair in East L.A.

<sup>51</sup> *Id.*

<sup>52</sup> Patrisia Gonzales & Roberto Rodriguez, *Leave No School Behind*, COMMONDREAMS, July 30, 2004, <http://www.commondreams.org/views/04/0730-08.htm>.

<sup>53</sup> *Id.*

<sup>54</sup> Jack Jones, *Revolt in the Barrios: Social Ferment Stirs Mexican-Americans*, L.A. TIMES, May 8, 1966, at C1.

<sup>55</sup> NORMAN MACAFEE, *THE GOSPEL ACCORDING TO RFK: WHY IT MATTERS NOW* 64 (2004).

<sup>56</sup> East L.A. Survey, *supra* note 50.

<sup>57</sup> U.S. Census Bureau, California – Population and Housing Narrative Profile: 2006, [http://factfinder.census.gov/servlet/NPTTable?\\_bm=y&-qr\\_name=ACS\\_2006\\_EST\\_G00\\_NP01&-](http://factfinder.census.gov/servlet/NPTTable?_bm=y&-qr_name=ACS_2006_EST_G00_NP01&-)

2008, the rate was 13%; by comparison, the Los Angeles County rate (buoyed mostly by Westside employment) was 9.5%.<sup>58</sup> The primary occupations in East L.A. are in manufacturing, construction, educational services, health care, and social assistance.<sup>59</sup> As one would expect, poverty is rampant—in 2006, twenty-four percent of East L.A. residents lived in poverty, as did nearly a third of children under eighteen.<sup>60</sup> In contrast, affluent Pacific Palisades—a district within Los Angeles that is home to the stars and Hollywood elite, including Judd Apatow—has, in recent years, boasted a median household income of \$131,890 and a median home price of \$1,329,856.<sup>61</sup>

Compounding these conditions for despair sown by poverty and inadequate schools is the splintering of the East L.A. community in its political voice, spirit, and land resulting from political manipulation and freeways. Gerrymandering muted East L.A.'s political voice in state government by fracturing the barrio—creating nine Assembly districts and seven Senate districts, so that no one district contained more than thirty percent of registered voters of Mexican American heritage.<sup>62</sup> Freeways cut swaths through the barrio's soul, connecting the post-*Brown* exodus to the suburbs with jobs in downtown Los Angeles. A historian described the brutal effects on community of freeway construction in East L.A.:

In the late 1950s the massive construction of freeways linking the Anglo suburban communities with the central business core began. High overpasses and expansive six-lane freeways crisscrossed the [Los Angeles] east side. Thousands of residents from Boyle Heights, Lincoln Heights, City Terrace, and surrounding neighborhoods were relocated. The freeways divided the neighborhoods without consideration for the residents' loyalties to churches, schools, businesses, or family. Residents, especially the young and the aged, became increasingly isolated from other areas of town as

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geo\_id=04000US06 (last visited Mar. 5, 2009) (based on 2006 American Community Survey data set).

<sup>58</sup> Cal. Employment Dev. Dep't, Unemployment Rates (Labor Force), <http://www.labor.marketinfo.edd.ca.gov/cgi/dataanalysis/areaselection.asp?tablename=labforce> (select "County" and "Sub-County Place" in field one and "Los Angeles County" and "East Los Angeles CDP" in field two, then click the "Continue" button; select "2008" in field three and "December" in field four, then click the "Continue" button; select "Not Seasonally Adjusted" in field five and "Unemployment Rate" in field six, then click the "View Data" button) (last visited Mar. 5, 2009).

<sup>59</sup> East L.A. Survey, *supra* note 50.

<sup>60</sup> *Id.*

<sup>61</sup> *Best Places to Live 2005: Pacific Palisades, CA Snapshot*, CNNMONEY.COM, <http://money.cnn.com/magazines/moneymag/bplive/2005/snapshots/46231.html> (last visited Mar. 5, 2009).

<sup>62</sup> RICHARD SANTILLAN, CHICANO POLITICS: LA RAZA UNIDA 33 (1973). Efforts to incorporate East L.A., revived in 2008, mark the first such attempt since 1974 and are prompted by the desire for local decision-making by a city council instead of control from afar by the Los Angeles County Board of Supervisors. See Christina Hoag, *East L.A. Seeks to Become a City of Its Own*, USA TODAY, Sept. 30, 2008, [http://www.usatoday.com/news/topstories/2008-09-30-2700992638\\_x.htm](http://www.usatoday.com/news/topstories/2008-09-30-2700992638_x.htm).

the massive layers of grey concrete and asphalt eliminated the trolley lines and disrupted public transit service. The daily trek of hundreds of thousands of autos left a gloomy grey cloud of smog hanging over the east side.<sup>63</sup>

## II. LIVING LA VIDA LOCA: GANG COLORS

East L.A. has long struggled with the conditions—inadequate schools, jobs, income, and hope—that spark gang membership. Flawed education systems, limited employment opportunities, and income below or near the poverty line combine to disrupt family life and steer some residents of the East L.A. barrio toward the alternative economies and camaraderie of gangs. So it comes with little surprise that popular culture and Americans generally regard East L.A. as gang territory. In a 1980s episode of the television game show *The \$25,000 Pyramid*, in which contestants gave verbal clues to their partners who in turn tried to guess specific words that the guessing partners were unable able to see, the answer “gangs” appeared on the screen. Without hesitation, a contestant delivered the clue, “[t]hey have lots of these in East L.A.,” prompting her partner to answer correctly.<sup>64</sup> Local television news has a “lurid fascination with violent crime,”<sup>65</sup> particularly crime involving minority perpetrators. Circulating for years on the internet has been the so-called East Los Angeles High School Math Proficiency Exam.<sup>66</sup> (It is sometimes restyled to target blacks as the South Central High School exam, or more generally labeled as the Los Angeles High School exam.) Takers of this satirical quiz are asked to list their name and gang name, and answer questions such as:

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<sup>63</sup> ROMO, *supra* note 29, at 170 (footnote omitted); *see also* GERALD PAUL ROSEN, *POLITICAL IDEOLOGY AND THE CHICANO MOVEMENT: A STUDY OF THE POLITICAL IDEOLOGY OF ACTIVISTS IN THE CHICANO MOVEMENT* 25 (1975) (suggesting that East L.A. is crossed by more freeways than elsewhere in Los Angeles and perhaps the world); *cf.* MARY PAT BRADY, *EXTINCT LANDS, TEMPORAL GEOGRAPHIES: CHICANA LITERATURE AND THE URGENCY OF SPACE* 15 (2002) (describing the deleterious effect of freeway construction in Tucson, Arizona, cutting through a Latino/a neighborhood).

<sup>64</sup> *See* Carlos E. Cortés, *The “Information” Media: Social Studies’ Main Competitor*, in *SOCIAL STUDIES AND THE PRESS: KEEPING THE BEAST AT BAY* 25, 28 (Margaret Smith Crocco ed., 2005).

