Within the contours of critical Latina/o (LatCrit) Theory, "comparative racialization" analyzes how society constructs, or racializes, or "others," various Latin American national origin groups in different ways. n1 Such comparisons in no way seek to demonstrate that one group is "more" disadvantaged than another, but rather strive for a deeper understanding of racial formation and the roots of racial subordination. In so doing, we must recognize the vast differences between various Latina/o communities.

This cluster of essays directly and indirectly investigates the comparative racialization of Latina/o national origin groups. n2 Several essays [*634] devote attention to the growing popularity of certain aspects of "Latin" culture among Anglos. n3 Their rich cultural analysis teaches much about the Latina/os able to achieve mainstream popularity, the hierarchy among Latina/o national origin groups, and the stereotypes that they reinforce.

Another contribution focuses on the tragic case of Elian Gonzalez, in which a young Cuban boy who journeyed by raft to the United States, lost his mother on the way, and became the center of a controversy over whether the United States should return him to his father in Cuba; this analysis considers how immigration law creates distinctions between Latina/o national origin groups--effectively racializing them differently--and reinforces their differential treatment. n4 The fluidity of racial constructions can be seen in the differentiation of immigrants of Mexican and Cuban ancestry over time, and the evolving legal responses to each group. n5

I. "Latin" Dance and Music: Promoting Cultural Appreciation or Reinforcing Negative Stereotypes?
Multiculturalism teaches tolerance of racial and cultural diversity. The relationship between race and culture has been the subject of increasing legal, including LatCrit, analysis. Contrary to popular belief, "culture is not some monolithic, fixed, and static essence." Any culture is constantly changing, affected by interaction with other cultures, especially in an era of globalization. We must acknowledge, for example, that Anglo American culture in this country has been indelibly influenced by Mexican culture while Mexican culture has been forever transformed by its interaction with Anglo culture. Indeed, with technological innovation over the last century, "American culture" has influenced the world. To add to the complexity, culture in any society is also the subject of continuing internal dissent and debate over its contours.

This line of analysis, of course, represents a gross over-simplification. In fact, no single "Mexican", "Latin," or "American" culture exists. Consistent with Critical Latina/o Theory's commitment to anti-essentialism, care must be taken not to homogenize cultures from Latin American nations, which vary dramatically across and within national borders.

A. Latin Dance and Music: Lessons from Anglo Popularity

1. Salsa Dancing

LatCrit inquiry has analyzed "Latina/o communities, cultures, and concerns," including "the Ricky Martin and Jennifer Lopez hysteria of contemporary pop culture." In this vein, Professor Nancy Ehrenreich explores how Latina/os view Anglo participation in salsa as part of the larger "Latin Music Craze," which generates "mixed reactions" from observers. Her fundamental premise is that "one should reject any impulse to interpret Anglo/a interest in Latin cultural productions as either unequivocally good or unequivocally bad." The need to investigate Anglo interest in Latina/o culture results from the dramatically different possible explanations for that interest. Cultural tolerance may help make it possible for mutual understanding. In contrast, the embrace of Latina/o culture may reinforce popular stereotypes. Importantly, the Anglo embrace of certain aspects of Latina/o culture has not ended anti-Latina/o sentiment in the United States. Although salsa has emerged as the most popular condiment in the United States, traces of animosity directed at persons of Mexican ancestry persist. The specific subject of Professor Ehrenreich's essay, salsa dancing, presents particularly perplexing complexities.

a. Deconstructing "Latin"

At the outset, Professor Ehrenreich observes that there is no "pure" or "true" version of "Latin music." Nor am I precisely sure how to define "Latin music," as that phrase is currently used in the popular media. Latina/os come from many national origin ancestries and popular music varies by country. The "Latin music craze" thus reflects the homogenization of many Latin cultures and peoples, including indigenous ones.

Moreover, the "Latin" music currently popular in the United States has been distinctly Caribbean in flavor. Puerto Ricans, such as Ricky Martin, Jennifer Lopez, and Marc Anthony, and Cuban Americans, including Gloria Estefan, have been at the forefront. Musicians of Mexican ancestry and U.S. citizenship, such as Ritchie Valens and Selena, both the subject of movies, became more well-known after their lives met tragic ends. MexicanAmerican artists like Los Lobos have received critical acclaim for decades but have failed to attract mass appeal or generate anything resembling a "craze"; indeed, Los Lobos was not invited to perform at the first Latin Grammys in 2000, which was marred by controversy concerning the alleged exclusion of Mexican musicians. A veteran of the 1960s music watershed known as Woodstock, Carlos Santana arguably represents an exception to the exclusion of Mexicans from popular circles, but he only attained commercial acclaim after decades in the music business.
In fact, the band of popular "Latin" music is rather narrow. Relatively little public attention has been paid to artists like Kid Frost, a rapper from East Los Angeles who analyzes the Chicana/o inner city experience marred by violence, police brutality, and desperation, n32 Los Tigres del Norte, a group composed of undocumented immigrants whose music documents the Mexican immigrant experience, n33 or Tish Hinojosa, a TexMex folk singer whose corridos offer insights about the place of Mexican-American and Mexican immigrants in the U.S. borderlands. n34

The interrogation of the "Latin" in the "Latin music craze" is critical. Although portrayed by the media as generic Latina/os, Ricky Martin and Jennifer Lopez are not generally seen by Mexican-Americans as one of them; Puerto Ricans understandably may view them as Puerto Rican. n35 In a country in which many, if not most, Latina/os identify primarily on the basis of national origin ancestry, not as Latina/o or "Hispanic," n36 the appreciation of the diversities among Latin musical artists is critically important.

