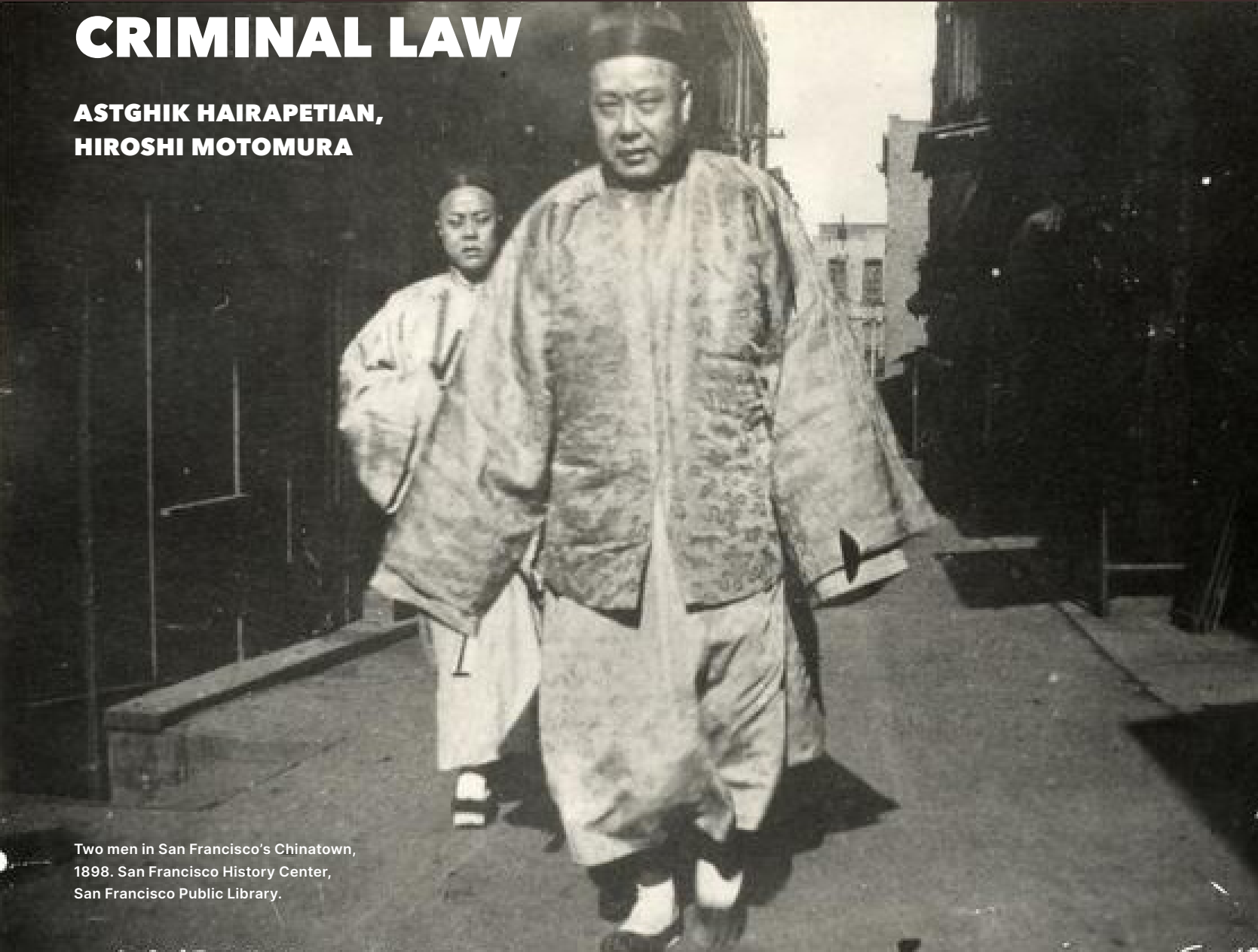


ANTI-AAPI RACISM IN IMMIGRATION AND CRIMINAL LAW

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Two men in San Francisco's Chinatown, 1898. San Francisco History Center, San Francisco Public Library.

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DISCLAIMER

The views expressed herein are those of the authors and not necessarily those of the University of California, Los Angeles. The authors alone are responsible for the content of this report.

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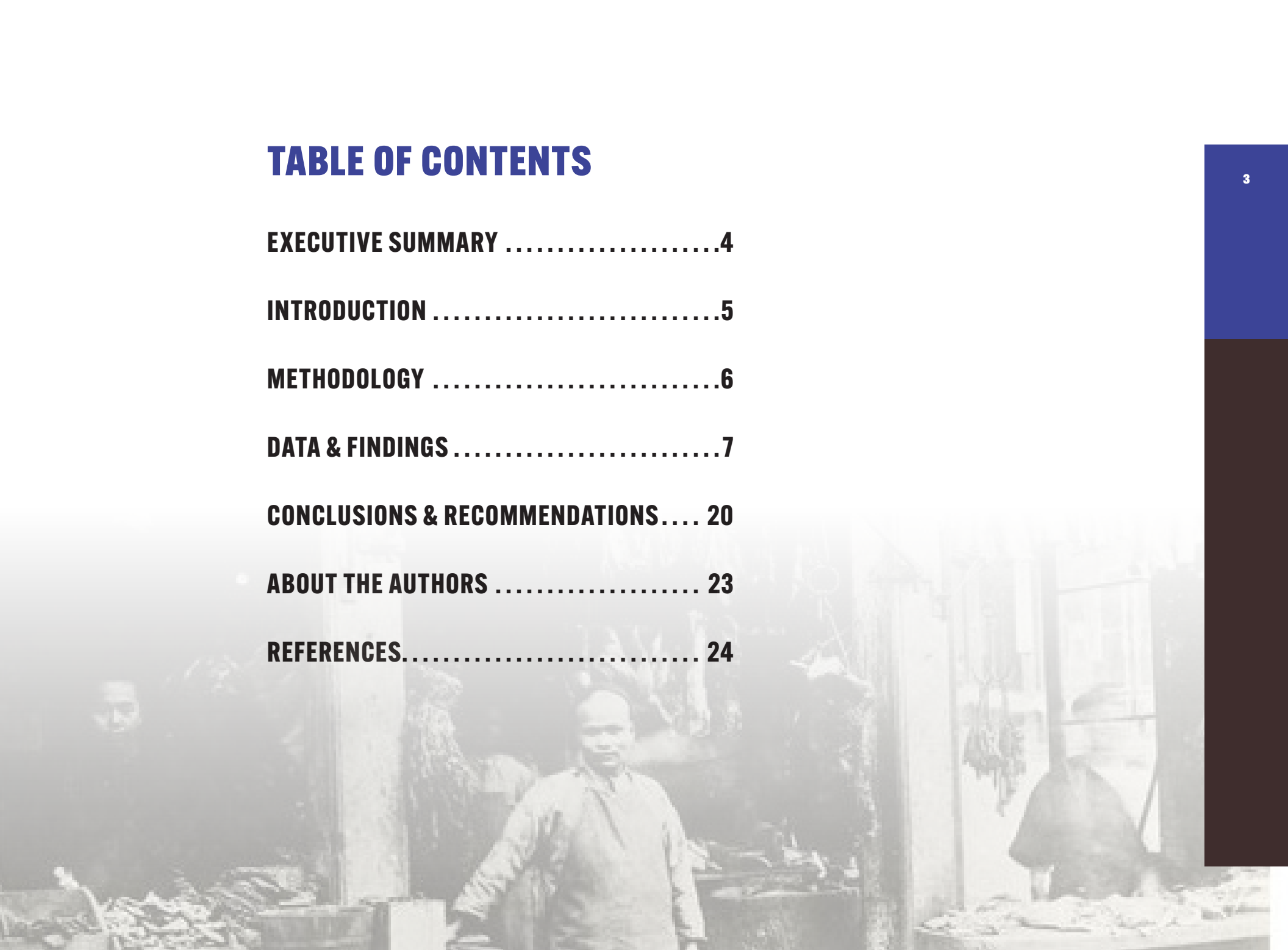
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EXECUTIVE SUMMARY

This report examines the foundation for discrimination, hate, and violence against Asian American and Pacific Islander (AAPI) communities laid by immigration laws that cast AAPI communities as “foreign” or less than fully American. The report sheds light on the intersection of criminal and immigration law and the anti-AAPI origins of laws that remain at the core of this country’s immigration and criminal legal frameworks.