<sup>65</sup> Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489, 1550, (2005); *see also id.* at 1573 (considering the legality of federal regulations that would impose a percentage cap on television news reporting on crime given the negative impacts on race relations of current slanted media coverage).

<sup>66</sup> BENDER, *supra* note 1, at 37. The film *STAND AND DELIVER* (American Playhouse 1988) dramatizes the experiences of an East Los Angeles high school math teacher who built a nationally prominent calculus program at the school, illustrating the congruence of Latino/as and math proficiency. After his departure from the school, the math program declined. *See* Jerry Jessness, *Stand and Deliver Revisited*, REASON, July 2002, at 34, available at <http://www.reason.com/news/show/28479.html>.

1. Little Johnny has an AK 47 with a 30 round clip. He usually misses 6 out of every 10 shots and he uses 13 rounds per drive-by shooting. How many drive-by shootings can Little Johnny attempt before he has to reload?
2. Jose has 2 ounces of cocaine. If he sells an 8 ball to Antonio for \$320 and 2 grams to Juan for \$85 per gram, what is the street value of the rest of his hold? . . .
7. If an average can of spray paint covers 22 square feet and the average letter is 3 square feet, how many letters can be sprayed with 3 eight ounce cans of spray paint with 20% paint free?
8. Hector knocked up 3 girls in the gang. There are 27 girls in his gang. What is the exact percentage of girls Hector knocked up?<sup>67</sup>

Popular media depicts East L.A. as the hub of *la vida loca*.<sup>68</sup> Setting the tone for the reference in *Knocked Up* were gangland films situated in or near East L.A. such as *American Me*,<sup>69</sup> *Blood In, Blood Out*,<sup>70</sup> *Boulevard Nights*,<sup>71</sup> *Colors*,<sup>72</sup> *Mi Vida Loca*,<sup>73</sup> *187*,<sup>74</sup> and *Walk Proud*.<sup>75</sup> A typical film features ruthless gang violence with depraved Latino gangsters invoking ethnic pride in their attacks. These media portrayals often fail to examine the roots of gang membership and sometimes situate Anglo actors, with exaggerated Chicano slang accents, as menacing Latino gang members.<sup>76</sup>

Mexican gangs in East L.A. date back at least to the pachuco gangs of the 1930s and 1940s.<sup>77</sup> The presence of Mexican and other Latino/a-comprised gangs<sup>78</sup> in East L.A. undeniably is a community problem of concern to Latino/as, but the media association of Latino/as and gangs is vastly overblown. The number of Latino/as participating in gangs is neither overwhelm-

<sup>67</sup> BENDER, *supra* note 1, at 37.

<sup>68</sup> Still, cinema gangland portrayals of Latino/as extend beyond East L.A. to encompass locations from Miami to Manhattan. *Id.* at 37-38.

<sup>69</sup> AMERICAN ME (Universal Pictures 1992).

<sup>70</sup> BLOOD IN, BLOOD OUT (Hollywood Pictures 1993) (also known as *Bound by Honor*).

<sup>71</sup> BOULEVARD NIGHTS (Warner Brothers Pictures 1979).

<sup>72</sup> COLORS (Orion Pictures 1988).

<sup>73</sup> MI VIDA LOCA (Channel Four Films 1994).

<sup>74</sup> 187 (Icon Entertainment International 1997) (also known as *One Eight Seven*).

<sup>75</sup> WALK PROUD (Universal Pictures 1979).

<sup>76</sup> Blue-eyed Robby Benson, cast as a Mexican gang member in *Walk Proud*, and red-haired Courtney Gains, in the same role in *Colors*, are noteworthy examples.

<sup>77</sup> RODRIGUEZ, *supra* note 44, at 4-5; see also Rubén Martínez, *East Side Stories: Joseph Rodríguez's Images of East L.A.*, in JOSEPH RODRIGUEZ, *EAST SIDE STORIES: GANG LIFE IN EAST LA* 9, 16 (1998) (dating the first "pachuco cliques" in East L.A. to the late 1920s and the 1930s and describing the Zoot Suit Riots in 1942 in which white servicemen flooded the barrio to terrorize Chicano youth).

<sup>78</sup> See GERALDO RIVERA, *HIS PANIC: WHY AMERICANS FEAR HISPANICS IN THE U.S.* 148-49 (2008) (describing the escapades of the Mara Salvatrucha gang and its origins in East L.A. among Salvadoran political refugees in the 1980s); Jennifer M. Chacón, *Whose Community Shield?: Examining the Removal of the "Criminal Street Gang Member"*, 2007 U. CHI. LEGAL F. 317, 327-29 (describing the deportation-related origins of the Mara Salvatrucha gang with roots in El Salvador and the U.S.).

ing nor defining of a people. A 1997 study, for example, found that five out of one hundred Latinos aged twelve to sixteen, and two out of one hundred Latinas of the same age, had belonged to a gang in the last year.<sup>79</sup>

*Knocked Up* treaded comedically on the turf of East L.A. by invoking the names of the most known gangs in the American cultural imagination—Bloods (known for their red colors) and Crips (distinguished by their blue colors).<sup>80</sup> Yet the Bloods and the Crips are primarily African American gangs founded outside of East L.A.<sup>81</sup> and delivered to the cultural mainstream by rap music, motion pictures, and the news media. Gangs based in the East L.A. area are comprised primarily of Latino/as and often named for turf by street or landmark locations and, in the case of Latino/a gangs in neighboring areas, by city or region name (for example, La Mirada Locos and the Barrio Van Nuys).<sup>82</sup> *Knocked Up*'s invocation of African American gangs within the East L.A. territory is ironic given the increasing interracial gang violence in the Los Angeles area as African Americans and Latino/as confront the changing demographics of previously black neighborhoods. As middle class black families leave places such as Compton and South Los Angeles, Latino/a immigrants are moving in—converting an area that in 1980 was eighty percent black and twenty percent Latino/a into a community that was sixty percent Latino/a and only forty percent black by 2000.<sup>83</sup> Tensions ensue over the crumbs of jobs, opportunity, and hope in these impoverished neighborhoods.<sup>84</sup>

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<sup>79</sup> OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, U.S. DEP'T OF JUSTICE, NCJ 179007, MINORITIES IN THE JUVENILE JUSTICE SYSTEM 5 (1999), available at <http://www.ncjrs.gov/pdffiles1/ojjdp/179007.pdf>; cf. Linda S. Beres & Thomas D. Griffith, *Gangs, Schools and Stereotypes*, 37 LOY. L.A. L. REV. 935, 952 (2004) (reporting results of a 1999 survey of fifteen- to seventeen-year-olds in which 2.9% of Latinos, 2.8% of blacks, and 1.3% of whites reported belonging to a gang since their last interview).