Importantly, the nature of the "Latin music craze" teaches much about Anglo society. We would expect, for example, Anglo acceptance of "Latin" music and dance that most easily fit into conventional Anglo norms and sensibilities. The popularity of the "Macarena," described as a "line dance that looks like a Simon Says routine and doesn't involve too much compromising action below the shoulders," among the public and politicians in the mid-1990s is an apt example. n37 The mainstream generally does not embrace "too different," or, put more gently, significant deviance from the norm. We also would expect less popular appeal generated by cultural representations that are deeply critical of the status quo or focus too specifically on the Latina/o experience.

b. Cultural Appreciation, Appropriation, or Commodification?

Professor Ehrenreich expresses concern with cultural appropriation of "Latin music," n38 which has been a concern of minorities seeking cultural survival. "Cultural appropriation' is a term used to describe the phenomenon of . . . 'the taking--from a culture that is not one's own--of intellectual property, cultural expressions or artifacts, history and ways of knowledge.'" n39 Appropriation of "Latin music" is a difficult charge to prove in light of the dynamic nature of culture as well as the diversity of the Latina/o community. Moreover, much of the current "Latin music" at the center of the current "craze" is designed by, as well as marketed to, Anglos as well as Latina/os. n40 As Professor Ehrenreich observes, most salsa clubs in Denver are owned by Anglos. n41 It therefore is uncertain what, if any, aspect of "authentic" Latina/o culture is being appropriated by Anglos with the recent popularity of "Latin" music.

One may divine from Professor Ehrenreich's discussion that she worries over "white fascination with Latin cultural productions" n43 and "exoticization and orientalization of Latin artists." n44 As recognized in other contexts, cultural interest does not inevitably result in multicultural sensitivity. n45 Attention to particular aspects of a minority culture may lead to objectification or commodification of a cultural practice and reinforce racial subordination. n46 One is left to ponder when Anglo fascination with Latina/o cultural crosses the line from commendable appreciation into the realm of fetishism. n47

Although perhaps an extreme example, the annual ritual of college students in the Southwest of spending spring break in Mexican resort cities may reinforce negative stereotypes about Mexico and the Mexican people. Positive cultural representations, of course, are possible through travel and exposure to different countries and cultures. Similarly, hip liberals may go "slumming" because of a fascination with certain aspects of minority cultures.

Confirming the fears with cultural voyeurism, Professor Ehrenreich discusses how the salsa dance clubs in Denver currently attract a large Anglo audience, n48 and expresses concern about how this dancing fits into stereotypical Anglo notions of Latino/a sexuality. n49 Professor Ehrenreich further observes that "Latin music," including the music and public persona of Jennifer Lopez, might reinforce stereotypes of Latina/o hyper-sexuality and a happy-go-lucky approach to living "la vida loca." n50
Although ambivalent about the cultural benefits of salsa to Anglos, Professor Ehrenreich acknowledges how her appreciation of salsa dancing, and frequenting salsa clubs, enhanced her understanding of the greater Latina/o community. n51 She learned about the significant Afro Latina/o population in the United States, the heart-wrenching immigration experiences of many Mexicans, and the political situation in Mexico that contributed to the migration. n52 LatCrit scholarship has considered these important subjects with rigor. n53

In considering her concerns with the Anglo embrace of salsa, Professor Ehrenreich raises interesting questions about who possesses standing to raise objections to cultural representations, such as whether a Latina/o who does not dance salsa or speak Spanish may object to their alleged appropriation. n54 One certainly can understand why a Latina/o non-Spanish speaker or U.S. citizens would object to English-only rules or restrictionist immigration laws. Such rules arguably represent subtle attacks on Latina/os generally cloaked in nonracial terms. n55 LatCrit theory has been inclusive in terms of allowing Anglos, Asian Americans, African Americans, Native Americans, and others to criticize the status of Latina/os and other people of color in the United States. n56 Just as in the realm of constitutional law, n57 standing in this context is difficult to define. One often does better by focusing on the merits of the argument than on who is making it. [*642]

2. "Latin" Pop Music

Professor Steve Bender critically analyzes the "Latin music craze," n58 concluding that the Latin Pop emerging in the late 1990s reinforced negative stereotypes about Latina/os. n59 Popular "Latin music," for example, promotes the myth of Latin lovers and bandidos. n60 This stereotyping damages the greater Latina/o community in two distinct ways; the music contributes to Latina/o internalization of negative self images about themselves, while Anglos see their popular stereotypes confirmed. n61

As Professor Bender correctly observes, this music is "more American 'pop' than Latin(o/a)." n62 Consistent with the popularity of the English-only movement, n63 most of the "Latin" music that currently captures the hearts of the country is performed in English. n64 Music in Spanish generally fails to make it high on the charts. Similarly, Latin artists continue the long history of Anglicizing their names (e.g., Enrique Martin Morales a/k/a Ricky Martin and Marco Antonio Muniz became [*643] Marc Anthony), n65 just like Richard Valenzuela transformed into Ritchie Valens in the 1950s. n66 The Anglicization of "Latin" music should not be surprising given that Anglos wrote many of the popular songs and design them to appeal to a mass--beyond Latina/o--audience. n67

LatCrit scholarship from its inception has challenged the classification of Latina/os as perpetual foreigners. n68 Professor Bender observes that the categorization of Enrique Iglesias, a Spaniard, as Latino based on Spanish surname is consistent with the treatment of Latina/os as "foreigners." n69 Even U.S.-born artists, such as Jennifer Lopez, Marc Anthony, and Ricky Martin, find themselves classified as natives of another country. n70 Latino/a entertainers find themselves homogenized as a generic foreign influence on U.S. culture, as represented by the bizarre (from the perspective of a Mexican-American) association of jalapenos and tamales (Mexican foods) with Puerto Rican artists. n71