KEY FINDINGS

1. **State and Local Transfers to ICE:** California permits state and local law enforcement to transfer individuals to Immigration and Customs Enforcement (ICE) if an individual has certain criminal convictions. Second, the California Department of Corrections and Rehabilitation, though not other law enforcement agencies, may use its resources for immigration enforcement.
2. **Lack of Universal Representation:** California’s statewide representation program does not permit funds to be used to represent individuals in removal proceedings who have certain criminal convictions. Some counties and cities have programs which provide representation regardless of criminal history, but these local programs do not reach all Californians.

3. **Gang Databases:** California’s gang database (CalGang) marks certain Californians as gang members, which can carry adverse immigration consequences. CalGang has stopped including LA Police Department data due to significant errors in the data, but continues to include questionable information from other local law enforcement agencies.

RECOMMENDATIONS

1. **Stop Transfers to ICE.** One example of positive legislation is the VISION Act (AB 937), which the California legislature considered in 2022. It helps ensure local and state resources are not used to separate families. The VISION Act prevents immigrants from being transferred to ICE immigration prisons and from potentially being deported and exiled from their families. It includes the California Department of Corrections and Rehabilitation in this prohibition. This kind of legislation stopping all transfers of Californians from local jails and state prisons to ICE, without exception, is essential to protecting immigrant communities.
2. **Universal Representation for All Californians.** California’s immigration services funding must reach all Californians—irrespective of past contact with the criminal legal system. California should amend Welfare and Institutions Code section 13303 to remove this limitation on funding.

3. **Discontinue CalGang.** Inclusion in the CalGang database can have negative immigration consequences. In light of the significant errors identified in a 2016 audit of CalGang, as well as in the 2020 audit of LAPD data, use of CalGang should be discontinued altogether.
4. **Amend State Criminal Laws to Eliminate or Mitigate Immigration Consequences.** California should amend state criminal statutes which can lead to deportation. The California legislature in 2022 considered AB 2195, which provides an alternate offense to drug convictions and thus does not carry immigration consequences. These kinds of smart alternatives to offenses like drug convictions are essential. California can also amend its criminal statutes so that they do not “match” federal definitions for a given crime. According to a special methodology that courts use in immigration cases, if a state criminal statute is broader than the federal definition, the state criminal conviction cannot create immigration consequences, like deportation. This kind of amendment, however, must be implemented carefully so as not to expand the number of people who can be criminally prosecuted.

INTRODUCTION

Discrimination, hate, and violence against Asian American and Pacific Islander (AAPI) communities in California intensified during the COVID-19 pandemic. Government officials’ use of terms like “Chinese virus” and “kung flu” to describe COVID-19 contributed to racism and racist acts against AAPI communities (Itkowitz, 2020; Hswen, 2020). Research on the rise in anti-AAPI racism since early 2020 is an important part of a comprehensive response to the California legislature’s research call.

This report takes a broader view of such anti-AAPI discrimination, hate, and violence by analyzing less well-known aspects of its historical foundations. The report focuses on key moments in the evolution of immigration law; while this history’s relevance may not be immediately obvious, it is important to remember that immigration law decides who legally belongs in America and who does not. Of course, legal belonging is distinct from the reality of who belongs, for example, to a family or a community. But by defining legal belonging in racist ways, immigration law decides that certain peoples’ and communities’ belonging matters less. This permits and encourages racist perceptions as to who really belongs in this country, fueling hate and violence. For that reason, any comprehensive understanding of the renewed increase in violence against AAPI communities must include an analysis of immigration law’s role.

A basic truth about the history of the United States is that its immigration laws have embodied and amplified systemic racism. This racism was explicit in generations of barriers erected against Asian immigrants who sought to come to America and naturalize as U.S. citizens. Several troubling episodes may be familiar to some: laws that barred Chinese immigrants were first enacted in 1875 and persisted until 1943; other federal policies and laws in effect from the early 1900s to the 1960s explicitly blocked Asian immigration; and, from the nation's founding until 1952, racial barriers kept Asian immigrants from naturalizing—i.e., becoming full members of the political community, as citizens.

METHODOLOGY

This report discusses laws with anti-AAPI origins that are less well-known but have led to devastating effects on AAPI communities in California. These laws used racist stereotypes to try connecting AAPI immigrants with drug use and criminality. Today, these laws continue to attach severe immigration consequences to people of AAPI descent, and to others—from encounters with law enforcement, to criminal convictions, to deportation.

Some may brush off the racist origins of these immigration laws as relics from the distant past, but the consequences of this racism continue to fall on AAPI communities in California. State laws and policies allow—and sometimes require—local governments to assist in federal immigration enforcement

against AAPI noncitizens. Though these practices rely on federal immigration laws, California state and local governments are complicit in their implementation.

The immigration laws discussed in this report were enacted because legislators saw AAPI immigrants as unassimilable: perpetual foreigners who could never become fully American. Of course, the racist tropes deployed against certain AAPI communities have shifted since then—for example, the racist association of South Asian communities with terrorism—and racism in immigration has expanded to other racial groups. But for 150 years, those foundational laws have helped maintain racist views of AAPI immigrants. This is a disturbing but real part of the foundation for anti-AAPI discrimination, hate, and violence that has erupted many times in U.S. history—most recently during the COVID-19 pandemic. Without concrete steps to expunge this foundation for anti-AAPI discrimination, hate, and violence from today's immigration laws, it is difficult to see a future without additional racist attacks—much less a future free of the devastating human impact of the immigration laws themselves.

This report proceeds thusly: First, it reviews the racist origins of federal laws that attach immigration consequences to “crimes involving moral turpitude” and controlled substance crimes, tracing the blatant racism of earlier eras as well as their persistence today. Second, the report highlights California laws that amplify the effects of federal laws with these racist origins. Third, the report discusses the effects

of these laws on AAPI communities in California. Fourth and finally, the report recommends state legislation and other changes in state laws and policies to expunge these aspects of racism from law, policy, and practice, while also redressing the harms to California’s AAPI communities.

DATA & FINDINGS

ANTI-AAPI RACISM IN IMMIGRATION AND CRIMINAL LAW, 1873-1990

Explicit anti-AAPI racism motivated early immigration and criminal statutes in both federal and California law. California politicians and civil servants played a significant role in the emergence of these federal laws in the late 1800s and early 1900s. Legal developments in the second half of the twentieth century did not abandon the substance of these earlier laws, but instead maintained their embedded racism. This history is not widely acknowledged and integrated in the national discourse on immigration, but its racism remains foundational to our immigration regime today.

EXPLICIT ANTI-AAPI RACISM IN IMMIGRATION AND CRIMINAL LAW, 1873-1942

Today, convictions for crimes involving moral turpitude (CIMT) and crimes relating to controlled substances can make noncitizens deportable—meaning they can be removed from the United States—or excludable—meaning they can be denied admission to the United States.¹ Although many

legal practitioners, legislators, and government officials take these consequences for granted, these laws have their origins in the late 1800s—an era of explicitly racist immigration lawmaking.

Crimes Involving Moral Turpitude as a Basis for Immigration Consequences

Throughout U.S. history, judgments about “morality” have been used to decide who belongs and who should be cast out. These notions of morality—and more specifically, how a perceived lack of morality is a sign of criminality—were often a proxy for race and racist perceptions. Lawmakers used racialized notions of immorality, and thus criminality, to justify early anti-Chinese barriers to immigration in both federal and California laws.