<sup>80</sup> See DUNN, *supra* note 44, at 191 (describing the choice of colors as based on those of local high school sports—blue from South Los Angeles's Washington High School and red from Compton's Centennial High School).

<sup>81</sup> *Id.* at 178-98 (describing the roots of black gangs in Los Angeles and the formation of the Crips and Bloods in black neighborhoods and high schools in the early 1970s).

<sup>82</sup> Californian Gangs, The Barrios of Southern California, <http://sanpedrocalifornia.blogspot.com/2007/08/barrios-of-southern-california.html> (Aug. 23, 2007, 16:22 PDT) (comprehensively listing California's Latino/a gangs). Latino/a gangs are also sometimes named in reference to racial/ethnic pride, such as Brown Pride, Border Brothers, La Raza, and Latin Kings. *Knocked Up*'s closing scene also referred to the Latin Kings, a gang founded and based in Chicago, with Ben suggesting to Alison that, "We could just throw off everyone [in East L.A.] and become Latin Kings. We both look good in gold." KNOCKED UP, *supra* note 9.

<sup>83</sup> *Black-Hispanic Gang Rivalries Plague Los Angeles*, FOX NEWS, Aug. 12, 2006, <http://www.foxnews.com/story/0,2933,208083,00.html> (comparing demographic statistics from 1980 and 2000).

<sup>84</sup> Cf. Lisa C. Ikemoto, *Traces of the Master Narrative in the Story of African American/Korean American Conflict: How We Constructed "Los Angeles"*, 66 S. CAL. L. REV. 1581, 1586 (1993) ("[O]ne common explanation circulated during the aftermath of the [1992] uprisings [in Los Angeles] . . . had to do with competition between Korean Americans and African Americans for a too small piece of the economic pie."). Among the notable incidents of alleged racially motivated gang violence in Los Angeles was the killing of high school football star Jamiel Shaw Jr. by a Latino gang member in 2008, prompting his father to undertake to help bridge the growing divide between blacks and Latino/as in Los Angeles. *Dad Faces Son's Alleged Killer; Sees "Normal" Youngster*, CNN, Mar. 26, 2008, <http://www.cnn.com>.

## III. DEFENDING TURF

*Mi barrio es primero, man. You want me to walk away from this, man?*<sup>85</sup>

Many sociologists consider gang warfare, at least among many Latino/a gangs, as exhibiting a defense of “turf” marked by defined geographic boundaries.<sup>86</sup> Although I abhor the violence of gangs, my upset over the derogatory geographic reference to East L.A. in *Knocked Up*, ironically, is similarly defensive of turf on a broader scale. Having been born and raised in the East L.A. area for thirteen years in a Mexican American household, media attacks on East L.A. hit home for me.<sup>87</sup> When *Knocked Up* viewers laugh at the thought of a white couple living and surviving in East L.A. by doing as the natives might, they are laughing at the legacy of segregation, the ravages of poverty, the failings of schools and school finance, broken promises to our youth, and the absence of hope. Funny stuff.

This Part outlines just a few of the reforms needed to confront these conditions that foster gang membership and unrealized potential. Admittedly, in the current anti-immigrant and anti-Mexican climate, these reforms stand little chance of passage and implementation. After generations of bombardment of the American imagination with negative images of Latino/as, many in the United States have no inclination to pursue strategies of hope; rather, they will fund more police, more prisons,<sup>88</sup> and support restrictive immigration laws. Reversing this tide of anti-Mexican sentiment will require the help of the media establishment. Having done such a thorough job of telling the “bad” stories about Latino/as, whether in film, on the evening news, or elsewhere, the mainstream media can help revise the public perception of Latino/as by beginning to tell some of the many good stories. Audiences crave struggles against all odds (such as those of Sylvester Stallone’s *Rocky Balboa*)<sup>89</sup> and audiences of all backgrounds can relate to triumphs of family and love. Media kingpins, such as Judd Apatow, might begin to tell these stories, particularly when situating their productions in Southern Cali-

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com/2008/US/03/26/jamielshaw.folo/index.html; see also Jennifer Steinhauer, *Immigration and Gang Violence Propel a Crusade by a Grieving Father*, N.Y. TIMES, May 15, 2008, at A20 (describing the victim father’s campaign against “illegal aliens in gangs”). For a discussion of the collateral effects in the United States and Latin America of federal anti-gang enforcement targeting undocumented immigrants, see generally Chacón, *supra* note 78.

<sup>85</sup> COLORS, *supra* note 72 (dialogue of L.A.-area Latino gang member spoken while flashing gang signs). *Primero*, in this context, means in first place, the best.

<sup>86</sup> See, e.g., IRVING A. SPERGER, THE YOUTH GANG PROBLEM: A COMMUNITY APPROACH 87 (1995).

<sup>87</sup> In 2002, a hate radio commentator interviewing me on the topic of Latino/a college students mockingly played the Cheech Marin parody song, *Born in East L.A.*, CHEECH & CHONG, GET OUT OF MY ROOM (MCA Records 1985), during the interview. *The Lars Larson Show* (KXL-AM radio broadcast Apr. 22, 2002).

<sup>88</sup> See Gonzales & Rodriguez, *supra* note 52 (“In the past 20 years, whereas one university in California has opened, some 20 prisons have also gone up . . .”).

<sup>89</sup> See, e.g., ROCKY (Chartoff-Winkler Productions 1976).



fornia and other demographically tilted areas of Latino/a population and culture.<sup>90</sup>

Hollywood has much to choose from. The human themes of the Latino/a experience in the United States include stories of individual courage and achievement such as activist Mario Obledo, who battled an anti-immigrant billboard on a California desert highway,<sup>91</sup> and Ruben Salazar, a *Los Angeles Times* reporter killed in 1970 by police with a ten-inch long teargas projectile fired into his head after he covered an anti-war rally.<sup>92</sup> Latino/a stories include the indefatigable artistry of Los Lobos, "Just Another Band

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<sup>90</sup> Latino/as would benefit from having more Latino/a writers and directors telling these good stories. See Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2413-14 (1989) (arguing for minorities to tell their own stories which he calls "counterstories"). "Stories, parables, chronicles, and narratives are powerful means for destroying mindset—the bundle of presuppositions, received wisdoms, and shared understandings against a background of which legal and political discourse takes place." *Id.* at 2413; see MONICA BROWN, GANG NATION: DELINQUENT CITIZENS IN PUERTO RICAN, CHICANO, AND CHICANA NARRATIVES xiv (2002) (recognizing that the media gives viewers the impression that inner city youth are criminally minded). "Latino/a literary and cultural producers . . . resist these demonizing and dehumanizing images" and "challenge stereotypical presumptions about Latino/a gang members and ask that we come to a deeper understanding of the links between youth violence and systemic, historically based racism, structural inequities, colonialism, entrenched poverty, failing educational and health care systems, a debilitated infrastructure, as well as the seeming lack of hope and the existential despair that accompany these material conditions." *Id.* See generally THE LATINO/A CONDITION: A CRITICAL READER 251-302 (Richard Delgado & Jean Stefancic eds., 1998) (excerpting various counterstories that challenge prevailing Latino/a stereotypes). Although Latino/a productions sometimes present stereotypical characters, such as gang members and drug dealers, they often strive to develop these characters as more than a single dimension of wanton soullessness. In a recent documentary, actor Esai Morales observed that actors in Latino/a productions may play stereotypical characters, "but with a heart. Yes we're playing bad guys, but we're playing good bad guys." THE BRONZE SCREEN: 100 YEARS OF THE LATINO IMAGE IN HOLLYWOOD (Bronze Screen Productions 2002).