Importantly, the Latina/o artists most likely to ascend to the top of the pop music charts are those that best approximate the Anglo norm. n72 Afro Latina/o and Mexican artists, for example, are not a prominent part of the "Latin music craze." n73 Latina/os who seek to cross-over into the mainstream, such as Ritchie Valens and Selena, must exhibit assimilationist tendencies. n74 Consequently, Latina/o artists at the core of the modern Latin pop scene are presented and received as "bilingual, young, attractive ('eye candy')," lightskinned middle to upper class, and [*644] heterosexual." n75 The monolingual Spanish speaker, middle aged, average looking, dark and indigenous appearing, poor and working class, out-of-the-closet gays and lesbians, are not among the popular Latin pop artists in the United States.
Professor Bender recognizes that none of the top Latina/o Pop artists, except Carlos Santana, are of Mexican ancestry, "by far the most populous of the group that comprise Latino/as in the United States." He innocuously attributes this to being a function of the fact that there are few Latina/o stars in popular music. However, coming on the heels of an era of deep public concern with Mexican immigrants in the 1990s, combined with a long history of treatment of Mexicans as inferior, we should not expect to see a Mexican-American pop culture icon. Ironically, dead Mexicans seem to achieve greater popularity in the United States than live ones.

The lack of entertainers of Mexican ancestry in the "Latin music craze" suggests a hierarchy of Latina/o racialization. Different Latina/o groups and different aspects of Latina/o culture may be more attractive to Anglos than others. This difficult question, which is easily evaded if we do not affirmatively recognize the diversity of the Latina/o community, requires future exploration.

Perhaps more troubling, as is true for African Americans, while certain types of Latina/os are visible in the music industry, few can be seen in other prominent places in U.S. culture, such as television, film, and literature. Although efforts have been made to increase Latina/o visibility in popular culture, change has been glacially slow. Latina/os are even rarer at the highest levels of government, academia, and business. With that in mind, Latino/as in the music industry might be equated to the minstrel show of the days of old.

B. Lessons from Puerto Rican Culture

Professor Pedro Malavet specifically analyzes the Puerto Rican culture on the island from the perspective of an "exile" on the United States mainland. In considering "two Puerto Rican cultures," he implicitly recognizes that living in the United States transforms people; people and cultures change in response to their surroundings. He looks nostalgically upon his own transformation, including the slow loss of his Puerto Rican-ness as he continues life in the United States. In discussing "mi cultura puertorriqueña" (my Puerto Rican culture), Professor Malavet implicitly acknowledges the multiplicity of Puerto Rican culture, with divisions based on class and other lines. In this vein, he acknowledges the "many diverse forms of Puerto Rican popular music."

Professor Malavet's "looking glass of exile" is not limited to Puerto Ricans. Other Latina/o national origin groups share a duality in their experiences. Many Mexican immigrants in the United States, for example, face difficulties adapting to life in this country but change in innumerable ways. Those who develop transnational identities may live a life straddling two nations. Their children born in the United States, in turn, view the world in entirely different ways than they do and parents did.

Professor Malavet's observations raise important questions. Namely, is the individual transformation that he describes for "exiles" something "good" or "bad"? Such individual changes may be inevitable in a globalizing world marked by increasing movement of people and capital across national lines.

Like other contributions to this cluster of essays, Professor Malavet recognizes that the current popularity of "Latin" music may reinforce negative stereotypes about Latina/os. Nonetheless, he considers the popularity to be beneficial to Puerto Ricans in the United States "especially because three of the most famous performers (Ricky Martin, Jennifer Lopez and Marc Anthony) are Puerto Ricans and they identify as Puerto Rican." One must question, however, how positive it is to have visible Puerto Rican performers who reinforce negative Latina/o stereotypes. Although the presence of Puerto Ricans in the public eye helps remedy Latina/o invisibility in American social life, such visibility may on the whole have negative consequences.

C. Conclusion

These three essays demonstrate that LatCrit inquiry has much to offer cultural analysis. At any historical moment, a society's political, economic, and social institutions tend to be mutually reinforcing.
popular portrayal of Latina/os in ways that confirm Anglo stereotypes helps circumscribe Latina/o membership in U.S. law and society. Importantly, we would be surprised to see the law dramatically out of step with the conceptions of Latina/os found in popular culture.

II. The Impact of Immigration Law on the Racialization of Different Latina/o National Origin Groups: The Case of Elian Gonzalez

An influential critical Latina scholar, Professor Berta Hernandez analyzes one of the most newsworthy events of the year 2000 in the United States, perhaps only overshadowed by the presidential election. She shows how the Elian Gonzalez case implicated two deeply held Cuban American values—the rule of law and family—that called for Elian Gonzalez's return to his father in Cuba when partisan anti-Castro politics did not. Analyzing the court of appeals decision in that case, Professor Hernandez demonstrates that the rule of law compelled the result. As Legal Realists and Critical Race Theorists might hypothesize, Professor Hernandez's interviews with Cuban American law professors confirm that their migration experiences from Cuba, including whether they left with the nuclear family intact, shaped their views on the U.S. government's response to the Elian Gonzalez case.

A. The Cuban Migrant Experience

Professor Hernandez observes that Cuban Americans historically have been viewed as an immigrant success story, with the community known for its work ethic and economic, social, and political mobility. As political commentator Linda Chavez has stated, Cuban American "accomplishments in the United States are attributable in large measure to diligence and hard work." 

The conventional wisdom about Cuban Americans is complex, however. Throughout the 1960s and 1970s, the U.S. government embraced Cuban migrants as refugees from Fidel Castro's communist Cuba. With the rising Cuban population, south Florida experienced growing pains. African Americans voiced concerns that Cubans received preferential treatment. The increased public use of Spanish by Cuban refugees led to English-only laws in Dade County, Florida.

Nonetheless, as Professor Hernandez suggests, the first wave of Cuban migrants who fled the 1959 revolution were widely considered to be a model Latin minority. Other Latina/o national origin groups, such as Mexican-Americans and Puerto Ricans, were extolled to work hard like the Cubans. Frequently ignored was the fact that, as Professor Hernandez acknowledges, this first wave of Cuban immigrants was largely white, middle and upper class, professional, and educated. U.S. citizens more easily accepted this immigrant cohort into the mainstream than other Latin American immigrants. Consequently, many Cuban Americans over time successfully integrated themselves into south Florida socially, economically, and politically.