1873-1891: “BRAZEN HARLOTS” AND THE “INCALCULABLE EVILS OF CHINESE IMMIGRATION”

In the 1870s, before it became clear that only the federal government could directly regulate immigration, California enacted the nation’s first immigration laws claiming a basis in “morality.” These California laws targeted East Asian women. In 1870, California prohibited bringing into the state “any Mongolian, Chinese or Japanese females. . . without first presenting to the Commissioner of Immigration evidence satisfactory to him that such female. . . is a person of correct habits and good character.”² The law was enforced at least to some extent: according to a newspaper account, on June 14, 1870, twenty-nine women were denied entry based

on this law (Peffer, 1999). In 1873, California amended the California Political Code to make “lewd or debauched wom[en]” inadmissible to California.³ Although the 1873 statute did not explicitly mention East Asian women, in 1875, the U.S. Supreme Court found this California statute unconstitutional, stating “if citizens of our own government were treated by any foreign nation as subjects of the Emperor of China have been actually treated under this law, no administration could withstand the call for a demand on such government for redress.”⁴ But the 1870 and 1873 California statutes had set a precedent for linking East Asian women to immorality, and thus to crime, in addition to more generally linking AAPI immigrants to morality-based criminality.

In the federal government, President Ulysses Grant and Congress were already discussing the exclusion of East Asian immigrants based on intertwined perceptions of immorality and criminality. In 1874, President Grant addressed Congress, stating, “[h]ardly a perceptible percentage of [Chinese women] perform any honorable labor, but they are brought for shameful purposes. . . . If this evil practice can be legislated against, it will be my pleasure as well as duty to enforce any regulation to secure so desirable an end.”⁵

Horace F. Page, a U.S. Congressman from California, was the principal sponsor of the Page Act of 1875. Answering President Grant’s call, the Page Act barred people from “China, Japan, or any Oriental country” from entering the U.S. for “lewd and immoral purposes.”⁶ It also prohibited the “importation of women into the United States for the

purposes of prostitution” and imposed particularly harsh penalties: up to five years in prison and a fine of up to \$5,000.⁷ Though nominally focused on “lewd and immoral” behavior, the Page Act’s legislative history shows that it was intended to keep all East Asian women out of the United States.

In a speech before Congress, Page stressed “the incalculable evils of Chinese immigration,” and voiced the complaints of “early emigrants to California” that “the spread and augmentation of the number [of Chinese immigrants] throughout the State of California has seriously discouraged the increase of the most desirable class of European immigrants.”⁸ Page expressed his hope that once the problem of “brazen harlot[s]” is “removed, . . . in its place. . . through the Golden Gate and across the continent, will come a race of people to settle among us who will. . . add something to the substantial wealth of the country.”⁹

The Page Act had its intended effect. Giles H. Gray, surveyor of the Port of San Francisco, testified before a congressional committee that before the Page Act, about 400 to 800 Chinese women entered the United States through this port every month; after the Page Act took effect, the number of Chinese women entering through the port dropped to 161 between July and October 1875, and to fifteen in the first three months of 1876.¹⁰

In 1882, Congress passed the first of several Chinese Exclusion Acts. The 1882 version banned all Chinese laborers from the United States.¹¹ The same year, Congress enacted



Chinese butcher and grocery shop, Chinatown, San Francisco, 1880.
San Francisco History Center, San Francisco Public Library.

morality-based exclusion of noncitizens, regardless of nationality, for “any convict, lunatic, [or] idiot.”¹²

The clear purpose of these and other morality-based federal laws was racial exclusion. In 1890, the U.S. House Committee on Immigration and Naturalization stated that the “intent of our immigration laws is not to restrict immigration, but to sift it, to separate the desirable from the undesirable immigrants, and to permit only those to land on our shores who have certain physical and moral qualities.”¹³

In 1891, Congress set the stage for the types of morality-based crimes that would proliferate in the next century by expanding the 1882 exclusion law to bar noncitizens “who have been convicted of a . . . misdemeanor involving moral turpitude.”¹⁴

1909-1917: “MORAL LEPROSY” AND THE “THE UNDESIRABLE FROM ASIA”

Racist views like those expressed by President Grant and Congressman Page persisted into the twentieth century; California state officials were among the adherents. In 1909 Almont Gates, Secretary of the California State Board of Charities and Corrections, wrote: “[t]he Japanese. . . carry with them wherever they go the same moral leprosy that the Chinese carry,” and guessed that “more than a majority” of the Chinese and Japanese women in the U.S. were prostitutes.¹⁵

These morality-based racist views broadened their practical impact as federal immigration law evolved and expanded early in the twentieth century. In 1907, Congress amended the 1882 immigration law to bar noncitizens for merely admitting to committing a CIMT, rather than requiring a conviction.¹⁶ A CIMT today is defined as a “reprehensible act with some form” of intent.¹⁷ Although the Supreme Court in 1951 found that CIMT is not unconstitutionally vague,¹⁸ the term has nonetheless historically been difficult to define with precision.¹⁹

The 1907 federal law shifted course in another way that further expanded the reach of morality-based racist views. Rather than focusing on barring people from the United

States, the 1907 law provided for the deportation of women and girls if they were found in a “house of prostitution or practicing prostitution” within three years of their entry.²⁰ In 1910, Congress eliminated the three-year limitation, making these women and girls deportable at any time.²¹

In 1907, Congress created the Dillingham Commission and charged it with studying immigration to the United States. This Commission adopted the racist pseudoscience of eugenics as its guide for immigration policy.²² In 1910, its report on the “Importation and Harboring of Women for Immoral Purposes” expressed the Commission’s view that Japanese and Chinese women who had been brought to the United States for prostitution were avoiding deportation by being married upon arrival to U.S. citizens.²³

Anti-AAPI racism in federal immigration laws—much of it based on notions of “morality” that prevailed in that period—continued unabated into the next decade. The Immigration Act of 1917 barred immigration from most of Asia. It made noncitizens deportable if they were sentenced for a crime involving moral turpitude within five years of entry. The 1917 Act also made noncitizens deportable at any time after entry for a second conviction and sentence.²⁴ The 1917 Act limited deportation for being an “inmate . . . of a house of prostitution” to within five years of entry, but stated that a woman “of the sexually immoral classes” could not gain citizenship by marrying a U.S. citizen.²⁵

It is important to note that many racist laws of the early period targeted AAPI women specifically; thus, their

experiences were shaped both by their race and their gender (Crenshaw, 1991). Although laws today do not target AAPI women directly as they did over a century ago, racist criminal and immigration laws today have a unique impact on AAPI women (NAPAWF and SEARAC, 2018).

The racism rampant among California’s congressional representatives during this period is clear from their official testimony. In 1915, Denver Samuel Church, a U.S. Congressman from California, urged support for an early version of the 1917 Act. He declared: “California being on the shores of the Pacific seems to be a dumping ground for the undesirable from Asia, and I assure you the Hindu and the Japanese are the greatest problems and the greatest plagues we have in the West . . . the standard of living and the standard of morality of our people are lowered by the arrival of this ignorant and immoral horde from across the sea.”²⁶

Controlled Substances Prohibitions in California State Criminal Law and Their Immigration Consequences

1875-1922: “ORIENTALS ARE GREAT AT THIS DRUG GAME”

As with “crimes involving moral turpitude,” California adopted some of the earliest state prohibitions on narcotics, again explicitly targeting East Asian immigrant communities. In 1875, the City and County of San Francisco enacted an ordinance prohibiting “opium dens.” The San Francisco Chronicle supported this ordinance by alleging that the dens were “kept by Chinese.”²⁷ By 1881, California law prohibited opium dens, in language similar to the San Francisco

ordinance.²⁸ A federal district court conceded that these laws likely stem “more from a desire to vex and annoy the [Chinese] in this respect, than to protect the people from the evil habit.”²⁹

California’s 1907 Poison Act barred the sale of heroin, opium, and cocaine, among other drugs without a prescription.³⁰ Enforcement of the ban focused on Chinese communities.³¹ A 1908 trade industry report relayed that the State Board of Pharmacy “has started a crusade” against medicine dealers in Los Angeles, highlighting the arrest of one man who “was dressed in a combination Chinese-Hindoo costume.”³² The racist views behind this “crusade” are evident in the State Board of Pharmacy’s 1911 Report. In a special section entitled “Chinese Prosecuted for Possession or Sale of Opium, Morphine, and Cocaine,”³³ it boasted that “unscrupulous druggists and many Chinese . . . [have been] prosecuted, fined and severely reprimanded.”³⁴

Even assuming some basis for addressing substance abuse, these laws and their enforcement went beyond that purpose to target Chinese immigrant communities. Several aspects of these laws make this clear. The 1875 San Francisco ban and 1881 California ban focused on closing opium dens rather than addressing smoking itself. This had the effect of enforcing against Chinese communities while condoning opium use by White smokers as long as they stayed away from Chinatown.³⁵ Moreover, enforcement of the 1907 California ban focused on smoking opium, which was primarily a Chinese American practice until 1870.³⁶ Addiction

to opium in other forms, such as powders or medicines, was more of a White phenomenon.³⁷ According to drug historian David Courtwright, contemporaries considered opium smokers—whether White or of Chinese ancestry —“alien and offensive,” while people addicted to other forms of opium were viewed with more sympathy.³⁸ Although the 1907 California ban did not distinguish between smoking opium and other preparations, enforcement targeted smoking opium—and thus was racially selective.