The possibility of these good stories being told by mainstream authors and directors is complicated by the frequent dichotomy in these struggles of the racist or otherwise oppressive Anglos and the Latino/a who overcomes the challenge. As Richard Delgado has pointed out to me, even if a mainstream Anglo author told such a story, white audiences might stay away in droves. Therefore, most of these stories have been told by Latino/a writers and directors, rendering them susceptible to charges of rabble-rousing. For example, the Latino production of *Zoot Suit* on Broadway, depicting the racial injustice of the Sleepy Lagoon murder prosecution and the Zoot Suit Riots, was blasted by a Broadway critic as "a slanted, neo-rabble-rouser, abrad[ing] ethnic emotions, presented in unnecessary hyperbole, terminal exaggerations. . . . The plot is almost totally stereotypical anti-American establishment." YOLANDA BROYLES-GONZÁLEZ, EL TEATRO CAMPESINO: THEATER IN THE CHICANO MOVEMENT 190 (1994). Delgado and Stefancic have also questioned the efficacy of media counterstories working in the marketplace of ideas to transcend entrenched racism. Richard Delgado & Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?*, 77 CORNELL L. REV. 1258, 1281 (1992) ("[O]ur examination of the cultural record, as well as postmodern understandings of language and personhood, both point to the same conclusion: The notion of ideas competing with each other, with truth and goodness emerging victorious from the competition, has proven seriously deficient when applied to evils, like racism, that are deeply inscribed in the culture.").

<sup>91</sup> Peter H. King, *A Sign of Victory: Offending Billboard is Gone*, SACRAMENTO BEE, June 24, 1998, at A3.

<sup>92</sup> IAN F. HANEY LÓPEZ, RACISM ON TRIAL: THE CHICANO FIGHT FOR JUSTICE 194-95 (2003) (describing how police killed Salazar at a bar where he sat with friends).

from East L.A.”<sup>93</sup> Most Latino/a victories are community ones, from the campaign in Kettleman City, California, against construction of a hazardous waste incinerator led by El Pueblo para el Aire y Agua Limpio (People for Clean Air and Water),<sup>94</sup> to the land occupation and protest to establish Chicano Park under the Coronado Bridge in San Diego,<sup>95</sup> to the Latino/a precursor to *Brown v. Board of Education*—a 1940s school desegregation lawsuit from the orange groves of Southern California.<sup>96</sup> Latino/a organizing tells a dramatic history of mass school walkouts in East L.A. in 1968,<sup>97</sup> the 2003 Immigrant Workers Freedom Riders who boarded buses for a cross-country journey to protest restrictive immigration laws,<sup>98</sup> and organizing of farm workers in the fields by the cofounders of the United Farm Workers union, César Chávez and Dolores Huerta.<sup>99</sup>

Negative depictions of Latino/a life, particularly in East L.A., would carry less weight if balanced by more positive portrayals. Because of the pervasive invisibility of Latino/as, the few, decidedly negative, Latino/a images shown end up serving as a blueprint for all of Latino/a culture.<sup>100</sup> The Latino/a experience generally is absent from Judd Apatow films,<sup>101</sup> even those centered in Los Angeles, but when Latino/as do make an appearance directly or by proxy, those impressions buttress the prevailing derogatory societal view of Mexicans and other Latino/as.

<sup>93</sup> See LOS LOBOS, JUST ANOTHER BAND FROM EAST L.A.: A COLLECTION (Warner Brothers Records 1993).

<sup>94</sup> See generally Luke W. Cole, *The Struggle of Kettleman City: Lessons for the Movement*, 5 MD. J. CONTEMP. LEGAL ISSUES 67 (1994).

<sup>95</sup> See generally BENDER, *supra* note 30.

<sup>96</sup> Westminister Sch. Dist. v. Mendez, 161 F.2d 774 (9th Cir. 1947). See generally Frederick P. Aguirre, Mendez v. Westminister School District: *How it Affected Brown v. Board of Education*, ORANGE COUNTY LAW., Feb. 2005, at 30. A Southern California television station produced an Emmy-winning documentary of this desegregation struggle in Orange County, Mendez vs. Westminister: *For All the Children/Para Todos los Niños* (PBS KOCE-TV television broadcast Sept. 24, 2002).

<sup>97</sup> Edward James Olmos directed the film WALKOUT (Esparza/Katz Productions 2006) detailing these events for cable network HBO, rather than a major theatrical release. For more on the 1968 school walkouts see *supra* note 44 and accompanying text.

<sup>98</sup> See Hotel Employees and Restaurant Employees Int'l Union, Immigrant Workers Freedom Ride, <http://www.iwfr.org/default3.asp> (last visited Mar. 5, 2009).

<sup>99</sup> See generally BENDER, *supra* note 23. For other stories about Latino/a culture and heritage, see CHICKEN SOUP FOR THE LATINO SOUL: CELEBRATING LA COMUNIDAD LATINA (Jack Canfield, Mark Victor Hansen & Susan Sánchez-Casal eds., 2005); RUBEN SOTO, FIESTA FOR THE HISPANIC SOUL (2003). See also KEVIN R. JOHNSON, HOW DID YOU GET TO BE MEXICAN?: A WHITE/BROWN MAN'S SEARCH FOR IDENTITY (1999) (an autobiographical account of race, class, legal education, and the legal profession).

<sup>100</sup> BENDER, *supra* note 1, at 181 (using the example of Paul Simon's Broadway production of *Capeman*, which told the story of a Puerto Rican thug in New York City). "Anglo borrowing of Latina/o influences and Anglo telling of Latina/o stories would be more tolerable and even welcome if they occurred against a backdrop of Latina/o relevancy and positive visibility." *Id.*

<sup>101</sup> Another example of Latino/a invisibility is WALK HARD: THE DEWEY COX STORY (Apatow Productions 2007), co-written by Apatow, set in the 1950s when Latino/as were even more absent from the cultural record.