For its part, the law fully supported Cuban refugees, offering them advantages unavailable to other migrant groups. At least until 1980, the U.S. government classified Cubans as "political refugees" and virtually all that reached the United States were allowed to remain in this country. In addition, Cuban migrants received special immigration benefits, including refugee resettlement assistance, under congressional legislation enacted specifically for their benefit.

B. Changing Demographics, Changing Law Enforcement

Popular perceptions, and the legal response to Cuban migrants, changed dramatically in 1980. In that year, the Mariel boatlift brought many poorer, Afro-Cubans to the United States; media characterization of the Marielitos as criminals, mentally ill persons, and homosexuals provoked public concern, even within the Cuban American community in south Florida. Depictions of crime brought by Cuban migrants, exemplified by the movie "Scarface," starring Al Pacino as a murderous Cuban American drug kingpin, reflected popular views about the new refugees. In response, the U.S. government's open embrace of Cuban refugees shifted to mass detention and slow admission of Cuban migrants.
In the 1990s, with the threat of a mass migration looming on the horizon after an influx of rafters from Cuba, the U.S. government offered even harsher treatment. In 1994, "the U.S. and Cuban governments signed an unprecedented agreement . . . , whereby the two governments recognized their common interest in preventing Cubans from leaving by sea" and allowing for interdiction, repatriation, and return of Cubans; the United States also agreed to accept a minimum of 20,000 Cubans per year.

Beginning in 1994, the U.S. government has interdicted Cuban rafters before reaching U.S. shores. Under the U.S. Coast Guard's "feet wet/feet dry" policy, only Cubans who make it to shore (feet dry) are permitted to pursue their rights to apply for asylum while those interdicted (feet wet) are returned to Cuba. In the summer of 1999, the Coast Guard was captured on camera using pepper spray and force, to keep Cuban rafters from making it to land and asylum in the United States. The Supreme Court's 1993 decision upholding the Haitian interdiction policy served as the principal legal precedent for the feet wet/feet dry policy.

The changing racial demographics of the Cuban migrants unquestionably affected their shifting legal treatment by the U.S. government. Viewed more recently as economic migrants than political refugees, class, fears of mass migration, and related political concerns also came into play. Consequently, for better or worse, the U.S. government now treats Cuban migrants more like other Latin American immigrants.

C. A Comparison: Mexican, Central American, and Haitian Migrants

Over the last half of the twentieth century, Mexican and Central American migrants have been classified as "economic migrants," not political refugees, and consistently been subject to harsh border enforcement measures. In the 1980s, for example, the Immigration and Naturalization Service (INS) detained Salvadorans and Guatemalans fleeing political violence and affirmatively encouraged them to forego their legal claims to apply for political asylum and return "voluntarily" to their homeland. The 1990s saw a dramatic escalation of the use of military force along the border resulting in the death of hundreds of Mexican migrants, which has provoked little public concern. Similarly, Haitians, classified as economic migrants even though they fled the political turmoil of their homeland, historically have been subject to much harsher treatment than Cubans.

Interestingly, the U.S. government has begun to treat Cuban migrants in the way that it long has treated those from other Latin American nations. This has been facilitated by the changing demographics, and racialization, of Cuban migrants.

D. Elian Gonzalez

Against this historical backdrop, the Elian Gonzalez controversy arose. After months of controversy, negotiations, and political hand-wringing, the United States government returned Elian Gonzalez, a young boy whose mother tragically died at his side as they traveled by raft to the United States, to his father in Cuba. The Cuban American community's history of special treatment under the immigration laws inevitably influenced views on the matter. The fact that in the wake of Castro's revolution some Cuban parents sent their unaccompanied children to the United States in the hopes that they could live a better life, surely did as well. To many Cuban Americans, it must have been a rude awakening to see Elian Gonzalez suffer the indignities at the hands of the U.S. government that it regularly doles out to other immigrant groups.

In some ways, however, Elian Gonzalez's extended family's request that the child remain with them in the United States received extraordinary treatment. Observers have noted that, if Elian Gonzalez were from any other Latin American country, he would have been returned to his father in a matter of days, if not hours. The sensitive nature of Cuban American politics in south Florida resulted in more deliberate action by the INS, under the watchful eye of Attorney General Janet Reno, than one typically
would see. The Cuban American vote, generally in the pocket of the Republican Party, was cherished in a Presidential election year. Despite the care taken in the decision, the negative political fallout with Elian Gonzalez's return to Cuba may have cost Vice President Al Gore the 2000 Presidential election. The dawn INS armed raid in which Gonzalez was taken from his uncle's home, outraged vocal segments of the Cuban American community.

The vociferousness of the Cuban American political resistance to the return of Elian Gonzalez to his father in Cuba, which was out of step with popular public opinion, may have permanently damaged Cuban American political power. At least during the time of the controversy, Cubans were marginalized by the media and the general public, thus moving away from being perceived as the "model" Latina/o minority.

E. Future Latina/o Coalitions

A silver lining may exist to the Elian Gonzalez controversy. The Cuban American reaction to the INS conduct in the Elian Gonzalez matter, as well as unhappiness with Coast Guard conduct in the Cuban interdiction program, demonstrates that Latina/os share common ground in addressing immigration as a civil rights issue.

In the past, some Cuban leaders stated that the "Mexican problem" with immigration in the southwest had nothing to do with Cubans in Florida. Recent events shed new light on such assertions. In these times, the U.S. government often focuses immigration enforcement on persons of Latin American ancestry. Conduct like that seen in Elian Gonzalez's case--namely, use of force--occurs with regularity in immigration enforcement against Mexican and Central American immigrants. Over the course of the 1990s, Cuban Americans have begun to get a glimpse of how harsh the U.S. government can be if it wants to focus its power on a particular immigrant community. Organized politically, Cuban Americans may join forces with other Latina/os to challenge the inequities inherent in INS enforcement policies.

