RACE, IMMIGRATION, AND LEGAL SCHOLARSHIP: A RESPONSE TO KEVIN JOHNSON

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I. INTRODUCTION

The harshest measures of contemporary American immigration law disproportionately affect persons of color. At the same time, persons of color have become the primary subjects of migration to the United States and are thus the main beneficiaries of the substantial benefits the U.S. immigration system offers.[1] The extent to which racism, conscious or subconscious, shapes immigration policy is, therefore, a compelling inquiry.

Recent amendments to the immigration laws strike at the heart of American legal traditions. The rule of law presupposes that recourse to an independent judiciary is available to check arbitrary detention and executive discretion over personal liberty, yet current legislation appears to subject even long-term resident immigrants to the mercy of executive officials.[2]

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1. As Kevin Johnson notes, the major source countries for contemporary immigration to the United States have populations that are predominantly Hispanic or Asian. *See* Kevin R. Johnson, *Race Matters: Immigration Law and Policy Scholarship, Law in the Ivory Tower, and the Legal Indifference of the Race Critique*, 2000 U. ILL. L. REV. 525, 526 & n.2.

2. Congress has limited judicial review of removal orders but in such a confused manner that some courts have invoked the Suspension Clause of the Constitution. Others have found by restrictive statutory interpretation that various avenues to habeas corpus in federal district or circuit court remain open, and some have found habeas jurisdiction to be repealed. *See, e.g.*, Jurado-Gutierrez v. Greene, 190 F.3d 1135 (10th Cir. 1999) (finding that the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) did not deprive federal courts of habeas jurisdiction over detained aliens), *cert. denied sub nom.* Palaganas-Suarez v. Greene, 120 S. Ct. 1539 (2000); Sandoval v. Reno, 166 F.3d 225 (3d Cir. 1999) (same); LaGuerre v. Reno, 164 F.3d 1035 (7th Cir. 1998) (holding that the AEDPA deprived federal courts of habeas jurisdiction), *cert. denied*, 120 S. Ct. 1157 (2000); Henderson v. INS, 157 F.3d 106 (2d Cir. 1998) (holding that habeas relief was available despite the enactment of the AEDPA and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)), *cert. denied sub nom.* Navas v. Reno, 526 U.S. 1004 (1999); Magana-Pizano v. INS, 152 F.3d 1213 (9th Cir. 1998), *vacated*, 119 S. Ct. 1139 (1999); Goncalves v. Reno, 144 F.3d 110 (1st Cir. 1998) (holding that Congress did not eliminate habeas jurisdiction when it enacted the IIRIRA), *cert. denied*, 526 U.S. 1004. Indefinite detention without charge or trial has been the subject of mounting challenges as draconian detention measures are increasingly applied to noncitizens who cannot be removed to any other state. *See, e.g.*, Phan v. Reno, 56 F. Supp. 2d 1158 (W.D. Wash. 1999), *aff'd sub nom.* Kim Ho Ma v. Reno, 208 F.3d 815 (9th Cir. 2000). The dangers of *Chevron* deference in the immigration field are illustrated in cases such as *INS v. Aguirre-Aguirre*, 526 U.S. 415 (1999), which held that the Board of Immigration Appeals (BIA) was not required to balance the seriousness of an alien's alleged

Severe and retroactive grounds for deportation threaten to cause many family ruptures in immigrant communities.[3] Moreover, current immigration policy poses severe threats to core community values of fairness and basic humanity. Constitutional theorists should find these developments compelling,[4] yet concern over the recent immigration legislation seems largely confined to immigration experts[5] and to the popular press.[6] Perhaps it is the notorious complexity of immigration law or an assumption that these measures will not pave the way for similarly harsh measures against citizens that produces such surprising ennui among general constitutional scholars.