In general, despite the racial rhetoric for addressing substance abuse, what is striking about this era is the minimal availability of data regarding opiate use by race. A 1928 national review of literature on the types of narcotics users provides extensive sex and age information, but does not provide information about race.³⁹ It cites a 1908 study which found “morphin[e] addiction does not respect age, sex, occupation, rank, race or [l]ocation,”⁴⁰ and simply concluded that opiate addiction “is not restricted to any social, economic, mental, or other group; that there is no type which may be called the habitual user of opium, but that all types are actually or potentially users.”⁴¹

The anti-AAPI racism behind these controlled substance laws is also clear from statements by Henry Finger, a member of the California State Board of Pharmacy.⁴² Finger was part of the U.S. Delegation to the International Opium Conference at the Hague in 1911. He wrote to his delegation colleague, Hamilton Wright, that “[w]ithin the last year we in California have been getting a large influx of Hindoos and they have in

turn started quite a demand for cannabis indica, they are a very undesirable lot and . . . they are initiating our whites into this habit.”⁴³ Two years later, in 1913, California adopted a new law that prohibited “hemp, or loco-weed.”⁴⁴

Over the next decade, explicitly racist attitudes towards AAPI immigrants in connection with drugs remained influential. In 1922, California Congressman Arthur M. Free urged the deportation of noncitizens convicted of controlled substance offenses by successfully advocating for the federal Narcotic Drugs Import and Export Act of 1922⁴⁵ which became the first federal law attaching immigration consequences to convictions for controlled substances. Free explained that the condition is worse in California “because we have more orientals there, and orientals are great at this drug game,”⁴⁶ and, “[w]herever you have those [people], you have lewd women, you have women who use dope, you have boys.”⁴⁷

1931-1940: “[T]HE CHINESE IN NORTHERN CALIFORNIA” AND “DEGENERATE SPANISH-SPEAKING RESIDENTS”

Anti-AAPI racism in immigration law laid the foundation for applying racist notions of criminality to target other immigrant communities in California. “Our narcotic problem in California is intensified by the Mexicans in southern California and the Chinese in northern California,”⁴⁸ stated a 1931 California state government report on controlled substances and immigrants.

Once again, racist views in California soon influenced federal lawmaking. The same California report became a

source for a 1931 federal report on “Crime and the Foreign Born” by the Wickersham Commission, created by President Herbert Hoover to study crime in the United States.⁴⁹ In its study of San Francisco, the Commission reported that “[a]rrests of Chinese for offenses against the narcotic laws . . . were proportionately very high – 4.2 percent as compared with only 0.4 percent of arrests of natives.”⁵⁰ The racial focus was clear from the study’s definition of “Chinese” as “always including native and foreign-born.”⁵¹

In 1931, Congress amended the Immigration Act of 1917 which had barred immigration from most of Asia and permitted the deportation of noncitizens sentenced for a crime involving moral turpitude. The 1931 amendment made deportable, in addition, all noncitizens sentenced for controlled substances violations.⁵² The same 1931 law also expanded the range of conduct that could lead to deportation to include not just importation, but also manufacturing and distribution.⁵³

AAPI communities were not the only ones targeted by laws that relied on racist stereotypes to associate immigrants with drug use. At the time, marijuana was illegal under California law, but not federal law.⁵⁴ In voicing support for the federal Marihuana Tax Act of 1937,⁵⁵ Harry Anslinger, commissioner of the U.S. Treasury Department’s Bureau of Narcotics, submitted a letter from Floyd Baskette, an editor of the Alamosa Daily Courier in Colorado, to Congress. Baskette wrote: “I wish I could show you what a small marihuana cigaret can do to one of our degenerate Spanish-speaking

residents.”⁵⁶ In 1940, Congress added marijuana to the federal list of controlled substances that could result in deportation. From then on, a prior controlled substances conviction was enough to make a noncitizen deportable, even if not accompanied by a prior term of federal imprisonment, as had been required earlier.⁵⁷

1942: “THE JAPANESE, BOTH ALIEN AND AMERICAN-BORN, MUST GO”

We draw two lessons from this history. First, a half-century of California and federal laws relied on race—and gender—to treat AAPI immigrants as morally suspect criminals who should be barred or deported from the United States. Much of the structure of those laws remain in place to this day. Second, and more broadly, this history shows us that belonging and race have been deeply intertwined in the United States. Influential voices in mainstream society characterized AAPI communities as immoral and criminal, and as undesirable “foreign” elements. Unfortunately, California has been a leader in casting AAPI communities outside of what those influential voices considered the “real America.”

This treatment of persons of AAPI ancestry as “perpetual foreigners” laid the foundation for making race, not immigration or citizenship status, the crucial factor in the law’s treatment of AAPI communities. Modern shifts in the specific tropes associated with AAPI communities, such as the emergence of “Muslim” as a racial category after 9/11, can also partly be attributed to this historical foundation (Gotanda, 2011). The most infamous historical example of the

association of “foreignness” with the AAPI community is the incarceration of Japanese Americans during World War II. In January 1942, just weeks before President Roosevelt signed Executive Order 9066—which began the incarceration of Japanese Americans—the same Henry Anslinger who had tied marijuana to Mexican immigrants in 1937 reported to Congress. He declared, “[w]e have experienced Pearl Harbors many times in the past in the nature of dangerous drugs from Japan which were meant to poison the blood of the American people.”⁵⁸ Anslinger also stated that “[i]n addition to . . . the Japanese Army, Japan itself and all Japanese possessions are havens for Japanese nationals engaged in the illicit drug traffic.”⁵⁹ The day Executive Order 9066 was signed, Congressman John M. Costello of California conveyed to Congress a statement by Los Angeles Mayor Fletcher Bowron: “The people of California, the American citizens of California, with hardly a dissenting voice, say that the Japanese, both alien and American-born, must go.”⁶⁰

RACISM PERSISTS, 1952-1990

By the mid-twentieth century, the racism that had infected immigration and controlled substances laws became less overt. But the passage of time did little to expunge the racist roots of these laws or the anti-AAPI sentiments entwined in their history.

The Immigration and Nationality Act of 1952 preserved key aspects of earlier laws. Crimes involving moral turpitude remained a basis for exclusion and deportation.⁶¹ The 1952



Tōyō Miyatake Family, Manzanar Concentration Camp, 1943. Photograph by Ansel Adams.