F. Immigration Law and Racial Formation

The sea change in popular attitude toward different groups, and the law's response, reveals volumes about racial formation. Specifically, immigration law and its enforcement affects the differential racialization of various Latina/o national origin groups. Efforts to keep some groups out of the country while welcoming others reinforce popular conceptions about the groups. At least at one time, positive stereotypes about Cubans as a "model minority" justified their generous treatment under the law.

When viewed as white, educated, middle and upper class, and refugees of communism, Cubans fared well. When the popular construction of the migrants changed around the time of the Mariel boatlift--as Blacker, poorer, and undesirable, the legal treatment became stricter. Similarly, the racialization of Mexican immigrants as dark, poor, and uneducated, long has rationalized their harsh treatment under the immigration laws. Thus, over time, we see the evolving racialization of Cubans in a way that makes them more resemble Mexican migrants. Changes in the racialization of Cubans creates the potential for future political coalitions challenging immigration law and enforcement.

Conclusion

In analyzing "Latino culture," we must take care not to ignore the diversity of the Latina/o communities. Such an approach violates the fundamental anti-essentialist core of LatCrit theory. By considering the variety of different Latin cultures, we are better able to appreciate how various Latin American groups are differentiated in law and popular culture. Specifically, LatCrit analysis of the "Latin music craze" allows for the study of the comparative racialization of different Latina/o national origin groups. The popularity of performers of Caribbean ancestry, combined with the relative marginalization of persons of Afro Latina/o and Mexican ancestry, is most revealing.
At its core, the "Latin music craze" reinforces negative stereotypes about Latina/s, including that they are foreigners. It promotes assimilationism in that the music promotes acceptance of certain types of Latina/os, those whom are viewed as most assimilable. Crossover appeal in fact rests on assimilation potential. The current "craze" therefore should be viewed critically.

Similarly, we should pay attention to how law racializes various Latina/o national origin sub-groups. Differential treatment between different immigrant groups affects how those groups are viewed by Anglos and those groups are racialized, in the United States. The Elian Gonzalez matter highlights the racialization of different Latina/o national origin groups in U.S. immigration law and policy, and how racial constructions change over time.

FOOTNOTE-1:

n1 See generally Michael Omi & Howard Winant, Racial Formation in the United States from the 1960's to the 1990's (2d ed. 1994) (analyzing racial formation in United States). In this essay, I use "racialization" in the context of "comparative racialization" broadly to refer to the different social constructions as "others" of persons of Mexican, Cuban, and Puerto Rican ancestry; such differentiation may be based on perceived class and cultural, as well as phenotypical (physical appearance), differences. See Kevin R. Johnson & George A. Martinez, Crossover Dreams: The Roots of LatCrit Theory in Chicana/o Studies Activism and Scholarship, 53 U. Miami L. Rev. 1143, 1155-57 (1999) (advocating scholarship analyzing the distinctive racialization of Chicano/as in the United States); Kevin R. Johnson, Celebrating LatCrit Theory: What Do We Do When the Music Stops?, 33 U.C. Davis L. Rev. 753, 764 (2000) ("The process of racialization is complex, affecting different groups in different ways. Latina/os comprise a truly complex racial mixture of peoples . . .") (footnote omitted).


n3 See infra text accompanying notes 6-98.

n4 See infra text accompanying notes 99-153.

n5 See infra text accompanying notes 105-30.

n6 See, e.g., Nathan Glazer, We Are All Multiculturalists Now (1997).


n17 Ehrenreich, Salsa Dancer, supra note 16, at 797.

n18 See id. (contending that Anglo appreciation of Latin dance can facilitate "true multicultural understanding").

n19 See infra text accompanying notes 48-50, 58-61, 68-75.


n21 See Christopher David Ruiz Cameron, The Labyrinth of Solidarity: Why the Future of the American Labor Movement Depends on Latino Workers, 53 U. Miami L. Rev. 1089, 1093-94 (1999). Actually, the increased popularity of salsa in fact is an increased popularity in salsa that is not too spicy. See infra text accompanying notes 37, 48-52, 72-75 (analyzing cultural representations likely to be embraced by Anglos).


n24 Ehrenreich, Salsa Dancer, supra note 16, at 800.


n26 See infra text accompanying notes 62-71. Others, such as Christina Aguilera, a blond mixed Ecuadoran, Irish singer raised in a Pittsburgh suburb, have also attracted popular attention. See Christopher John Farley, Christina Aguilera: Building a 21st Century Star, Time, Mar. 6, 2000, at 70 (reporting that "now that [Aguilera]'s a mainstream star, she wants to be a Latin star too"); Steve Sailor, Not Hispanic Enough, Wash. Times, Jan. 8, 2001, at A15 (stating that "somebody of Irish American upbringing who couldn't resist cashing in on her Spanish surname is the blue-eyed and blond teen diva Christina Aguilera").

n27 See La Bamba (Columbia Pictures, 1987); David Reyes & Tom Waldman, Land of a Thousand Dances: Chicano Rock 'n' Roll From Southern California 41-42 (1998) (discussing the various efforts to "remember" Valens and his music after his death); Michael A. Olivas, I'll
Just Cry - "96 Tears," 24 Bilingual Rev. 292, 293 (1999) (noting that Valens "is remembered today as much for dying in the ill-fated flight with . . . the Big Bopper . . . and Buddy Holly as for his music" and that his song La Bamba did "not become a huge hit until the movie" of his life was released almost three decades after his death); see also Sheila Benson, Accent on the Latino Market, L.A. Times, July 24, 1987, Calendar, at 6 (noting that movie on Valens life, La Bamba, overlooked the difficulties that Valens faced, including the perceived need to Anglicize his name to succeed in the music business, and complications caused by the fact that the love of his life, Donna, was Anglo).


