

Immigration, Incarceration, Deportation: Asian Americans in the Criminal Justice System

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Abstract: Asian Americans have been long overlooked in the United States for their contributions and have been restricted by ever-changing stereotypes and perceptions. Within the Asian American community, the incarcerated population and former criminals have been hidden because of cultural stigmas and missing statistics. In the 1980s, a large population of Asian American youth were becoming involved in criminal activity because of difficulty adapting to life in the United States after arriving at a young age. Gang membership and racial profiling increased the chances that Asian Americans would be arrested, although Asian Americans are less likely to be sentenced to prison time and often are given shorter sentences compared to members of other ethnic minority groups. At the same time, Asian American juveniles were more likely to be sentenced as adults despite being underage and were also more likely to be sentenced to life for their crimes. After serving time, some Asians still find themselves back in a detention center because of removal orders. Southeast Asian Americans are more likely to find themselves deported to a country that they had previously escaped from before arriving to the United States as refugees. While some juvenile crime laws have been recently repealed or modified, there have been more deportations from the current government administration.

Introduction

In 1986, Eddy Zheng was tried as an adult at the age of sixteen and sentenced to life for his involvement in a home invasion and robbery in San Francisco's Chinatown.¹ While incarcerated in San Quentin State Prison, Eddy was involved in many programs including San Quentin's associate degree program. He also advocated for courses in Asian American Studies, and this activity led to his being kept in solitary confinement for eleven months.² Nineteen years after his imprisonment, Eddy Zheng was recommended for parole and was released on March 10, 2005.³ He had been in prison longer than he had lived in the "free" world. Although no longer in prison, Eddy was immediately shipped to Yuba County Jail where he remained for two years waiting for deportation proceedings.⁴ Although Eddy was brought into the United States legally, deportation became mandatory after 1996 for noncitizen parolees who committed aggravated

¹ Bernice Yeung, "Throwing Away the Key," *SF Weekly* (San Francisco, CA), June 5, 2002.

² Ji Hyun Lim, "Asian American Studies Denied to San Quentin Inmates: APAs Fight for Their Rights Behind Bars," *Asianweek* (San Francisco, CA), March 28, 2003.

³ Kara Platoni, "The Last Stand of Eddy Zheng," *East Bay Express* (Oakland, CA), August 10, 2005.

⁴ Yeung, "Throwing Away the Key."

felonies.⁵ Eddy fought against his deportation to China for ten years and was granted a full pardon from Governor Jerry Brown in 2015; the immigration officials promptly withdrew the deportation orders.⁶ Eddy's story captivated many with his strong activism after his release; he has cofounded the advocacy group Asian Prisoner Support Committee, and in 2016, a documentary about him was released, called *Breathin'*.⁷ His story, although incredibly unique, has many aspects that are shared by others in similar situations.

The incarceration of Asian Americans is not a recent topic; however, most of the literature on the topic has only been published recently. After the 1965 Immigration Act, many previously excluded immigrants, including a large number of East and Southeast Asians, were allowed into the United States.⁸ Although some of the new immigrants often already knew other people in the United States, there were not many resources available to help the youth and their transition to a new country. Immigration from Asia increased during the 1970s and the 1980s, which led to increased crime and incarceration of Asians. Recently, the issues of immigration and deportation of Asian criminals have been brought up again because of recent political and legal changes. The deportation of Asian Americans through aggravated felonies often targets Asian Americans who committed a crime at a young age and have already re-established themselves back into society. Most of the scholarly research is located in the sociological and criminological fields, while the historical field is quite lacking in the exploration of incarcerated Asian Americans. Many sources on the topic of Asian American incarceration take the form of newspaper reports on individual cases or articles on crime trends within Asian communities

⁵ Platoni, "The Last Stand of Eddy Zheng."

⁶ Agnes Constante, "After Facing Life in Prison and Deportation, Reformed Inmate Receives U.S. Citizenship," *NBC News*, January 5, 2017.

⁷ *Breathin': The Eddy Zheng Story*, directed by Ben Wang (2016).

⁸ Erika Lee, *The Making of Asian America: A History* (New York: Simon and Schuster, 2015), 285.

rather than in-depth historical analysis of the topic. This project will tie in the existing literature as well as previous historical documents to provide a more accurate depiction of this phenomenon during the period from the 1980s to the 2000s.