Critical race scholars, especially Latinos/as and Asian Americans, represent an important exception to this pattern of nonspecialists ignoring the lessons of immigration law. These scholars have found immigration policy to be fertile ground for a race-sensitive critique of the American legal system.[7] As Kevin Johnson surveys the terrain of immigration scholarship, however, he notes that mainstream immigration scholars give at best superficial acknowledgement to the racial impacts of immigration regulation and fail to draw adequately upon the unique insights and methodology of critical race theorists trying to penetrate this still-insular field.[8]

Johnson's article poses the question whether the racial fault lines of U.S. immigration policy can be more effectively exposed and explored if legal scholars of the two camps he identifies—the influential "imperial scholars" of immigration doctrine and the critical race theorists—consciously strive for greater exchange and synthesis.[9] Johnson fairly acknowledges that critical race theorists who overlook the technical complexities of immigration regulation diminish their credibility and the potential influence

crimes in his own country against the risk of persecution he would suffer if deported there and acquiescing in the BIA's failure to consider whether such crimes were "atrocious."

3. *See generally* Richard Prinz, *Automatic Removal—The Practical Consequences of Criminal Convictions for Aliens*, *in* 1999–2000 IMMIGRATION & NATIONALITY LAW HANDBOOK, VOL. II, at 403 (American Immigration Lawyers Ass'n ed., 1999).

4. Vast quantities of legal scholarship have been devoted to unenacted jurisdiction-stripping measures concerning nonimmigration topics. *See* Vicki C. Jackson, *Introduction: Congressional Control of Jurisdiction and the Future of the Federal Courts—Opposition, Agreement and Hierarchy*, 86 GEO. L.J. 2445, 2447 (1998).

5. *See generally* Lenni B. Benson, *The New World of Judicial Review of Removal Orders*, 12 GEO. IMMIGR. L.J. 233 (1998); Gerald L. Neuman, *Habeas Corpus, Executive Detention, and the Removal of Aliens*, 98 COLUM. L. REV. 961 (1998). An exception to the indifference of nonimmigration specialists is the recent symposium in the *Georgetown Law Journal* featuring three reviews of AKHIL REED AMAR, THE BILL OF RIGHTS: CREATION AND RECONSTRUCTION (1998), and a response by Amar. *See* Symposium, *Book Reviews*, 87 GEO. L.J. 2273 (1999).

6. *New York Times* columnist Anthony Lewis has repeatedly chronicled the harsh aspects of the 1996 immigration amendments. *See, e.g.*, Anthony Lewis, *Abroad at Home: Janet Reno's Test*, N.Y. TIMES, Nov. 23, 1999, at A27; Anthony Lewis, *Abroad at Home: The Price of Harshness*, N.Y. TIMES, Nov. 2, 1999, at A27.

7. *See, e.g.*, Gabriel J. Chin, *Segregation's Last Stronghold: Race Discrimination and the Constitutional Law of Immigration*, 46 UCLA L. REV. 1 (1998); Berta Esperanza Hernández-Truyol & Kimberly A. Johns, *Global Rights, Local Wrongs, and Legal Fixes: An International Human Rights Critique of Immigration and Welfare "Reform,"* 71 S. CAL. L. REV. 547 (1998).

8. *See* Johnson, *supra* note 1, at 550-51.

9. *See id.* at 554.

of their scholarship.[10] But he correctly observes that mainstream scholars have been excessively preoccupied with abstract questions of doctrine and overly insular in their research and analysis.[11]

Johnson's article is especially welcome not only because it illuminates the connections between race and immigration policy but also because it offers a rare opportunity for self-appraisal by the legal academy. Johnson challenges scholars of all backgrounds to question their assumptions and priorities and to push themselves to explore new methodologies and insights.