Lopez argued that she was well-suited to play Selena because they shared an ethnic identity as Latinas beyond their "national" identities. "I don't think the actress who played her had to be Mexican-American because Selena was," Lopez said. "Selena and I are both Latinas and both had the common experience of growing up Latina in this country. This is good enough."


n30 See Mireya Navarro, Latin Grammys' Border Skirmish; New Awards Face Complaints About Slighting a Mexican Genre, N.Y. Times, Sept. 13, 2000, at E1; see also Latin Grammys, City News Serv., Sept. 29, 2000 (reporting that two groups refused to accept Latin Grammys because of alleged bias against Mexican music); David Bauder, Santana Wins 3 Latin Grammys; Inaugural Awards Offer Emotion, Controversy, Commercial Appeal (Memphis, Tenn.), Sept. 14, 2000, at A10 (reporting that television producers of Latin Grammys favored artists who sang in English and are better known in United States).


n33 See, e.g., Los Tigres del Norte, 16 Grandes Exitos (Fonoriso 1991); Saldivar, supra note 32, at 1-8 (analyzing group's focus on undocumented Mexican experience); George Lipsitz, Dangerous Crossroads: Popular Music, Postmodernism and the Poetics of Place 131 (1994) (noting that, despite their popularity in Mexico, Los Tigres de Norte "have secured almost no 'mainstream' commercial recognition in the U.S.A., perhaps because they sing in Spanish...., but also perhaps because their lyrics contain values that threaten vested interests too much.").
n34 See, e.g., Tish Hinojosa, Frontejas (Rounder Records, 1995); Saldívar, supra note 32, at 187-91 (analyzing cultural significance of Hinojosa's music); Timothy O'Hara, The Power of Music; Songs Tell Workers' Tale, Sarasota HeraldTrib., Apr. 21, 2000, at B1B (reporting that Hinojosa's songs touched on plight of farmworkers and Mexican immigrants and that "though she has won the praises of music critics and other song writers, major commercial success has eluded her.").

n35 See infra text accompanying notes 94-98. In fact, some Puerto Ricans attended the movie "Selena" to watch Puerto Rican actress Jennifer Lopez play the real life subject of the movie, Selena, a Mexican-American. See Negron-Muntaner, supra note 28, at 181. Lopez seems to claim a Latina, as opposed to a Puerto Rican, identity. See supra note 28.


n38 See Ehrenreich, Salsa Dancer, supra note 16, at 796.


n40 See supra text accompanying note 14.

n41 See infra text accompanying note 67.

n42 See Ehrenreich, Salsa Dancer, supra note 16, at 795, fn 5.

n43 Id. at 796, fn 6.

n44 Id. at 799.


n46 See Margaret Jane Radin, Contested Commodities 154-63 (Harv. University Press 1996); see also Peter Halewood, Law's Bodies: Disembodiment and the Structure of Liberal Property Rights, 81 Iowa L. Rev. 1331, 1332-33 (1996) ("Commodification, the process of transforming an object, quality, or capacity into something with a recognizable market value, occurs in several ways. The human body is commodified by wage labor, by advertising, by commercial exploitation of women's bodies, by biotechnology's reduction or fragmentation of the body into marketable parts, and by the conceptual and ideological shift in our society toward thinking of the body as something marketable or alterable."). Consider, for example, the commodification of Mexican cuisine. See Victor M. Valle & Rodolfo D. Torres, Latino Metropolis 67-99 (2000).

n48 See Ehrenreich, Salsa Dancer, supra note 16, at 795.

n49 See id. at 806.


n51 See Ehrenreich, Salsa Dancer, supra note 16, at 795.

n52 See id. at 803.


n54 See Ehrenreich, Salsa Dancer, supra note 16, at 809.

n55 See Kevin R. Johnson & George A. Martinez, Discrimination by Proxy: The Case of Proposition 227 and the Ban on Bilingual Education, 33 U.C. Davis L. Rev. 1227 (2000) (analyzing how language can be employed as a proxy for race); supra note 22 (citing authority discussing anti-Latina/o edge to California's Proposition 187, which would have eliminated public benefits to undocumented immigrants); see also Charles R. Lawrence III, The Id, the Ego, and Equal Protection: Reckoning with Racism, 39 Stan. L. Rev. 317 (1987) (advocating "cultural meaning" test for claims of racial discrimination).

n56 See, e.g., supra note 2 (citing examples).

n57 See William A. Fletcher, The Structure of Standing, 98 Yale L.J. 221, 221 (1988) (characterizing standing doctrine developed by Supreme Court under Article III of Constitution as "incoherent").


n59 See Bender, Latino Pop Music, supra note 58; see also George Lipsitz, Time Passages: Collective Memory and American Popular Culture 159 (1990) (stating that Mexican-Americans in Los Angeles "suffer from the anguish of invisibility" and that the mass media rarely portrays "their world . . . sympathetically or even accurately" and "reinforces and legitimizes Anglo cultural hegemony"); Richard Delgado & Jean Stefancic, Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?, 77 Cornell L. Rev. 1258 (1992) (analyzing stereotypical depictions of different minority groups in media); Jerry Kang, Cyber-Race, 113 Harv. L. Rev. 1131, 1208 nn.162, 163 (2000) (observing that racial stereotypes are common to advertising and film); Roman, supra note 28 (analyzing stereotypical representations of Latina/os in film).

See Roman, supra note 28, at 49-65; see also Laura M. Padilla, Social and Legal Repercussions of Latinos' Colonized Mentality, 53 U. Miami L. Rev. 769 (1999) (analyzing damage caused by Latina/o internalization of society's negative stereotypes about them).

See Bender, Latino Pop Music, supra note 58, at 732.


See Bender, Latino Pop Music, supra note 58, at 722.

See id. at 743.