While some scholars have discussed the lives of incarcerated Asian Americans for the sake of comparison with other American ethnic groups, others have examined each of the distinct ethnic groups and nationalities within the categorization of Asian Americans. There is significant data aggregation for incarcerated Asians since they are often classified as “other.”⁹ Due to the constraints of statistical information on the subgroups, the term “Asian Americans” will be used to refer to East Asians and Southeast Asians. This paper will examine the identities as well as the perceptions and attitudes towards Asian Americans in relation to criminal activity and judicial punishment. While it is important to draw attention to the plight of the overlooked within the Asian American community, it is also necessary to examine the factors that often lead to incarceration and possibly deportation. These factors include language barriers, gang membership, lack of resources and support, as well as social and financial pressures.

A 2014 article called “The Criminal Justice System and the Racialization of Perceptions” examined the perception of juveniles who had been in previous contact with the criminal justice system. The study found that the more contact an Asian American juvenile had with the system, the less likely they were to be perceived as Asian.¹⁰ There have been several criminological studies that have shown how Asian Americans typically received lighter sentences when compared to other races with the exception of white offenders.¹¹ These findings typically

⁹ Philip Goodman, “‘It’s Just Black, White, or Hispanic’: An Observational Study of Racializing Moves in California’s Segregated Prison Reception Centers,” *Law & Society Review* 42, no. 4 (2008), 750.

¹⁰ Aliya Saperstein, Andrew M. Penner, and Jessica M. Kizer, “The Criminal Justice System and the Racialization of Perceptions,” *The Annals of the American Academy of Political and Social Science* 651, no. 1 (2014), 108.

¹¹ For studies relevant to Asian Americans and incarceration, please refer to Brian D. Johnson and Sara Betsinger, “Punishing the ‘Model Minority’: Asian American Criminal Sentencing Outcomes in Federal District Courts,” *Criminology* 47, no. 4 (2009), 1046-1090; Ronald S. Everett and Roger A. Wojtkiewicz, “Difference, Disparity, and

result in a comparatively lenient view of sentencing for Asian American offenders. Since Asians generally receive a lighter sentence and there is a relatively small population of Asian Americans in the criminal justice system, it can lead to the assumption that incarceration is not an important issue that affects many Asian Americans.

Asian Americans are often depicted as more privileged than other minority groups which is why there often is not great concern for the population affected by the justice system. This is also strongly perpetuated by the stereotype of Asian Americans as a “model minority” which has been advanced by media and other aspects of society.¹² In fact, the model minority stereotype holds historical significance, as it has obscured many issues of Asian American culture and life since the mid-1960s.¹³ Within the Asian American community, there is also a great stigma surrounding those who are incarcerated, and the issue is rarely discussed among immigrant families, especially because the significant lack of data has led some to believe that the issue is uncommon and therefore insignificant. Many within the Asian American community do not feel the necessity to talk about their struggles since most of the population is painted in a relatively “positive” light. When comparing different Asian ethnicities, East Asian immigrants tend to have higher education levels and therefore different experiences whereas Southeast Asian immigrants are more likely to have fled from a war-torn country. The model minority stereotype is often portrayed in media which can lead to serious repercussions such as delegitimizing the struggles Asian Americans experience especially the plight of those who are incarcerated.

Race/Ethnic Bias in Federal Sentencing,” *Journal of Quantitative Criminology* 18, no. 2 (2002), 189-211; Travis W. Franklin and Noelle E. Fearn, “Sentencing Asian Offenders in State Courts: The Influence of a Prevalent Stereotype,” *Crime & Delinquency* 61, no. 1 (2015), 96-120.

¹² John Song and John Dombrink, “‘Good Guys’ and Bad Guys: Media, Asians, and the Framing of a Criminal Event,” *Amerasia Journal* 22, no. 3 (1996), 26.

¹³ “Success Story of One Minority Group in U.S.,” *U.S. News and World Report*, December 26, 1966.

The mainstream American perception of Asian Americans is often convoluted and does not always work to differentiate between different sub-groups. Many scholars have worked to distinguish between Southeast Asians and East Asians and their different patterns of educational achievement and incarceration, since many Southeast Asians fled their country to the United States because of war and violence. Similarly, there have been differences in the struggles the two groups have faced when adapting to life in America. It would be beneficial to further examine the distinction in how it could lead to one group being disproportionately sentenced or imprisoned. It is currently very difficult to address the needs and concerns of the Asian American incarcerated community without recognizing the discrepancies within the categorization of Asian Americans.