Those in the media industry who continue to pick at the scab of our past and current racial history might someday regret their artistry when attitudes shift and viewers question the rampant derogatory depictions of race, gender, sexuality, and other popular targets. In the dustbin of history, these works will prove embarrassing and will sully the artists' reputations.<sup>102</sup> Some of these artists were well-intentioned and failed to grasp the harm in exercising their artistic privilege to tell the bad stories rather than the good. For example, John Steinbeck's classic novel, *Tortilla Flat*, is a tale of Mexican men ("paisanos") in Monterey, California, who are quick to fight, slow to work and maintain their homes, disdainful of responsibility, and who yearn only for jugs of wine and willing women. Steinbeck's unflattering depiction of Mexican Americans drew criticism and he responded by writing a foreword, found only in the 1937 Random House edition of the book, that conveyed his lament over what he had done:

When this book was written, it did not occur to me that paisanos were curious or quaint, dispossessed or underdogish. . . .

. . . .

. . . I wrote these stories because they were true stories and because I liked them. But literary slummers have taken these people up with the vulgarity of duchesses who are amused and sorry for a peasantry. These stories are out, and I cannot recall them. But I shall never again subject to the vulgar touch of the *decent* these good people of laughter and kindness, of honest lusts and direct eyes, of courtesy beyond politeness. If I have done them harm by telling a few of their stories, I am sorry. It will not happen again.<sup>103</sup>

As a Hollywood kingpin,<sup>104</sup> should Judd Apatow experience a similar epiphany, he would be able to reach across the concrete river in numerous ways and help address the conditions that foster hopelessness and gangs. For example, one of the factors that separated my youth from gang involvement was community centers—safe and structured places of music, activities, and sports.<sup>105</sup> Community centers in the barrio kept me on the path toward educa-

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<sup>102</sup> See Delgado & Stefancic, *supra* note 90.

<sup>103</sup> JOHN STEINBECK, *TORTILLA FLAT*, at i-iii (Random House 1937) (1935). Steinbeck went on to write several works centered in Mexico and steeped in the Mexican cultural experience, including *THE PEARL* (1947), *THE LOG FROM THE SEA OF CORTEZ* (1951), and *VIVA ZAPATA!* (Twentieth Century Fox Film Corp. 1952) (screenplay written by Steinbeck and nominated for an Academy Award).

<sup>104</sup> Judd Apatow made *Time* magazine's 100 most influential people list in 2008. *Time* 100: Judd Apatow, *TIME*, May 12, 2008, at 41, available at [http://www.time.com/time/specials/2007/article/0,28804,1725112\\_1723512\\_1723599,00.html](http://www.time.com/time/specials/2007/article/0,28804,1725112_1723512_1723599,00.html).

<sup>105</sup> See RODRIGUEZ, *supra* note 44, at 250 (citing the YMCA, Little League, and the Boy Scouts as competing organizations that could provide a sense of belonging to barrio youth). "Gangs flourish when there's a lack of social recreation, decent education or employment." *Id.* Those opposed to a 1958 referendum to renounce the City of Los Angeles contract awarding the condemned Chávez Ravine to the Dodgers baseball team for a stadium pointed to a forty-acre youth recreation area required by the contract. Ostensibly that recreation area would address juvenile delinquency. See Ronald William López II, *The Battle for Chavez Ravine: Pub-*

tion and eventually toward a career in the law and in the legal academy. Community centers can also spark a cultural surge—imagine the uplifting presence of a Judd Apatow community center for aspiring Latino/a filmmakers in East L.A. Certainly, Americans of Mexican heritage deserve more from Hollywood than a mocking reference to gangs and poverty in their midst. They deserve implementation of practical pathways to dignity that address the despair that keeps so many Mexican Americans knocked down.<sup>106</sup>

Elsewhere I offered a comprehensive strategy for attacking derogatory media depictions using law, voluntary industry standards, counterspeech, and community-based protest, among other approaches.<sup>107</sup> I recognized, however, the practical and historical shortcomings of these strategies to rein in media, and suggested the need for a transformative political movement for social and redistributive change to address Latino/a poverty and educational disadvantages.<sup>108</sup> Here, I continue to articulate that agenda.

#### IV. BARRIO DREAMS: ADDRESSING THE CONDITIONS THAT FOSTER GANG VIOLENCE

*You have to address the lethal absence of hope. I have never seen a hopeful person join a gang.*<sup>109</sup>

In fall 2007, then-Senator Barack Obama held a townhall meeting at Garfield High School in East L.A.—the school where the film *Stand and Deliver*<sup>110</sup> was set and the high school my mother attended in the early 1950s. Here, Obama outlined plans for an educational and inner-city renaissance that struck chords similar to those plucked by Robert Kennedy

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lic Policy and Chicano Community Resistance in Post War Los Angeles, 1945-1962, at 158-59 (1999) (unpublished Ph.D. dissertation, University of California, Berkeley) (on file with author). Despite the vote to uphold the stadium contract, the youth recreation area was never built.

<sup>106</sup> Cf. RICHARD THOMPSON FORD, *THE RACE CARD: HOW BLUFFING ABOUT BIAS MAKES RACE RELATIONS WORSE* 265 (2008) (“Maybe it’s time to consider the possibility that the civil rights approach to racial justice is doing just about all it can do. . . . [M]aybe we should look to new approaches to deal with racial injustices that don’t fit well in the civil rights framework.”).

<sup>107</sup> BENDER, *supra* note 1, at chs. 11-13.

<sup>108</sup> *Id.* at ch. 14 (addressing how antipoverty efforts will work to dispel stereotypes of the Latino/a population). Of course, the catch-22 here is that if the media continue to tell the bad stories and propagate derogatory stereotypes, then the climate is poor for a transformative political and social movement to take root. Absent such a transformative undertaking, the media will continue to feed whatever poison the public is willing to consume. So efforts must be made on both the media and the larger movement fronts, mindful that progress may be slow to measure and that, in times of acute economic distress, these efforts might constitute measures more defensive than transformative.

<sup>109</sup> Paul Harris, *Gang Mayhem Grips LA*, *OBSERVER* (London), Mar. 18, 2007, at 39 (quoting Father Greg Boyle, a Jesuit who has worked to help rehabilitate L.A. gang members for two decades).

<sup>110</sup> *STAND AND DELIVER*, *supra* note 66.

campaigning in 1968 as he targeted poverty in the ghettos and barrios.<sup>111</sup> Exhorting Americans to “lift expectations and restore a sense of hope in our communities,” Obama declared, “[i]t’s time to stand and deliver for America’s urban poor.”<sup>112</sup> He called for the creation of good-paying jobs by bringing businesses “back to our inner-cities.” Reminding the audience that Latino/as suffer the highest dropout rate of any U.S. group, Obama urged:

Let’s not pass a law called No Child Left Behind and then leave the money behind. Let’s rebuild our crumbling schools, recruit an army of new teachers and get more of them to come teach right here in East L.A.—because what makes the most difference in any child’s education is the person standing at the front of the classroom.