See Bender, Latino Pop Music, supra note 58, at 737.


See Bender, Latino Pop Music, supra note 58, at 733.

See id.

See id. at 729-30.


See supra text accompanying notes 24-36.

See supra text accompanying note 66 (noting that Valens Anglicized his name); see also Beverly Mendheim, Ritchie Valens: The First Latino Rocker 136 (1987) (observing that the "majority of fans, even those of Mexican heritage, did not know [Ritchie Valens] was of Mexican descent until well into the 60's"); Olivas, supra note 66, at 211 (telling story of Chicano author who did not know that Valens was Mexican until after his death); Ehrenreich,
Salsa Dancer, supra note 16, at 815 ("The versions of Latino/a cultural productions that tend to gain entry into the mainstream (white) 'American' consciousness are often the more whitewashed ones.").

n75 Bender, Latino Pop Music, supra note 58, at 731. Of course, the role of the marketing of sex appeal affects the popularity of entertainers of all races and ethnic backgrounds.

n76 Id.; supra text accompanying notes 24-36 (discussing fact that no entertainers of Mexican ancestry are at center of "Latin music craze").

n77 Id.


n80 See supra text accompanying notes 27-28 (discussing careers of Ritchie Valens and Selena).

n81 See infra text accompanying notes 105-30 (analyzing how U.S. immigration laws racialize various Latin American national origin groups in different ways).


n83 See Gerald P. Lopez, Learning About Latinos, 19 Chicano-Latino L. Rev. 363, 367 (1998); see also George A. Martinez, Philosophical Considerations and the Use of Narrative in Law, 30 Rutgers L.J. 683 (1999) (contending that minority stories must be told to secure social change).


n86 For example, the highest levels of government have few, if any, Latina/os. The Supreme Court never has had a Latina/o Supreme Court Justice. See "Toward a Supreme Court Appointment" Conference, Harvard Law School, Apr. 7, 2001. Similarly, despite activism over decades, Harvard Law School still lacks a Chicana/o law professor. See Luz Herrera, Challenging a Tradition of Exclusion: The Push for Latino Faculty at Harvard Law School, 5 Harv. Latino L. Rev. (forthcoming 2002). The difficulties experienced by Henry Cisneros in the Clinton administration reveal the public scrutiny of high profile Latina/os. See Deborah L. Rhode, Conflicts of Commitment: Legal Ethics in the Impeachment Context, 52 Stan. L. Rev. 269, 347 (2000) ("Taxpayers paid seven million dollars to learn that former [U.S. Housing and Urban Development] Secretary Henry Cisneros lied, not about paying money to a former mistress (which he acknowledged), but only about the precise amount paid.") (footnote omitted). More recently, because she had employed an undocumented worker from Guatemala, Linda Chavez, President Bush's original nominee for Secretary of Labor, was the only new


n88 See Malavet, Looking Glass of Exile, supra note 87.

n89 See supra text accompanying notes 9-13.

n90 Malavet, Looking Glass of Exile, supra note 87, at 776.

n91 Professor Malavet employs narrative to relay his thoughts as a Puerto Rican exile. The narrative in places proves difficult to connect to broader LatCrit themes. See Robert S. Chang & Natasha Fuller, Performing LatCrit, 33 U.C. Davis L. Rev. 1277, 1280 (2000) (discussing "narrative responsibility of a LatCrit storyteller") (footnote omitted).

n92 See supra text accompanying notes 10-11. This transformation can be viewed in different ways. Anglos view assimilation positively. See supra note 72 (citing authorities). In contrast, the derogatory term used by Mexicans to refer to assimilated Mexican immigrants is "pocho," see Jose Antonio Villarreal, Pocho (Doubleday 1970) (1959); see also Richard Delgado, Rodrigo's Fourteenth Chronicle: American Apocalypse, 32 Harv. C.R.-C.L. L. Rev. 275, 299 & n.115 (1997) (mentioning "pocho" as slang for person of Mexican ancestry "who does not speak Spanish and has lost touch with his or her roots"), or "gabacho," see, e.g., Rick P. Rivera, A Fabricated Mexican 79-81 (1995) (telling story of Mexican-American accusing another one of being a "gabacho," slang for Anglo). The desire not to be seen as becoming "too" American may help explain the history of relatively low naturalization rates among Mexican immigrants. See Kevin R. Johnson, Civil Rights and Immigration: Challenges for the Latino Community in the Twenty-First Century, 8 La Raza L.J. 42, 52-54 (1995).

n93 See Rachel F. Moran, Demography and Distrust: The Latino Challenge to Civil Rights and Immigration Policy in the 1990's and Beyond, 8 La Raza L.J. 1, 19-24 (1995); see also Maria L. Ontiveros, Forging Our Identity: Transformative Resistance in the Areas of Work, Class, and the Law, 33 U.C. Davis L. Rev. 1057, 1064-66 (2000) (contending that concept of citizenship must change with emergence of transnational identities); Maria de los Angeles Torres, Transnational Political and Cultural Identities: Crossing Theoretical Borders ("With increased contact between people and cultures, we may be witnessing the rise of transnational identities. Such identities are likely to be more visible in communities where people have crossed many

n94 See supra text accompanying notes 48-50, 58-61, 68-75.

n95 See supra text accompanying notes 58-61.

n96 See supra text accompanying notes 26, 35-36.

n97 See supra text accompanying notes 58-61.

n98 See supra text accompanying notes 58-61.

n99 See, e.g., Emile Durkheim, Education and Sociology (1956).


n105 See Hernandez-Truyol, supra note 101, at 689.