I agree with much of Johnson's thesis. In this brief response, I will pose several additional questions that Johnson might have explored further. First, are there important variations within Critical Race Theory and among the experiences of immigrants of color that affect a race-sensitive critique of immigration policy? What might be the specific advantages and disadvantages of applying the narrative method of some critical race scholarship to dissect the impact of immigration policy? And, briefly, is there not already a fair amount of the synthetic scholarship that Johnson advocates (that is, scholarship that critiques immigration doctrine through a race-sensitive lens), receiving significant exposure in widely distributed journals?[12]

II. MIGRATION, DEMOGRAPHY, AND LEGAL THEORY

The racial and ethnic identity of contemporary migrants is reshaping the demography of the United States. By the middle of the new century, non-Hispanic whites, who composed eighty-five percent of the population in 1900 and have been politically dominant for several centuries, may diminish to a bare majority.[13] If the composition of the community were to alter along these lines, national identity and legal theories of majoritarian democracy and nondiscrimination might require rethinking at a profound level. Contemporary immigration restrictionism, along with other policies to reinforce a traditional Anglo-oriented concept of Americanism,[14] in part represents a rear-guard action to stem this tide of demographic and cultural change. The preoccupation of immigration law scholars with constitutional

10. *See id.* at 553.

11. *See id.* at 528-29, 535.

12. The dominant teaching materials, however, still neglect this scholarship, as Johnson carefully and fairly documents. *See id.* at 548.

13. *See* MICHAEL FIX & JEFFREY S. PASSEL, IMMIGRATION AND IMMIGRANTS: SETTING THE RECORD STRAIGHT 27–28 (1994); U.S. COMM'N ON IMMIGRATION REFORM, BECOMING AN AMERICAN: IMMIGRATION AND IMMIGRANT POLICY 19–20 (1997) (indicating that by 2050, the Hispanic population may increase to 25%, while the Asian population may increase to 8%). Taking into account the relatively steady 12% of the population that is of African heritage, non-Hispanic whites would thus constitute only 55% of the national population by the middle of the next century. These projections depend on several factors, including continued higher fertility rates among immigrant groups, the ethnic self-identification of immigrants, and the offspring of mixed marriages.

14. *See* Johnson, *supra* note 1, at 540.

doctrine, particularly the anomalous equal protection and due process variants of the plenary power doctrine,[15] may enable them to sound an early warning signal of the shifting composition of the community and its likely impact on constitutional theory.

III. CONCERNS NOT FULLY EXPLORED IN JOHNSON'S ARTICLE

A. Variations in the Experiences of Migrants of Color

Kevin Johnson acknowledges that Critical Race Theory has many complex substrands, especially as it relates to immigration law.[16] Immigration matters have particular resonance in Hispanic and Asian communities because of the racial and ethnic identity of many current immigrants and the anti-Asian racial distinctions in previous legislation.[17] Johnson effectively demonstrates that citizens who are either Hispanic (especially persons of Mexican heritage) or Asian American suffer from negative public perceptions of themselves as "perpetual 'foreigners.'"[18]

Latino/a and Asian American scholars bring different insights to the race-sensitive critique of immigration policy. Asian American scholars have effectively argued that the racist origins of the plenary power doctrine, in the late nineteenth-century Chinese exclusion era, delegitimate this doctrine as a contemporary framework for immigration regulation.[19] Unlike non-Asian scholars who share this view,[20] Asian American scholars have noted the lingering impacts of restrictions on Asian entry and naturalization on the present status and political influence of Asian Americans in U.S. society.[21] Asian Americans of Japanese origin also have the unique experience of incarceration based on supposed political disloyalty,[22] while Asian Americans more generally have experienced the phenomenon of the perpetual foreigner in recent political fund-raising scandals in which Asian donors were singled out for scrutiny.[23] The increasing role of organized smuggling in bringing undocumented Chinese to the United States, as well as the

15. *See generally* Stephen H. Legomsky, *Immigration Law and the Principle of Plenary Congressional Power*, 1984 SUP. CT. REV. 255; Hiroshi Motomura, *Immigration Law After a Century of Plenary Power: Phantom Constitutional Norms and Statutory Interpretation*, 100 YALE L.J. 545 (1990).

16. *See* Johnson, *supra* note 1, at 543-46.

17. Indeed, this point is made in one of the accompanying responses to Johnson. *See* Bill Ong Hing, *No Place for Angels: In Reaction to Kevin Johnson*, 2000 U. ILL. L. REV 559, 587-89.