...  
... [W]e also have to take targeted steps to improve graduation rates. That means supporting college outreach programs ... And it also means intervening much earlier in a child’s education—because the downward spiral that leads a high school student to drop out often begins in elementary and middle school.

That’s why I’ve proposed a STEP UP plan to expand summer learning opportunities through partnerships between schools and community organizations. And that’s why next week, I’ll be introducing a bill in the Senate that invests in proven strategies to support middle school students and that awards grants to states and districts that are improving graduation rates.<sup>113</sup>

In addition to attacking the dropout rate in K-12 education, society must provide a clearly illuminated pathway to higher education and the financial opportunities a college degree carries. Many, if not most, Latino/a undergraduate and law students I have taught recount that they are the first in their family to pursue higher education or an advanced degree.<sup>114</sup> But measures to improve the access of Latino/as to higher education encounter the twin restrictions of equal protection and anti-affirmative action initiatives patterned after California’s Proposition 209, adopted in 1996.<sup>115</sup> Disallowing “preferential treatment” on the basis of race in public education and

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<sup>111</sup> BENDER, *supra* note 23, at ch. 10.

<sup>112</sup> *Obama Wants to “Stand and Deliver” on Education for Urban Poor*, ABC News, Oct. 21, 2007, <http://blogs.abcnews.com/politicalradar/2007/10/obama-wants-to-.html>.

<sup>113</sup> Barack Obama and Joe Biden: The Change We Need, Obama Calls for Comprehensive Effort to Address Latino Dropout Rate (Oct. 20, 2007), [http://www.barackobama.com/2007/10/20/obama\\_calls\\_for\\_comprehensive.php](http://www.barackobama.com/2007/10/20/obama_calls_for_comprehensive.php).

<sup>114</sup> See Doug Lederman, ‘Double Whammy of Disadvantage’, INSIDE HIGHER ED, June 16, 2008, <http://www.insidehighered.com/news/2008/06/16/first> (finding that low-income, first-generation college students work significantly more than other students due to their financial needs, which affects their graduation rate).

<sup>115</sup> CAL. CONST. art. I, § 31.

prompted by anti-Latino/a animus,<sup>116</sup> Proposition 209 hampered the growth of Latino/a college enrollments in California. Despite their substantial increase in number in recent years, Latino/as accounted for only sixteen percent of the 2006 entering class in the University of California system at a time when Latino/as amounted to over thirty-six percent of state high school graduates.<sup>117</sup>

As noted above, a mere four percent of East L.A. residents hold a bachelor's degree.<sup>118</sup> If a state college decided to boost Latino/a enrollment from a poor neighborhood such as East L.A., giving a preference to applicants from this geographic area, such a proxy for race likely would contravene Proposition 209. After Michigan voters adopted a counterpart to California's Proposition 209 in 2006,<sup>119</sup> Michigan universities considered whether they might ensure racial diversity through geographic and cultural proxies, such as by giving a preference to applicants from Detroit (thereby ensuring admittance of African Americans), to bilingual applicants (Latino/as), or to those having lived on a reservation (Native Americans).<sup>120</sup> Although arguing that such a geographic proxy would survive strict scrutiny under an Equal Protection Clause challenge,<sup>121</sup> a scholar has opined that Proposition 209 and the Michigan initiative modeled after it prohibit such proxies for race in the admissions process.<sup>122</sup>

California did embrace a geographic proxy of sorts for race-based affirmative action programs—the so-called four percent plan. Under this rule, adopted by the University of California Board of Regents after voters approved Proposition 209, Californians who graduate in the top four percent of their high school class are guaranteed admission to the UC system.<sup>123</sup> Pre-

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<sup>116</sup> See JORGE RAMOS, *THE OTHER FACE OF AMERICA: CHRONICLES OF THE IMMIGRANTS SHAPING OUR FUTURE* 47 (Patricia J. Duncan trans., HarperCollins Publishers 2002) (2000) (arguing that the sum of California's Propositions 187, 209, and 227 is "the new math of the anti-immigrant, anti-Latino, anti-Mexican movement in California"); see also Kevin R. Johnson & George A. Martínez, *Discrimination by Proxy: The Case of Proposition 227 and the Ban on Bilingual Education*, 33 U.C. DAVIS L. REV. 1227 (2000) (detailing anti-Mexican underpinnings of California's eradication of bilingual education).

<sup>117</sup> Eleanor Yang Su, *UC Ethnic Shift Revives Proposition 209 Debate*, SAN DIEGO UNION-TRIB., Nov. 27, 2006, at A1. Although the sixteen percent rate is an increase from the thirteen-percent entering class just before Proposition 209 was enacted a decade before, it is a paltry amount in relation to Latino/as' share of state high school graduates—an already discounted percentage given the staggering Latino/a high school drop-out rate. *But see* University of California, UC Releases 2008 Freshman Admissions Data (Apr. 14, 2008), <http://www.universityofcalifornia.edu/news/article/17659> (reporting a rise in undergraduate admission offers to underrepresented students for the 2008 entering class).

<sup>118</sup> East L.A. Survey, *supra* note 50.

<sup>119</sup> MICH. CONST. art. 1 § 26.

<sup>120</sup> Brian T. Fitzpatrick, *Can Michigan Universities Use Proxies for Race After the Ban on Racial Preferences?*, 13 MICH. J. RACE & L. 277, 278-79 (2007).

<sup>121</sup> See *id.* at 281-92.

<sup>122</sup> See *id.* at 292-304.

<sup>123</sup> University of California Office of the President, Eligibility in the Local Context (ELC) Program, <http://www.ucop.edu/sas/elc/> (last visited Mar. 5, 2009) (policy approved on March 19, 1999 and amended on July 15, 2004). Notice that, ironically, the California four percent plan coincides with the paltry number of East L.A. residents with a bachelor's degree.

sumably this measure passes scrutiny under Proposition 209 because it applies equally to all school districts, whether in East L.A. or Beverly Hills. But unlike the similar Texas ten percent plan that allows admission to the state university of the student's choice, the California plan does not guarantee which of the nine<sup>124</sup> University of California campuses the student can attend. So a graduate of an East L.A. high school such as Garfield in the top four percent of her class might gain admission to UC Riverside or UC Merced rather than achieving her aspiration of UCLA or Berkeley, assuming that the student from a poor barrio family is even able to afford higher education. Given the dismal statistics of Latino/a college admissions in California, it is evident that strategies are needed beyond the four percent plan.

Undocumented students fare even worse. As measured by the 2000 Census, East L.A. and Los Angeles were two of only ten U.S. locations with at least forty percent of their population foreign-born.<sup>125</sup> Undoubtedly, many of these residents and their children are undocumented. In California alone, one commentator estimated 20,000 undocumented students were enrolled in colleges and community colleges in 2005.<sup>126</sup> Although California accords in-state tuition to certain undocumented students by state law,<sup>127</sup> the possibility of conflict with existing federal law<sup>128</sup> and the presence of contrary state law

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<sup>124</sup> The University of California, San Francisco offers only one undergraduate program, in dental hygiene; therefore, I did not include it within the count of UC schools.