n110 See id. at 438 ("The first waves of Cuban immigrants came to Miami in the 1950s as model immigrants and soon became model minorities."); see also Lisandro Perez, Cubans in the United States, 487 Annals 126 (1986) (studying demographics of Cuban refugees and studying relative Cuban economic success); Alejandro Portes & Robert L. Bach, Immigrant Earnings: Cuban and Mexican Immigrants in the United States, 14 Int'l Migration Rev. 315 (1980) (analyzing differences between Mexican and Cuban migrations to United States). Somewhat like Cubans, Asian Americans also have been cast as the "model minority," even
though only certain segments of this diverse community have enjoyed economic and social mobility in the United States. See, e.g., Robert S. Chang, Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space, 81 Cal. L. Rev. 1242, 1308-12 (1993); Pat K. Chew, Asian Americans: The "Reticent" Minority and Their Paradoxes, 36 Wm. & Mary L. Rev. 1, 2433 (1994).

n111 See Chavez, supra note 106, at 139-59.


n113 See supra text accompanying notes 105-09; see also Berta Esperanza Hernandez-Truyol, Nativism, Terrorism, and Human Rights - The Global Wrongs of Reno v. American-Arab Anti-Discrimination Committee, 31 Colum. Hum. Rts. L. Rev. 521, 551-54 (2000) (studying how Cuban-American groups seeking to overthrow Fidel Castro, who were involved in Elian Gonzalez matter, were not classified as "terrorists" under immigration laws while those loosely affiliated with Palestinian groups are). For example, Cuban Americans successfully pushed for early bilingual education programs in Florida. See James Crawford, Bilingual Education: History, Politics, Theory and Practice 35-37 (3d ed. 1995).


n117 See Portes & Bach, supra note 114, at 88 (noting the changing demographics of Cuban migrants to the United States, including that less than five percent of Cuban refugees before 1980 were Black compared to 30 percent after); Garcia, supra note 107, at 44 (noting that only 3 percent of Cubans in United States in 1970 were Black, compared to 30 percent of population in Cuba); see also Susan Martin, Andy Schoenholtz, & Deborah Waller Meyers, Temporary Protection: Towards a New Regional and Domestic Framework, 12 Geo. Immigr. L.J. 543, 556-57 (1998) (discussing changing Cuban American attitudes toward Cuban rafters in the 1990s); SandrinoGlasser, supra note 112, at 89 (discussing "popular images" of the Mariel refugees as "undesirables - poorer, less educated and mostly black or mixed Cubans, with a large percentage being either criminal or mentally ill") (footnotes omitted).

n118 See Roman, supra note 28, at 42-43.


n124 See infra text accompanying note 129.

n125 See Richard A. Boswell, Throwing Away the Key: Limits on the Plenary Power, 18 Mich. J. Int'l L. 689, 705-08 & n.52 (1997) (book review). Race also affects Cuban migrants' experience in the United States. See Mirta Ojito, Best of Friends, Worlds Apart, N.Y. Times, June 5, 2000, at A1 (reporting that two Cuban immigrants - one Black, one not --who had been friends in Cuba had dramatically different experiences in Miami with one associating with white Cubans and the other with African Americans).

n126 See infra text accompanying notes 127-28.

n127 See, e.g., Orantes-Hernandez v. Thornburgh, 919 F.2d 549 (9th Cir. 1990); see also Am. Baptist Churches v. Thornburgh, 760 F. Supp. 796 (N.D. Cal. 1991) (settling case in which
Salvadoran and Guatemalan asylum-seekers claimed that asylum claims were subject to improper bias in adjudication.


n130 See supra text accompanying notes 117-25.

n131 See supra text accompanying notes 110-16.

n132 See Garcia, supra note 107, at 23-26. Other factors affecting Cuban American opinion include the political situation in Cuba, see Berta Esperanza Hernandez Truyol, Out in Left Field: Cuba's Post-Cold War Strikeout, 18 Fordham Int'l L.J. 15 (1994), and the fact that the Cuban government in the past had persecuted persons returned there who had sought asylum in the United States, see, e.g., Rodriguez-Roman v. INS, 98 F.3d 416 (9th Cir. 1996) (holding that Cuban asylum applicant fearing punishment for leaving Cuba was eligible for asylum).

n133 See supra text accompanying notes 126-30.


n135 See Garcia, supra note 107, at 146-47. For a literary account of Miami's complex politics, see Joan Didion, Miami (1987).

n136 See Dexter Filkins & Dana Canedy, A Mayor, Once Vocal for Gore, is Silent, N.Y. Times, Nov. 25, 2000, at A11 (reporting that Democratic mayor of Miami, Alex Penelas, who did not actively support Vice President Gore because of the Clinton administration's handling of Elian Gonzalez matter, may have taken steps during ballot recount that adversely affected Gore).

n141 See Rick Bragg, Fight Over Cuban Boy Leaves Scars in Miami, N.Y. Times, June 30, 2000, at A12; see also Victorino Matus, The Slanderers of Cuban-Americans; There's One Ethnic Group It's Still Politically Correct to Smear, Wkly. Standard, Apr. 17, 2000, at 14 (contending that politicians and journalists during the Elian Gonzalez controversy viciously attacked Cuban-Americans as an ethnic "mob" with many anti-Cuban slurs).

n142 See supra text accompanying notes 105-06.

n143 See Hernandez-Truyol, supra note 101; supra text accompanying notes 121-23.

n144 See Johnson, supra note 68, at 115-16, 117-29.

n145 See id. at 133-34 (footnote omitted).


n147 See Elvia R. Arriola, LatCrit Theory, International Human Rights, Popular Culture, and the Faces of Despair in INS Raids, 28 U. Miami Inter-Am. L. Rev. 245 (1996-97); see, e.g., INS v. Delgado, 466 U.S. 210 (1984) (holding that workplace raids by INS failed to constitute "seizures" subject to the constraints of the Fourth Amendment); see also supra text accompanying note 128 (discussing increased border enforcement efforts in 1990s).

n148 See supra text accompanying notes 100-47.

n149 See supra text accompanying notes 100-16.

n150 See supra text accompanying notes 100-16.

n151 See supra text accompanying notes 117-24.