Act made more types of controlled substance violations enough to exclude or deport noncitizens: newly covered were violations relating to “any addiction-forming or addiction sustaining opiate,”⁶² and even the status of being an addict.⁶³

The 1952 Act also broadened federal statutes that made noncitizens excludable or deportable due to political affiliation. Noncitizens affiliated with communism were excludable, and they were deportable if the affiliation predated the noncitizen’s arrival in the United States.⁶⁴ This focus on political affiliation in federal immigration law became another setting for anti-Chinese views to gain

traction, linking Chinese immigrants with communism and drug trafficking. In 1955, the Internal Security Subcommittee of the Senate Committee on the Judiciary held hearings “to determine whether the Chinese Communists are using narcotics to weaken the morale of the free nations of the western world.”⁶⁵ Henry Anslinger spoke up again, testifying that there “is a great concentration of Communist heroin in California.”⁶⁶

In 1971, Richard Nixon officially declared war on drugs in the United States (Hodge and Dholakia, 2021). Efforts to tie narcotics to “foreignness” intensified during the rest of that decade and into the 1980s, definitively expanding that association to include Black, Latinx, and other communities of color. Congressman Claude Pepper of Florida called drugs a “deadly invader” at a 1984 congressional hearing on federal drug enforcement.⁶⁷ In 1987—at a Senate hearing on “Illegal Alien Felons”⁶⁸—Janet Reno, then-attorney general of Florida and future U.S. Attorney General, submitted written testimony that “[n]o drug interdiction effort will be successful unless it also interdicts the flow of illegal aliens, in this case Colombians.”⁶⁹ An anonymous informant of the Orlando Police Department also testified that “[m]any Haitians are brought into the United States illegally for the sole purpose of dealing drugs and to recruit other Haitians for the drug business. These dealers are mixed with political refugees to hide their identity.”⁷⁰

In contrast, the reality of drug trafficking from Europe and Canada was not accompanied by statements regarding the

need to “interdict the flow of illegal aliens” from those regions. In the 1990’s, ecstasy was produced primarily in Europe and was trafficked to the United States, among other places.⁷¹ A 2000 State Department report indicated that the Netherlands was a major producer and exporter of synthetic drugs like ecstasy, including for export to the U.S.: in 1998, thirty-five drug production sites for ecstasy and/or amphetamine were discovered.⁷² Ecstasy was often smuggled to the U.S. through Germany,⁷³ and heroin and cocaine from Asia were transited through France to the U.S.⁷⁴ Additionally, the same report estimated that Canada produced about 800 metric tons of marijuana a year, 60% of which was smuggled into the United States.⁷⁵ Despite this, the U.S. Senate responded by *increasing* opportunities for European immigration: in 1988, it passed a bill to increase employment-based immigration⁷⁶—the sponsoring Senator specifically citing the low number of recent Irish immigrants, and immigrants from “other nations that have sent large numbers of immigrants to the United States in the past,” as the reason for this change.⁷⁷

The link between immigrants—particularly Black and Latinx immigrants—and drugs surfaced yet again when President George H. W. Bush signed the Immigration Act of 1990. Bush praised the legislation because it “boosts our war on drugs and crime, allowing us to send back alien offenders who threaten our streets and who make up nearly a fourth of our Federal prison populations. It’ll help secure our borders, the front lines of the drug war.”⁷⁸ In 1990 there were 65,526 people incarcerated in federal prisons.⁷⁹ The

1990 law stiffened existing laws in significant ways: it was the first to make noncitizens excludable for admitting to the *commission* of a controlled substance crime; like the 1907 CIMT law, a conviction was no longer needed.⁸⁰ The 1990 law also added any “attempt to violate” controlled substance laws as a deportation ground, in contrast to the prior statute’s requirement of an actual violation or conspiracy to violate.⁸¹

This history shows how lawmakers continued to tie criminality to race and in turn used that supposed link to justify deportation policies that were at once aggressive and racist. The anti-AAPI racism explicit in early federal immigration laws did not disappear or even fade in the second half of the twentieth century—it just took another form while repeating the consequences of earlier, explicitly racist policies.

CALIFORNIA AND LOCAL LAW AMPLIFY RACIST FEDERAL LAW TODAY

Federal immigration laws continue to harm AAPI communities in California today. These laws, with their origins in anti-AAPI racism, have enabled a view of AAPI communities that contributed to increased anti-AAPI violence during the COVID-19 pandemic. These laws have also led to devastating consequences for individuals and families, including arrest, detention, deportation, and ultimately, family separation as well as permanent banishment from one’s home. California law allows immigration and criminal laws—despite

their racist underpinnings—to lead to these harmful results. The following California laws and policies are especially troubling.

TRANSFERS TO IMMIGRATION AND CUSTOMS ENFORCEMENT

California took an important step in 2017 when it adopted Senate Bill 54, the California Values Act. The California Values Act generally prohibits local law enforcement agencies from sharing a person’s release date with federal Immigration and Customs Enforcement (ICE) or holding noncitizens in custody past their release time in order to facilitate a transfer to ICE.⁸²

But the California Values Act has troubling exceptions that allow federal immigration and criminal laws to harm AAPI communities: though the Act narrowed some exceptions that had been part of similar 2016 California legislation, the Transparent Review of Unjust Transfers and Holds (TRUTH) Act,⁸³ and 2013 legislation, the “TRUST Act,” the California Values Act makes exceptions based on criminal convictions remain part of the law.⁸⁴ And though the California Values Act prohibits state and local law enforcement agencies from using their resources for immigration enforcement, this prohibition does not apply to the California Department of Corrections and Rehabilitation.⁸⁵

UNIVERSAL REPRESENTATION

If people in deportation proceedings have lawyers, they have a much greater chance—as compared to noncitizens without lawyers—to present their cases in immigration court, win

the relief that they should have under federal immigration law, and stay with their families in the U.S.⁸⁶ For example, detained immigrants are ten and a half times more likely to succeed in their immigration case if they have a lawyer.⁸⁷ But under California law, access to legal representation in deportation proceedings is much more limited for noncitizens with certain criminal convictions than noncitizens without convictions. These individuals are ineligible for the removal defense legal services provided by Immigration Services Funding administered by the California Department of Social Services.⁸⁸ This inequality magnifies the effect of racism in the criminal legal system by allowing encounters with state and local law enforcement to lead to deportation and other harmful immigration consequences, particularly because Black, Southeast Asian, Pacific Islander, and Middle Eastern Californians, as well as other communities of color, are more likely to be stopped by the police and thus come in contact with the criminal legal system.⁸⁹ People can be deported even though federal law does not call for that outcome; in many cases, with proper legal representation, these individuals could ultimately have won their cases and remained in the United States.⁹⁰ Without legal representation, AAPI noncitizens—particularly low-income AAPI noncitizens—face the double hardship of continuing racist legacies in both the criminal *and* immigration systems.

California cities and counties have tried to fill this gap. In 2017, the County and City of Los Angeles approved funding for the LA Justice Fund (LAJF).⁹¹ Although the first version

of LAJF did not fund deportation defense for individuals with certain criminal convictions, the current version of the program, now called “RepresentLA,” will fund legal services irrespective of an individual’s criminal convictions.⁹² The cities of Santa Ana,⁹³ San Francisco,⁹⁴ Oakland,⁹⁵ Sacramento,⁹⁶ and Long Beach,⁹⁷ and San Diego County,⁹⁸ and Alameda County⁹⁹ also have representation programs without criminal carveouts—but these programs are a piecemeal and patchwork solution that fails to protect all Californians.

GANG DATABASES

California maintains a database called CalGang that tracks suspected gang members.¹⁰⁰ Being labeled a gang member can have adverse immigration consequences. Though Department of Homeland Security (DHS) guidance attempted to move away from previous guidance that had explicitly prioritized the deportation of alleged gang members by instead prioritizing individuals deemed a “threat to public safety,”¹⁰¹ those new guidelines were vacated by a district judge in Texas and are not currently in effect.¹⁰² Moreover, even if the new guidelines were in effect, inclusion in a gang database can still lead the federal government to view a noncitizen as a “threat to public safety,” and thus a priority for arrest, detention, and deportation.

A 2016 audit by the California State Auditor revealed serious errors in the database, including infants less than one year old being recorded as gang members, as well as failure to conduct required purges of outdated records.¹⁰³ That same

year, new legislation appeared to address these problems. Assembly Bill 2298 required the government to notify adults of their inclusion in CalGang and permitted individuals to challenge their inclusion.¹⁰⁴ In 2017, Assembly Bill 90 shifted responsibility for CalGang from the CalGang Executive Board to the California Department of Justice (DOJ), and required the California DOJ to establish procedures for ensuring reliability and purging inaccurate records¹⁰⁵—but a 2020 audit by the Los Angeles Police Department of its own entries into CalGang found extensive inaccuracies.¹⁰⁶ That year, CalGang stopped using records from the LA Police Department, which had supplied 25% of records.¹⁰⁷ Moreover, according to observers, data from other local law enforcement agencies included in CalGang are likely to have the same problems as the LAPD data.¹⁰⁸ The 2016 audit showed that 3,415 AAPI individuals were recorded as gang members¹⁰⁹; in 2021, 500 AAPI individuals were recorded as gang members.¹¹⁰ If this reduction can be attributed to these partial corrective measures, it would indicate that there could be errors in these remaining entries, and that further corrective measures are necessary.