<sup>125</sup> Press Release, U.S. Census Bureau, Foreign-Born a Majority in Six U.S. Cities; Growth Fastest in South, Census Bureau Reports (Dec. 17, 2003), available at [http://www.census.gov/Press-Release/www/releases/archives/census\\_2000/001623.html](http://www.census.gov/Press-Release/www/releases/archives/census_2000/001623.html). Seven of these ten places are in California, including six in Southern California and four with foreign-born majorities.

<sup>126</sup> JEANNE BATALOVA & MICHAEL FIX, MIGRATION POLICY INST., NEW ESTIMATES OF UNAUTHORIZED YOUTH ELIGIBLE FOR LEGAL STATUS UNDER THE DREAM ACT 8 (2006), available at [http://www.migrationpolicy.org/pubs/Background1\\_Dream\\_Act.pdf](http://www.migrationpolicy.org/pubs/Background1_Dream_Act.pdf) ("Some rough estimates suggest that about 1,620 [undocumented] students were enrolled in 2005 in the University of California and California State University system and take advantage of the tuition break provided by the California AB540 Act. The act grants in-state tuition to certain non-residents, including unauthorized students. In addition, about 18,000 students enrolled either full- or part-time in California community colleges qualified for in-state tuition under the same act (California Senate Appropriations Committee 2006). We assume that all 20,000 AB540-eligible students enrolled in California colleges and universities are unauthorized.").

<sup>127</sup> CAL. EDUC. CODE § 68130.5 (West 2003), invalidated by *Martinez v. Regents of Univ. of Cal.*, 83 Cal. Rptr. 3d 518 (Cal. Ct. App. 2008) (invalidating the statute as federally preempted). The Supreme Court of California has granted a petition for review of the *Martinez* decision and a petition from out-of-state lawyer and law professor Kris Kobach, see *infra* note 128, to represent the U.S. citizen nonresident students challenging the statute on appeal. *Martinez v. Regents of Univ. of Cal.*, 87 Cal. Rptr. 3d 198 (Cal. 2008).

<sup>128</sup> Compare Kris W. Kobach, *Immigration Nullification: In-State Tuition and Lawmakers Who Disregard the Law*, 10 N.Y.U. J. LEGIS. & PUB. POL'Y 473, 477 (2007) (arguing that under federal law any state that wishes to make resident tuition available to the undocumented must extend that benefit to all nonresident citizens and nationals) with Michael A. Olivas, *Lawmakers Gone Wild? College Residency and the Response to Professor Kobach*, 61 SMU L. REV. 99, 122-25 (2008) (countering persuasively that the only "reasonable conclusion" is that confusingly worded federal law allows states to confer (or not to confer) residency status upon undocumented immigrants in their public postsecondary institutions without similarly according resident status to nonresidents). "Kobach is simply wrong when he somehow concludes

elsewhere denying residency status to the undocumented<sup>129</sup> compel the enactment of federal legislation to treat resident undocumented students as other state residents. Although it drew bipartisan support, the proposed federal Development Relief and Education for Alien Minors (DREAM) Act has been stymied in Congress for years, despite valiant efforts in 2007 to include the Act in the Department of Defense authorization bill.<sup>130</sup> Even if enacted, the DREAM Act will come too late for many undocumented Latino/a youth whose educational careers likely have been devastated in earlier years by the upheaval of undocumented family life—household poverty, separation from family left behind in Mexico or elsewhere, and the ever-present threat of an immigration raid to tear families further apart. Comprehensive immigration reform regularizing status of adults and their children and carrying a pathway to citizenship would pay dividends in enhancing the educational opportunities of millions of Latino/a youth.

As I have urged elsewhere, given the disproportionate youth of the Latino/a community and the critical impact of quality education, creating opportunity in Latino/a geographies<sup>131</sup> must focus on educational imperatives:

To properly educate Latina/o children, we will need to invest in our collective futures by funding and valuing education over other spending priorities. Should we fail to do so, these children . . . will be hard pressed to break out of the vicious cycle of poverty and the lack of education that Latinas/os endure in disproportionate numbers. Whether we view our burgeoning Latina/o youth as an opportunity for collective growth or, through the lens of stereotype, as a fiscal and moral burden, may come to define our time in American history.<sup>132</sup>

## V. THE COLOR OF MONEY

I last visited East Los Angeles in the summer of 2007 to show my fiancée my childhood dwellings. Although I never lived in a single-family house there, my grandmother lived in a well-kept home a block from the economic and cultural epicenter of East L.A.—Whittier Boulevard. As a

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that the states [doing so] are breaking the law or somehow thumbing their noses at federal law.” *Id.* at 125.

<sup>129</sup> Professor Michael Olivas maintains a list of state legislation concerning undocumented college students. See Institute for Higher Education Law & Governance, University of Houston Law Center, State Legislation Concerning Undocumented College Students (Fall 2008), <http://www.law.uh.edu/ihe/g/state.html>.

<sup>130</sup> STEVEN W. BENDER, RAQUEL ALDANA, GILBERT PAUL CARRASCO & JOAQUIN G. AVILA, *EVERYDAY LAW FOR LATINO/AS* 212 (2008).

<sup>131</sup> See generally Michael A. Olivas, Brown and the Desegregative Ideal: Location, Race, and College Attendance Policies, 90 CORNELL L. REV. 391 (2005) (confronting the geographies of opportunity for Latino/as and detailing litigation in Texas and California addressing undue burdens of location on Latino/a students in distribution of resources for higher education and the role of residence in college admission).

<sup>132</sup> BENDER, *supra* note 1, at 233.



youngster, I walked from school to her house most afternoons where she would watch me and my three cousins until my mother returned from her secretarial job in downtown Los Angeles. I remember my grandmother working near daily in her yard, despite her age. After she died, my mother's family inherited the house and sold it for a song. A few years later, they were shocked when my uncle "zillowed"<sup>133</sup> the home and discovered in mid-2007 that it was "worth" some \$500,000 and that it had sold for \$460,000 in late November 2006.<sup>134</sup> By April 2008, however, the home was again listed for sale at \$460,000 and advertised as a potential short sale.<sup>135</sup> Given the sale price and content of the broker listing,<sup>136</sup> it is apparent the home was purchased at the height of the recent subprime mortgage frenzy with financing for all or nearly all of its purchase price—one of the most common varieties of subprime loans. By the fall of 2008, in the throes of the subprime meltdown,<sup>137</sup> the Zillow website estimated its value as under \$330,000,<sup>138</sup> an economic freefall.