18. Johnson, *supra* note 1, at 537.

19. *See* Chin, *supra* note 7, at 12–21.

20. *See* Louis Henkin, *The Constitution and United States Sovereignty: A Century of* Chinese Exclusion *and Its Progeny*, 100 HARV. L. REV. 853, 858–63 (1987).

21. *See* Jan C. Ting, *"Other Than a Chinaman": How U.S. Immigration Law Resulted from and Still Reflects a Policy of Excluding and Restricting Asian Immigration*, 4 TEMP. POL. & CIV. RTS. L. REV. 301, 308–14 (1995).

22. *See* Natsu Taylor Saito, *Alien and Non-Alien Alike: Citizenship, "Foreignness," and Racial Hierarchy in American Law*, 76 OR. L. REV. 261, 301–06 (1997).

23. *See* L. Ling-chi Wang, *Beyond Identity and Racial Politics: Asian Americans and the Campaign Fund-Raising Controversy*, 5 ASIAN L.J. 329, 335–40 (1998).

links of these smugglers to the criminal underworld,[24] threaten both a revival of stereotypical attitudes[25] and fissures among socio-economic strata of Asian immigrants.[26]

Until 1965, immigration to the United States from the Western Hemisphere was largely unregulated by exclusionary admission criteria or entry quotas.[27] Hispanics were more affected by periodic enforcement crackdowns launched by executive officials without formal statutory authorization.[28] Some similarity does exist between the nativism that propelled the Chinese exclusion laws and periodic hostility to Mexicans—in particular, scapegoating during times of economic downturn and perceptions of unassimilability for reasons of language, culture, and religion.

Persons of apparent Mexican ancestry are at special risk of discriminatory and dangerous law enforcement measures aimed at stemming unlawful migration. Mexican appearance may subject citizens and lawful residents, along with irregular migrants, to dangerous traffic stops,[29] workplace raids,[30] and violent border control techniques.[31] Although undocumented migrants in the United States possess a wide variety of nationalities, U.S. border control has largely a southern orientation, and enforcement crackdowns tend

24. Several men responsible for forcing hundreds of Asian women and girls into prostitution in Atlanta are presently under indictment. *See* R. Robin McDonald, *Human Contraband: Asian Women Expected Jobs, Not Prostitution*, ATLANTA J.-CONST., Aug. 31, 1999, at C1.

25. Stereotypes of Chinese during the exclusion era included the view that female arrivals were largely prostitutes and that criminal gangs exercised significant influence. Merchant associations attempted to secure legal rights and to assert the legitimacy of Asian communities. *See generally* CHARLES J. MCCLAIN, IN SEARCH OF EQUALITY: THE CHINESE STRUGGLE AGAINST DISCRIMINATION IN NINETEENTH-CENTURY AMERICA (1994); LUCY E. SALYER, LAWS HARSH AS TIGERS: CHINESE IMMIGRANTS AND THE SHAPING OF MODERN IMMIGRATION LAW (1995).

26. *See* James Brooke, *Vancouver Is Astir over Chinese Abuse of Immigration Law*, N.Y. TIMES, Aug. 29, 1999, at A8 (explaining that middle-class Chinese immigrants were critical of the impact of mass arrivals of smuggled Chinese peasants; many of those smuggled do not appear for asylum interviews in Canada and are believed to cross the border into the United States seeking employment in the underground economy).

27. *See* Johnson, *supra* note 1, at 525.

28. The most notorious crackdown was Operation Wetback in 1954. *See* Gerald P. López, *Undocumented Mexican Migration: In Search of a Just Immigration Law and Policy*, 28 UCLA L. REV. 615, 633, 670 (1981). During periodic crackdowns against Mexican participants in the Bracero Program, some U.S. citizens of suspected Mexican heritage were deported along with undocumented Mexican workers. *See* Michael A. Olivas, *The Chronicles, My Grandfather's Stories, and Immigration Law: The Slave Traders Chronicle as Racial History*, 34 ST. LOUIS U. L.J. 425, 438–39 (1990).