THE EFFECT OF RACIST FEDERAL, STATE, AND LOCAL POLICY TODAY

Deportations have a profound impact on California AAPI families and communities. A 2018 report from the Southeast Asia Resource Action Center and National Asian Pacific American Women’s Forum tells of emotional and financial devastation when Southeast Asian American women are

forced to care alone for their children, and often for others' children, after a partner has been deported.¹¹¹

Tina explained that after her father was deported when she was a teenager, she got a part-time job because her mother became the only breadwinner.¹¹² “[W]e were also sending money back to him in Laos. So the financial impact was really rough,” she says.¹¹³ “[W]e carry our own traumas with it,” she adds.¹¹⁴ “So my mom, to this day, because her husband was detained and deported, she lives in fear of getting picked up by the police.”¹¹⁵

Between 2017 and February 2022, sixty-eight Californians were deported to Cambodia.¹¹⁶ In that time period, 1,201 Californians were deported to Southeast Asia (Burma, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, and Vietnam). Another 2,596 Californians were deported in those years to East Asia (China, Japan, South Korea, North Korea, Hong Kong, and Taiwan).¹¹⁷ Among California’s AAPI communities, the highest numbers of deportations in this period come from the state’s Chinese (2,348), Indian (1,476), and Filipino (547) communities.¹¹⁸ Behind each of these deportations are wounded families and communities — heartbroken parents and spouses, traumatized children, and others — weakened by the loss of valued members who could have had a chance to reintegrate but for the ongoing effects of racist immigration laws.

The racist history of CIMT and controlled substance laws is not just in the past: the ongoing legacy of these laws is that AAPI individuals in the U.S. continue to face immigration

consequences for encounters with the criminal legal system. For example, Nhia Bee Vue left Laos for the U.S. in 1980, living here for over a decade and becoming a permanent resident.¹¹⁹ Vue is of Hmong ethnicity and is a medicine man in the Laotian community.¹²⁰ Opium is traditionally used in Hmong medicinal ceremonies; he was convicted of possession and importation of opium, serving a total of twenty-two months in prison.¹²¹ He was put into removal proceedings and the immigration judge denied Vue relief, acknowledging that “opium has been used by the Hmong people for many generations, not as a recreation device but in a medical and religious sense,” but nonetheless ordering him deported “in view of the inherent adverse effect that opium can have on individual members of our society.”¹²² But the Ninth Circuit reversed that decision, because the immigration judge did not sufficiently consider the fact that Vue would most likely be executed if deported to Laos, and this would cause his family to suffer severe emotional and psychological hardship.¹²³

In contrast, Thavysack Thammavongsa, a Californian, was convicted of possessing a controlled substance for sale in 2008 and ordered deported to Laos.¹²⁴ In 2017, under a California rehabilitative statute, that conviction was vacated and he was permitted to plead guilty to simple possession, rather than possession for sale.¹²⁵ He sought to reopen his removal proceedings in light of the vacated conviction, but the Ninth Circuit denied his petition and ordered him deported to Laos because the vacated conviction “remains valid for immigration purposes.”¹²⁶

CIMTs operate similarly. Vinh Tan Nguyen fled Vietnam in 1983 and lived in the United States for decades, becoming a permanent resident.¹²⁷ He became involved in activities countering the Vietnamese communist regime, and in 2007, he pled guilty to a CIMT: using his brother's passport to travel to the Philippines "to facilitate an act of international terrorism" – allegedly building explosives to bomb the Vietnamese Embassy in Manila. He was sentenced to fourteen months in prison,¹²⁸ placed in removal proceedings, and faced deportation to Vietnam because of the CIMT conviction.¹²⁹ Ultimately, the Ninth Circuit ordered that Nguyen not be deported because he is "more likely than not to be tortured if he is removed to Vietnam."¹³⁰

Regardless of the type of conviction – controlled substance, CIMT, or something else – the threat of deportation as a result of the combined effects of the immigration and criminal systems continues to harm AAPI communities today. The experiences of two Californians, Billy Taing and Phal Sok,¹³¹ give a deeper, more historical perspective on anti-AAPI discrimination, hate, and violence that intensified during the COVID-19 pandemic.

Billy Taing's family escaped Communist China and fled to Cambodia—but when Billy was just one and a half years old, the Khmer Rouge killed his father for speaking Chinese. His mother carried him and his brother to Thailand, and they ultimately arrived in Atlanta as refugees before later settling in Los Angeles. Billy was seventeen years old when he joined the National Guard. At nineteen years old, Billy

was convicted of kidnapping and armed robbery and then served twenty-one years in prison. Because of laws attaching immigration consequences to his conviction, after his release, ICE detained him for deportation proceedings. It was only after receiving a pardon from then-Governor Jerry Brown in 2018 that the threat of deportation—to a country he barely knew—was lifted. He is now a co-director of the nonprofit Asian Pacific Islander Reentry and Inclusion Through Support and Empowerment.

Phal Sok was born in a refugee camp in Thailand after his Cambodian parents fled the Khmer Rouge. He and his parents moved to Los Angeles when he was less than a year old. Unfortunately, that was not the end of the adversity Phal would face. His mother left Phal and his father when Phal was three, and his father died of cancer when Phal was sixteen. These difficult circumstances eventually led to him being tried as an adult at seventeen, convicted of armed robbery, and sent to prison. He served out his sentence over sixteen years. However, instead of being released, he was transferred directly to ICE and held in detention for deportation proceedings. He lived under threat of deportation to Cambodia, a country he had never seen, until he also received a pardon from then-Governor Jerry Brown. Since his release and opportunity to return home, he has worked with community to keep families united against all odds.

Billy and Phal were nearly deported even though they are both essentially lifelong Californians: immigration and criminal laws work together to punish people twice and

tack on extreme outcomes like lifetime separation from all they know and love. California has a responsibility—and an opportunity—to address some of the unjust ways these laws operate. Although Billy and Phal faced these devastating consequences due to different types of convictions, California has a particular role to play in ameliorating harms to the AAPI community related to CIMT and controlled substance laws, given our state’s role in their racist history.

CONCLUSIONS & RECOMMENDATIONS

Addressing the anti-AAPI discrimination, hate, and violence that intensified during the pandemic must include considering and correcting the broader history of racism directed against AAPI communities in California and beyond. We recognize that the California legislature cannot amend or repeal federal laws, but the California legislature should not amplify the effects of federal laws that have a troubled racist history. Given the anti-AAPI origins of federal laws that make people deportable for encounters with the criminal legal system and California’s own historical role in labeling its AAPI communities as foreign and thus deportable, California has a special responsibility to mitigate the damage that these laws continue to cause.

1. **Stop Transfers to ICE.** Legislation ending transfers to ICE from local jails and state prisons, without exception, is essential to undoing the harms of racist immigration lawmaking. One model of positive legislation is AB 937, the

Voiding Inequality and Seeking Inclusion for Our Immigrant Neighbors (VISION) Act, which was up for the California legislature’s consideration in 2022. The VISION Act fills in gaps left by the California Values Act to ensure local and state resources are not used to separate families.¹³² The VISION Act also prevents immigrants from being transferred to ICE immigration prisons and being deported and exiled from their families,¹³³ as well as includes the California Department of Corrections and Rehabilitation in this prohibition.¹³⁴ Its other positive measures include prohibiting the consideration of immigration status as a factor in denying probation or access to diversion programs¹³⁵ and repealing a law requiring the California Department of Corrections and Rehabilitation to identify undocumented noncitizens¹³⁶ and provide these names to the Department of Homeland Security, including ICE.¹³⁷

This kind of legislation is essential to protecting immigrant communities from being torn apart due to contact with the criminal legal system—a devastating result which carries on the legacy of the racist lawmaking outlined in this report.