The recent era of subprime lending marked a detrimental shift in discriminatory lending practices affecting Latino/as. Previously rejected by lenders that ignored neighborhoods of color, Latino/a borrowers found themselves pursued aggressively by subprime lenders and mortgage brokers, wielding predatory terms, that saw green in communities of color. As an NAACP lawyer observed, "[i]t's almost as if subprime lenders put a circle around neighborhoods of color and sa[id], 'This is where we're going to do our thing.'"<sup>139</sup> Lured by these pitches, Latino/a and African American borrowers became the lifeblood of the subprime lender, disproportionately obtaining subprime loans. Thus, by contrast to the days of mortgage lenders

<sup>133</sup> See Zillow, <http://www.zillow.com> (last visited Mar. 5, 2009).

<sup>134</sup> Zillow, Home Value Graphs & Charts for 676 Amalia Ave, Los Angeles, CA 90022, [http://www.zillow.com/homedetails/charts/21081832\\_zpid,10years\\_chartDuration/](http://www.zillow.com/homedetails/charts/21081832_zpid,10years_chartDuration/) (last visited Mar. 5, 2009) (for more complete sales history, enter the number shown in the dialog box under "Sales History & Tax Information" and then follow the "Go" hyperlink).

<sup>135</sup> The subprime mortgage crisis of 2008 and attendant decline in property values made the option of a so-called short sale attractive to struggling homeowners who owed more on their mortgage loan than their property was worth. Under the short-sale procedure, which is an alternative to foreclosure, the borrower secures the agreement of the mortgage lender to release the mortgage upon a bona fide sale to a third party for an agreed-upon price below the mortgage loan balance. The broker's listing of my grandmother's former home stated: "PLEASE DON'T LET THE PRICE DISCOURAGE YOU FROM SENDING ANY OFFERS. SELLERS PRICE. SUBJECT TO LENDERS APPROVAL OF SHORT PAY AND COMMISSIONS TO SELLING AND LISTING AGENTS. HOUSE IS 2 BED. 1 BA. WERY [sic] WELL TAKING [sic] CARE OF." Prudential California Realty, 676 Amalia Ave, Los Angeles, CA, <http://www.prudentialcal.com/Listing/ListingDetail.aspx?Listing=29635708> (last visited Mar. 5, 2009).

<sup>136</sup> *Id.*

<sup>137</sup> See generally BENDER, *supra* note 30.

<sup>138</sup> Zillow, *supra* note 134. The home eventually sold for \$390,000 in late October 2008, though the Zillow charts indicate that the value of the home was continuing to decline in the months after that sale. *Id.*

<sup>139</sup> Manny Fernandez, *Study Finds Disparities in Mortgages by Race*, N.Y. TIMES, Oct. 15, 2007, at B1, available at <http://www.nytimes.com/2007/10/15/nyregion/15subprime.html>.

redlining<sup>140</sup> minority neighborhoods and denying their residents home loans, subprime lenders and brokers engaged in reverse-redlining to target minority borrowers perceived as susceptible to predatory loans given their nontraditional or absence of credit history, their lack of familiarity with home purchasing and borrowing, and the potential of language barriers.<sup>141</sup> The Federal Reserve reported that almost half (46.6%) of Latino/as financing a home purchase in 2006 received subprime financing, and the rate for African Americans was even higher at 53.7%.<sup>142</sup> By contrast, the subprime rate for Anglo homebuyers was far lower—17.7%.<sup>143</sup> Statistics from the California market reflect the disparity—in 2005, 56% of Latino/a homebuyers in California used subprime loans.<sup>144</sup>

Home ownership is the quintessential American dream. However, the familial and community stability, optimism, and pride that come with home ownership can erode quickly when home ownership gains stem from an illusory subprime lending market that gives way to a wave of foreclosures and a crash in housing markets. Add increased joblessness and fuel and food costs in 2008, and you have the ingredients for a boost in gang membership.

#### CONCLUSION

Despite the history of struggle in East L.A. and the legacy of gang violence there, I remember a different vision of East L.A.—one that can light a path toward change. I remember dinners with handmade tortillas at my grandmother's house. I remember walking with my mother to the butcher shop and standing on sawdust floors to order cuts of meat. I remember accompanying my grandmother every afternoon to the markets on Whittier Boulevard to get fresh tomatoes and ingredients for the night's meal. I remember playing with my cousins after school. I remember attending Catholic mass on Sundays with my mother. Above all, "I remember *mi*

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<sup>140</sup> See Benjamin Howell, Comment, *Exploiting Race and Space: Concentrated Subprime Lending as Housing Discrimination*, 94 CAL. L. REV. 101, 107-08 (2006) (attributing the term redlining to color-coded maps prepared during the Great Depression by a federally-operated mortgage lender signaling with red coloring the highest-risk neighborhoods in which it generally refused to lend).

<sup>141</sup> Cf. *id.* at 115-16 (arguing that lending decisions made on the basis of geography that cannot be justified by legitimate economic factors and that "closely track the spatial dimension of racial composition" should be presumed discriminatory under a disparate impact analysis); see also Jo Carrillo, *In Translation for the Latino Market Today: Acknowledging the Rights of Consumers in a Multilingual Housing Market*, 11 HARV. LATINO L. REV. 1 (2008) (discussing the need for consumer protection laws designed specifically to protect Spanish speaking borrowers).

<sup>142</sup> Sue Kirchhoff, *Higher Subprime Rates for Blacks, Hispanics Baffling*, USA TODAY, Sept. 13, 2007, at 9A, available at [http://www.usatoday.com/money/economy/housing/2007-09-12-subprime-fed\\_N.htm](http://www.usatoday.com/money/economy/housing/2007-09-12-subprime-fed_N.htm).

<sup>143</sup> *Id.*

<sup>144</sup> John Gittelsohn & Ronald Campbell, *Street of Broken Dreams*, ORANGE COUNTY REG., Aug. 12, 2007, available at <http://www.ocregister.com/articles/loans-camile-percent-1806121-subprime-loan>.

*familia*,”<sup>145</sup> and the closeness of our community in a place largely ignored by the rest of the world, except for cheap laughs like those had by the characters and audiences of *Knocked Up*. Had I been a contestant on *The \$25,000 Pyramid* game show and been given the same clue, I might have responded with answers such as Mexican restaurants, Mexican Americans, or immigrants—answers I would expect from television writers in Hollywood. But if asked to give my independent opinion on what they have “lots of” in East L.A., I would respond “families.” Families like mine with hopes for education and health for their children. Families like mine that would overcome the derogatory stereotypes of Mexicans and Latino/as that pervade mass media and the American imagination. Families like mine with roots in Mexico, but with American dreams in red, white, and blue that evoke the colors of promise rather than of violence. *Mi barrio es primero*.

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<sup>145</sup> MY FAMILY (American Playhouse 1995) (the closing words of the film as narrated by the fictional Los Angeles family’s eldest son, a writer).