29. Those stops may involve serious violations of Fourth Amendment rights or brutal ill treatment by arresting officers. *See, e.g.*, United States v. Jimenez-Medina, 173 F.3d 752, 756 (9th Cir. 1999); Kenneth B. Noble, *Sympathies Sharply Divided on Beatings of 2 Immigrants*, N.Y. TIMES, May 6, 1996, at A10 (describing a videotaped beating of two suspected smugglers of undocumented immigrants by police in Riverside, California, following a high-speed chase).

30. The Immigration and Naturalization Service (INS) recently has found that audits of employment records and forced dismissals of unauthorized workers are more economical enforcement tools but are disruptive to communities in which undocumented workers reside with citizen and legal resident family members. *See* Barbara A. Serrano, *Fuming Follows INS-Ordered Firings—To Avoid Cost of Deportation, U.S. Tries Putting Illegal Immigrants Out of Work*, SEATTLE TIMES, Feb. 28, 1999, at A10.

31. For example, in May 1997, Marines deployed on border control duty in rural Texas killed a teenage U.S. citizen of Mexican ancestry as he herded his family's goats. *See House Report Assails Agencies in Shooting of Teen Near Border*, CHI. TRIB., Nov. 13, 1998, § 1, at 13.

to target migrants from Mexico.[32] For many policymakers, the problem of undocumented migration is a problem of Mexicans.[33]

One interesting distinction is that Mexican Americans are virtually unique in being a "national minority" on the European model; that is, a population over whom the border crossed rather than a group that consciously chose to migrate.[34] In this respect, Mexican Americans resemble Native Americans to a greater extent than they do Asian Americans. Regarding membership issues and cultural rights, this distinct aspect of Mexican American history may be relevant. Although it is true that many migrants from Mexico have arrived in the territorial United States long after Mexico lost its sovereignty over portions of the West and that many occupy regions of the United States never under Mexican control, the persistence of migration into a territory formerly joined to the source country hardly should be surprising.

African and Caribbean migration to the United States is relatively neglected by critical race and mainstream immigration scholars.[35] African American Critical Race Theory has understandably concentrated on the experiences of native-born Americans whose African heritage is traceable to ancestors arriving as captives of the slave trade several centuries ago. Patterns of migration are increasing the diversity within the African American community, however, and African American critical race scholars may be drawn increasingly to the more general immigration arena.

The face of recent immigration to many European countries is distinctly African,[36] and the political controversy surrounding immigration policy in European states is stimulated by fears concerning the distinct and visible differences of these migrants. In contrast, African and Caribbean migrants to the United States risk being lost to the general public consciousness, which tends to perceive a fairly monolithic African American community stratified by class but not essentially diverse in language and culture.[37]

32. The INS estimated in 1996 that 54% of the undocumented immigrant population in the United States were Mexican. *See* INS, U.S. DEP'T OF JUSTICE, 1996 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE 198 (1997).

33. Kevin Johnson notes that 80% of those removed by immigration enforcement authorities in fiscal year 1998 were Mexican nationals. *See* Johnson, *supra* note 1, at 532 n.31.

34. *See* WILL KYMLICKA, MULTICULTURAL CITIZENSHIP 45–48 (1995). To give a personal example, my own ancestry is a blend of various waves of European migration. The earliest recorded arrival is the appearance of a Spanish ancestor in 1701 in what is now northern New Mexico but at the time was a portion of Spain's empire in Mexico.

35. The situation of Haitian asylum seekers has been more visible in the legal literature than the plight of other recent migrants of African heritage. *See* Johnson, *supra* note 1, at 532 n.32, 544 n.94.

36. This migration involves persons from North Africa as well as sub-Saharan regions and may also involve persons arriving from the Western Hemisphere where their ancestors had been transported during the colonial period. One such example is Surinamese citizens migrating to the Netherlands.