2. **Universal Representation for All Californians.** California’s immigration services funding must reach all Californians—irrespective of past contact with the criminal legal system. California should amend the Welfare and Institutions Code to remove any limitation on funding based on past contact with the criminal legal system.¹³⁸

3. **Discontinue CalGang.** Inclusion in the CalGang database can have adverse immigration consequences based on faulty information. Given the serious errors identified in the 2016 audit of CalGang and in the 2020 audit of entries by the Los Angeles Police Department, CalGang should be completely discontinued.
4. **Amend State Criminal Laws to Eliminate or Mitigate Immigration Consequences.** California can go a step further to mitigate or eliminate immigration consequences of state criminal convictions.

California already leads the nation in implementing smart alternatives to state criminal statutes which can result in deportation. For example, in 2015 California passed SB 1242, which reduced the maximum sentence for crimes that are punishable by up to one year in jail to 364 days instead.¹³⁹ This reduction ensures that those convicted of a misdemeanor like theft and sentenced to one year are not automatically deported.¹⁴⁰ In 2018, another California law made a small but important change, this time in relation to pre-trial diversion programs which provide drug treatment and, if successfully completed, result in dropped charges.¹⁴¹ That law, AB 208, changed the requirement that a defendant plead guilty in order to access the diversion program—permitting defendants to instead enter a “not guilty” plea.¹⁴² Since immigration law defines a “conviction” as a finding or plea of guilt,¹⁴³ permitting

defendants to plead “not guilty” protects them from immigration consequences.

Another example is AB 2195, considered by the California legislature in 2022, which provides an alternative plea for individuals facing possible drug convictions.¹⁴⁴ AB 2195 gives prosecutors the discretion to charge individuals with this alternate public nuisance offense, which carries all the same criminal penalties as a drug conviction but would not lead to deportation.¹⁴⁵

California can continue to explore other possible amendments to state criminal statutes to ensure state prosecutions do not result in immigration consequences. For example, the federal courts have long utilized a distinct method known as the “categorical approach” for determining whether state convictions trigger exclusion or deportation under federal law. For a state criminal conviction to carry immigration consequences, it must not be broader than the “generic” definition of the crime used for federal immigration purposes.¹⁴⁶ To illustrate the rule, consider burglary: the generic definition of burglary is “an unlawful or unprivileged entry into, or remaining in, a building or other structure, with intent to commit a crime.”¹⁴⁷ Thus, if a state burglary statute includes entry into “a building, other structure, or vehicle,” it is broader than the generic federal definition, and the state conviction under that statute generally would be deemed too broad to trigger immigration consequences. Notably, this methodology does not

require immigration authorities to analyze the individual facts of any given case.

Because of this unique methodology, state legislatures can alter the immigration consequences of convictions under state law based on how they define the underlying criminal offenses. For example, applying this methodology, in 2017 the Second Circuit found that because a New York drug-trafficking statute includes a drug which is not criminalized in the federal analog, a conviction under that state statute does not result in immigration consequences for anyone regardless of the actual drug the individual is convicted of selling.¹⁴⁸ Therefore, California may want to consider amending its controlled substance laws and the laws defining offenses that have been classified as CIMTs to alter their immigration consequences and ensure that certain convictions do not lead to immigration consequences.

Of course, such amendments may also have consequences under state criminal law—including potentially expanding the set of individuals who could be subject to state criminal prosecution. For that reason, any such proposals would have to be carefully tailored to strike a proper balance in protecting people from deportation without simultaneously expanding the threat of mass incarceration.

California must continue to pursue and adopt amendments to its criminal laws, like those described above, to protect immigrant communities from the racist

legacy of tying deportation to contact with a state's criminal legal system.

The anti-AAPI discrimination, hate, and violence that emerged during the COVID-19 pandemic must be considered in context. This report has shed light on the explicit anti-AAPI racism in early laws that have attached immigration consequences, including deportation, to criminal convictions and other law enforcement encounters. This report has also unmasked the role that influential Californians played in turning their racism into laws and policies that endure to this day. As Professor Neil Gotanda wrote, speaking about the Chinese American community, “foreignness. . . is directed less at inferiority than at expulsion.”¹⁴⁹ And as Professor Jennifer Chacón explained, “the law itself has played a central role in constructing the image of the immigrant as a criminal threat.”¹⁵⁰ This broader perspective is essential to understanding, acknowledging, and redressing the harms the AAAP community continues to suffer because of racism—before, during, and after the COVID-19 pandemic.

Understanding the interactions between race, immigration law, and criminal law is essential to understanding anti-AAPI racism, as well as avenues for combatting and eradicating racism. California has the opportunity and responsibility to change laws that amplify the effects of racism in federal immigration laws and thus protect against future hate, discrimination, and violence against persons of AAAP ancestry and their communities.

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NOTES

1. See 8 U.S.C § 1182(a)(2); *Id.* § 1227(a)(2)(B).
2. An Act to prevent the kidnapping and importation of Mongolian, Chinese and Japanese females, for criminal or demoralizing purposes, ch. 230, § 1, 1869-1870 Cal. Stat. 330 (March 18, 1870).
3. An Act to amend the Political Code, ch. 610, § 70, 1873-74 Cal. Code 39 (March 30, 1874).
4. *Chy Lung v. Freeman*, 92 U.S. 275, 276-279 (1875).
5. 3 Cong. Rec. 4 (Dec. 7, 1874).
6. An act supplementary to the acts in relation to immigration, ch. 141, § 1, 18 Stat. 477 (March 3, 1875).
7. *Id.* § 3, 18 Stat. 477.
8. 3 Cong. Rec. Appx. 44 (February 10, 1875) (statement of Horace F. Page).
9. *Id.* at 45. See also Kerry Abrams, *Polygamy, Prostitution, and the Federalization of Immigration Law*, 105 Colum. L. Rev. 641, 691-94 (2005); Pooja R. Dadhania, *Deporting Undesirable Women*, 9 UC Irvine L. Rev. 53 (2018); Peffer, *supra* note 5.
10. Report of the Joint Special Committee to Investigate Chinese Immigration, S. Rep. No. 44-689, at 388 (1877); see also Abrams, *supra* note 12.
11. An act to execute certain treaty stipulations relating to Chinese, ch. 126, 22 Stat. 58 (May 6, 1882)
12. An act to regulate Immigration, ch. 376, § 2, 22 Stat. 214 (Aug. 3, 1882).
13. Craig S. Lerner, "Crimes Involving Moral Turpitude": *The Constitutional and Persistent Immigration Law Doctrine*, 44 Harv. J.L. & Pub. Pol'y 71, 80 (2021), citing H.R. Rep. No. 3472, at ii (1891).
14. An act in amendment to the various acts relative to immigration and the importation of aliens under contract or agreement to perform labor, ch. 551, § 1, 26. Stat. 1084 (Mar. 3, 1891).
15. Almont Gates, *Oriental Immigration on the Pacific Coast* 10 (1909).
16. An Act to Regulate the Immigration of Aliens into the United States, ch. 1134, § 2, 34 Stat. 898 (Feb. 20, 1907).
17. *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008).
18. *Jordan v. De George*, 341 U.S. 223 (1951).
19. See *The Immigration and Naturalization Systems of the United States: Report of the Committee on the Judiciary Pursuant to S. Res. 137*, S. Rep. 81-1515, at 353 (1950) (a U.S. consul in France requested "there be a listing of crimes... comprehended within the meaning of moral turpitude," because otherwise the determination to exclude or admit someone depends on the individual officer's decision whether a crime fit the definition).
20. Act of Feb. 20, 1907, *supra* note 19, at § 3.
21. An Act To Amend an Act Entitled "An Act to regulate the Immigration of Aliens into the United States", ch. 128, § 2, 36 Stat. 263 (March 26, 1910).
22. See Reports of the Immigration Commission, *Changes in Bodily Form of Descendants of Immigrants*, June 8, 2011; Katherine Benton-Cohen, *Inventing the Immigration Problem: The Dillingham Commission and Its Legacy 168-199* (2018).
23. Reports of the Immigration Commission, *Importation and Harboring of Women for Immoral Purposes 69-70*, December 5, 1910.
24. Act To regulate the immigration of aliens to, and the residence of aliens in, the United States, ch. 29, §§ 3, 19, 39 Stat. 874 (February 15, 1917).
25. *Id.* § 19.
26. 52 Cong. Rec. 3055-56 (1915) (statement of Rep. Denver Samuel Church).

27. *The Opium Dens: Action of the Board of Supervisors on the Evil – A disgusting recital of facts*, San Francisco Chronicle, Nov. 16, 1875.

28. An Act to amend an Act entitled “An Act to establish a Penal Code,” approved February 14, 1872, by adding a new section thereto, to be known as Section 307, relating to the sale and use of opium, ch. 40, 1881 Cal. Stat. 34 (March 4, 1881); see also Sara Brady Siff, *A History of Early Drug Sentences in California: Racism, Rightism, Repeat*, 34 Fed. Sentencing Rep. 80 (2021).

29. *Ex parte Yung Jon*, 28 F. 308, 312 (D. Or. 1886); see also Alina Das, *Inclusive Immigrant Justice: Racial Animus and the Origins of Crime-Based Deportation*, 52 UC Davis L. Rev. 171, 186 (2018).

30. An Act to regulate the sale of poisons in the State of California and providing a penalty for the violation thereof, ch. 102, § 8, 1907 Cal. Stat. 124, 126 (March 6, 1907).

31. See Siff, *supra* note 33, at 82.

32. *News and Comment: State Board Wars on Los Angeles Peddlers*, 21-24 Practical Druggist & Pharmaceutical Review of Reviews 349 (1908).

33. Report of the California State Board of Pharmacy for the Fiscal Year Ending June 30, 1911, at 10 (1912).

34. *Id.* at 9.

35. David T. Courtwright, *Dark Paradise: A History of Opiate Addiction in America 77-78* (2001).

36. *Id.* at 69.

37. *Id.* at 61-62, 69. Those most likely to be addicted to non-smoking opium in the late 19th and early 20th centuries were White women in the south. *Id.* at 36-38. White people were overrepresented in this kind of opium use: in Jacksonville, Mississippi in 1912 and 1913, about 75% of opium and morphine users were White, even though they represented slightly less than half the city’s population. *Id.* at 37. In that era, in Shreveport, Louisiana, and Houston, Texas, 91.5% and 95.5% of clinic patients, respectively, were White, despite significant Black populations in both cities. *Id.* A 1914 report from Tennessee conjectured that even though about 75% of the population was White, they represented 90% of narcotics permit holders. Lucius P. Brown, *Enforcement of the Tennessee Anti-Narcotics Law 330-31* (1914). In terms of immigration, in Chicago in 1880, 73.2% of people addicted to opium and morphine were U.S.-born, even though U.S.-born individuals made up only 59.3% of the city’s population. See Courtwright, *supra* note 40, at 37-38.

Although it is difficult to estimate the total number of White opium users at the time, Courtwright estimates, based on import data, that between 1900 and 1914 there were no more than approximately 313,000 total Americans addicted to opiates. *Id.* at 28. A contemporary study estimated that in 1911, 2.5 billion doses of opium were imported into the U.S., compared to 305 million doses of coca leaves, 35 million doses of cocaine, and 40 million doses of morphine. See Martin I. Wilbert & Murray Galt Motter, *Poisons and Habit-Forming Drugs*, United States Public Health Service 13 (October 1913). In light of the high proportion of White usage, this indicates a large number of White opium users.

38. Courtwright, *supra* note 33, at 61. Despite widespread use of non-smoking opium by Whites in that era, in 1908, a sampling of 1,000 prescriptions from a representative California druggist revealed only 18 containing opium— indicating a significant amount of White opium use was non-prescription, and thus subject to the ban. *Id.* at 53.

39. Charles E. Terry & Mildred Pellens, *The opium problem 468-516* (1928).

40. *Id.* at 490, citing C. W. Carter, *The Nature of the Morphine Disease*, 99 Lancet-Clinic 500 (1908). Terry incorrectly cites Carter as stating “vocation” instead of “location.”

41. Terry, *supra* note 44, at 516.

42. *Id.* at 3.

43. Letter from H. J. Finger to Dr. Hamilton Wright, July 2, 1911, in Preliminary Inventories, No. 76, Records of United States Participation in International Conferences, Commissions, and

Expositions, No. 39, “Correspondence of Wright with Delegate Henry J. Finger, 1911.” See also Dale H. Gieringer, *The Forgotten Origins of Cannabis Prohibition in California*, 26 Contemp. Drug Probs. 237 (1999).

44. An Act to amend “An act to regulate the sale and use of poisons in the State of California and providing a penalty for the violation thereof,” ch. 342, § 6, 1913 Cal. Stat. 1, 692-98 (June 11, 1913).

45. Pub. L. No. 67-227, ch. 202, 42 Stat. 596 (“Any alien who at any time after his entry is convicted [of importing controlled substances] shall, upon the termination of the imprisonment... be taken into custody and deported”).

46. *Id.*

47. *Deportation of Aliens Convicted of Violation of Narcotic and Prohibition Acts Hearings before the Committee on Immigration and Naturalization: House of Representatives, 67th Cong., 2d Sess., 544* (on H.R. 11118), (Mar. 29, 1922).

48. *Id.* at 206, citing California State Narcotic Committee, *Survey of Drug Addiction in California* (1931).

49. National Commission on Law Observance and Enforcement, *Report on Crime and the Foreign Born* (1931).

50. *Id.* at 354.

51. *Id.* at 353.

52. An Act To provide for the deportation of aliens convicted and sentenced for violation of any law regulating traffic in narcotics, ch. 224, 46 Stat. 1171 (February 18, 1931); see also Alina Das, *Inclusive Immigrant Justice: Racial Animus and the Origins of Crime-Based Deportation*, 52 UC Davis L. Rev. 171, 187 (2018).

53. *Id.* (noncitizen deportable if sentenced for a “violation of or conspiracy to violate any statute of the United States taxing, prohibiting, or regulating the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, or any salt, derivative, or preparation of opium or coca leaves”).

54. See An Act to amend “An act to regulate the sale and use of poisons in the State of California and providing a penalty for the violation thereof,” ch. 342, § 6, 1913 Cal. Stat. 1, 692-98 (June 11, 1913).

55. The act was found unconstitutional in 1969. See *Leary v. United States*, 395 U.S. 6, 54, 89 S. Ct. 1532, 1557, 23 L. Ed. 2d 57 (1969), *aff’d*, 544 F.2d 1266 (5th Cir. 1977).

56. Hearings before the Committee on Ways and Means, House of Representatives, Seventy-Fifth Congress, First Session, on H.R. 6385 (1937). In 2018, a House Resolution was introduced apologizing to communities harmed by the War on Drugs, discussed below, which cited that statement introduced by Anslinger. H.Res.933, 115th Congress (2017-2018).

57. An Act To prohibit certain subversive activities; to amend certain provisions of law with respect to the admission and deportation of aliens; to require the fingerprinting and registration of aliens; and for other purposes, Pub. L. 76-670, ch. 439 § 21, 54 Stat. 670, 673 (June 28, 1940).

58. *Traffic in Narcotics, Extension of Remarks of Hon. B. Carroll Reece of Tennessee, House of Representatives, February 23, 1942*, 88 Cong. Rec. A646-47 (statement of Harry Anslinger); see also *Japan A Smuggler of Narcotics in U.S.*, N.Y. Times (Jan. 26, 1942).

59. *Traffic in Narcotics, supra* note 64, at A646-47.

60. *Removing the Japanese Menace, Extension of Remarks of Hon. John M. Costello of California, House of Representatives, Feb. 23, 1942*, 88 Cong. Rec. A653 (statement of Fletcher Bowron); see also *Bowron tells plans to intern Japs*, Los Angeles Daily News (February 20, 1942).

61. An Act To revise the laws relating to immigration, naturalization, and nationality; and for other purposes, Pub. L. 414, chs. 2, 5, §§ 212(a)(9), 241(a)(4), 66 Stat. 163, 182, 204 (June 27, 1952).

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68. Illegal Alien Felons: A Federal Responsibility: Hearing Before the Subcommittee On Federal Spending, Budget and Accounting of the Committee on Governmental Affairs United States Senate, 100th Cong., 1st Sess. 1 (Mar. 12, 1987).
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