37. Lolita Buckner Innis notes that African Americans whose ancestors migrated as slaves have largely been deprived of information concerning their precise national origins and are thus "singularly adrift" in a nation of immigrants. Lolita K. Buckner Innis, *Tricky Magic: Blacks as Immigrants and the Paradox of Foreignness*, 49 DEPAUL L. REV. 85, 116–17 (1999). She also notes that within the African American community there has long been awareness of differences between persons whose ancestors

Events such as the shooting death of Amadou Diallo in New York may galvanize interest in the distinct experiences of contemporary African immigrants to the United States.[38] Although the police officers who killed Diallo were acquitted and the factors that unleashed the barrage of police firepower against him in the lobby of his apartment building were sharply contested at the trial,[39] his story is intriguing and suggestive. More specifically, Diallo was the victim of harsh law enforcement tactics targeted at the indigenous African American community in New York. A squad of plain-clothes police operating in predominantly African American neighborhoods apparently mistook Diallo for a suspect in a violent crime.[40] It is possible that Diallo's unfamiliarity with police culture in New York and language problems[41] may have contributed to his tragic death.

To African American activists, Diallo's death was another, albeit extreme, iteration of familiar, race-biased police brutality.[42] The response of local politicians was arguably more sensitive than usual, however, given the international scrutiny and the revelation of Diallo's respectable family background.[43]

Although African Americans and Hispanics both suffer from biased law enforcement, the Diallo case poses an interesting contrast to the situation of Mexican Americans. Citizens and lawful residents of apparent Mexican ethnicity risk being caught in a border-control dragnet whose main target is violators of immigration restrictions. False perceptions of foreignness thus pose a risk to Mexican Americans. African immigrants like Diallo, in contrast, are at risk because they are subject to the same racial stereotyping as U.S.-born African Americans and are suspected without reasonable cause of involvement in drug trafficking and violent crime.[44]

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arrived as slaves and those whose ancestors are more recent immigrants from the Caribbean, Hispanic countries, or Africa. *See id.* at 119, 122–24, 126–33.

38. *See* Amy Waldman, *Killing Heightens the Unease Felt by Africans in New York*, N.Y. TIMES, Feb. 14, 1999, at A1; Jodi Wilgoren, *Push to Turn Diallo Rally Into a Broader Movement*, N.Y. TIMES, Apr. 14, 1999, at B6 (relating that two months of rallies concerning Diallo's death have created interest in a new multiracial coalition to focus on police brutality).

39. Janet Fritsch, *The Diallo Verdict: The Overview; 4 Officers in Diallo Shooting Are Acquitted of All Charges*, N.Y. TIMES, Feb. 26, 2000.

40. *See* Kevin Flynn, *Revisiting a Killing: Many Details, but a Mystery Remains*, N.Y. TIMES, Feb. 14, 1999, at A38.

41. English was not Diallo's native tongue, but the extent to which language problems may have contributed to his death remains uncertain. *See* Ginger Thompson & Garry Pierre-Pierre, *Portrait of Slain Immigrant: Big Dreams and a Big Heart*, N.Y. TIMES, Feb. 12, 1999, at A1 (describing Diallo's efforts to improve his English and enroll in college).

42. Diallo's family has received the services of New York activist Rev. Al Sharpton and police brutality litigator Johnnie L. Cochran, Jr. *See* Andy Newman, *Mrs. Diallo Seeks to Replace Legal "Dream Team,"* N.Y. TIMES, Aug. 13, 1999, at B3.

43. *See* Thompson & Pierre-Pierre, *supra* note 41, at A1.

44. The problem of racial profiling by law enforcement agencies has received extensive media attention. *See, e.g.*, Steven A. Holmes, *Clinton Orders Investigation on Possible Racial Profiling*, N.Y. TIMES, June 10, 1999, at A22. A class action was recently filed against the U.S. Customs Service, alleging that African American women travelling internationally have been subjected disproportionately and without reasonable suspicion to intrusive body searches, prompting the Service to announce revised search policies. *See*

False perceptions of membership in the indigenous community (with presumptions of its criminal inclination) place African immigrants at risk.

B. The Narrative Method

One intriguing technique of critical race scholarship has been use of the narrative technique to expose and probe the racial dimensions of legal doctrine.[45] Kevin Johnson does not really examine how this methodology might have particular resonance in the immigration field nor, conversely, how the association of this technique with Critical Race Theory may cause mainstream scholars to turn away.

Those of us who teach immigration law know that students' individual experiences of migration shape their perceptions of the subject. Students who have waited in line at INS offices seeking immigration benefits for themselves or relatives can offer especially piquant observations during discussions of potential structural reform of the immigration system. Requesting students to draft a family and personal history of migration can be a creative (if delicate) project. More than in other courses, I find myself referring to the experiences of my own ancestors (who arrived in several waves of European immigration over the course of two centuries) to illustrate salient points of U.S. immigration history.

Immigration analysis can be easily drained of the richness and complexity of human experience by emphasis upon statistical trends and economic impacts. The human vitality of migration constantly confounds social scientists—for example, in the persistence of migration streams—even after classical push-pull factors have dissipated.[46]

Scholars who possess a first-hand familiarity with immigrant communities may communicate the realities of the migration experience and thereby enhance the quality of policymaking.[47] Mainstream scholars may share the tendency of lawmakers to see immigrants as a group apart from the citizenry, while those familiar with the lives of immigrants may be able to depict the complex ties that immigrants share with others in the community.[48]

Thus, I found it a bit surprising that Kevin Johnson did not examine in greater depth the potential that the narrative method might hold for critical race scholarship in the immigration field. Perhaps advocating this method-

David Johnston, *U.S. Changes Policy of Searching Suspected Drug Smugglers*, N.Y. TIMES, Aug. 12, 1999, at A14.

45. A vivid example of the narrative technique is Margaret E. Montoya, *Máscaras, Trenzas, y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 HARV. WOMEN'S L.J. 185 (1994).

46. *See* Alejandro Portes & József Böröcz, *Contemporary Immigration: Theoretical Perspectives on Its Determinants and Modes of Incorporation*, 23 INT'L MIGRATION REV. 607 (1989).

47. Kevin Johnson notes the importance of considering the intersectionality of minority status, gender, and poverty in policymaking, for example. *See* Johnson, *supra* note 1, at 544 nn.97-100.

48. One example is the fact that many nuclear families include citizens, lawful residents, and undocumented persons.

ology risks impeding Johnson's essential aim to induce greater acceptance and exchange between critical race scholars and those in the ivory tower who may be skeptical of the value and seriousness of this technique.[49]

C. Is There Enough Synthetic Scholarship?

Kevin Johnson's article provides extremely valuable exposure for the critical race scholars working in the immigration field. He documents a wealth of scholarship in widely circulated journals that offer extensive critiques of the racial dimension of immigration policy.[50] Reviewing his extensive citations, one can hardly conclude that legal academia is suffering from an absence of quality analysis of the interconnections between race and immigration law.

The indifference of the mainstream immigration scholars that Johnson documents thus remains a mystery. One hopes that the difficulty has been one of unfamiliarity rather than hostility and that more direct and engaged exchanges will result from Johnson's study.

IV. CONCLUSION

It is a paradox that persons of color dominate contemporary migration to the United States, while immigration law and practice continue to be embedded with racial bias. Kevin Johnson, in this issue and in his other publications, has brilliantly illuminated the need for a race-sensitive critique of immigration policy. Moreover, the exposure he gives to critical race scholars facilitates his objective of promoting greater and more nuanced awareness of racial issues among mainstream immigration scholars. I look forward to his views on the three issues on which I wanted to hear more: (1) variations in the experiences of migrants of color; (2) the value of the narrative method of scholarship; and (3) whether the volume and exposure of critical race scholarship on immigration remains inadequate.

49. *See* Johnson, *supra* note 1, at 553 n.144 (citing mainstream scholars' dismissive analyses of critical race scholarship).

50. *See, e.g.*, *id.* at 529 nn.19–20, 530 n.25.