In this paper, I will argue that the current perceptions of Asian Americans in the United States are deeply rooted in the history of immigration and have harmed many of those who have not been able to fit into those stereotypes. Although studies have shown that Asian Americans generally receive lighter sentences than other members of ethnic and racial minority groups, discrimination and racial perceptions have negatively affected Asian American criminals. I specifically argue that there has been a lack of attention to Asian Americans within the incarceration system in the larger society, in the Asian American community, and in academic fields, especially historical studies. The paper will strongly focus on the multitude of Asian American identities and cultural backgrounds and how they have led to incarceration, specifically juvenile incarceration, and also deportation for some. I will argue that the Asian American community and political climate of the United States exacerbated the issue of incarcerated Asian Americans through the expansion of gangs and lack of support for immigrants. The paper will provide a historical perspective and analysis while using many

sociological and criminological sources to fill some of the gaps surrounding the topic of Asian Americans in the incarceration system.

Data Collection on Asian Americans within the Criminal Justice System

Asian Americans make up 5.6 percent of the US population but only 1.5 percent of the federal prison population.¹⁴ The statistics on Asian Americans in the incarceration system is severely lacking primarily due to two reasons: the relatively small population and the “other” categorization. Even in states that have a higher population of Asian Americans, the categorizations are still not always inclusive of the diversity within Asians. The small population of Asian Americans in the incarceration system compared to other ethnic groups helps continue the marginalization that is demonstrated by the “other” categorization. Asian Americans are not seen as statistically significant as their own category and therefore, they have been consistently grouped with others who also have smaller populations within the criminal justice system. Therefore, there has been a lack of representation of Asian Americans reflected in the reports and as well as the information collected from the incarcerated population. This also leads to the failure of addressing the issues specific to Asian Americans involved in criminal activity because of the data gap.

In 2008, a study found that in California’s segregated prison reception centers, the “other” categorization was still being used.¹⁵ At that time, Asian American inmates comprised 6 percent of all inmates.¹⁶ Compared to the Asian American population in federal prison, the population of Asian Americans in the California prison system is proportionally higher. Since

¹⁴ “Inmate Race Statistics,” Federal Bureau of Prisons, November 24, 2018, https://www.bop.gov/about/statistics/statistics_inmate_race.jsp (accessed March 21, 2019).

¹⁵ Goodman, “‘It’s Just Black, White, or Hispanic’, 736.

¹⁶ *Ibid.*

California has the largest Asian American population in the United States and a significant Asian American political presence, it is highly unlikely that other states with a smaller Asian American population would disaggregate their data.¹⁷ Hawaii is currently the only state that disaggregates the Asian ethnic groups when they collect data from inmates.¹⁸

A 2018 report on offender data points from the California Department of Corrections and Rehabilitation had four ethnicity categories: Hispanic, Black, White, and Others. According to the report, “ethnicity is self-reported by offenders who choose from a list of 28 ethnicity types,” yet when published in report the statistical data was only depicted for four ethnicities.¹⁹

According to the report, the information on different ethnicities and races is marked down, but when analyzed or represented graphically then Asian Americans are not included as their own category. The “other” category includes American Indians, Asians, Hawaiians/Pacific Islanders, as well as offenders whose ethnicity is unknown or not self-reported.²⁰ This category makes up 6.8 percent of the total federal inmate population, which is an 0.8 percent increase from 2008.

Due to data aggregation, it is not possible to know whether the increase is mainly Asian Americans or inmates of other ethnicities. A report on the California prison population in 1980 reveals that the “Other” categorization was also used.²¹ Within the “Other” category, the numbers of male and female felons newly received from court were provided for American Indians, Chinese, Filipinos, Hawaiians, Japanese, and others.²² However in 1980, the statistics

¹⁷ “The Asian Population: 2010,” *United States Census Bureau*, Census Brief, 8, <https://www.census.gov/prod/cen2010/briefs/c2010br-11.pdf> (accessed March 21, 2019).

¹⁸ Angela Oh and Karen Umemoto, “Asian Americans and Pacific Islanders: From Incarceration to Re-Entry,” *Amerasia Journal* 31, no. 3 (2005), 45.

¹⁹ The Office of Research: Division of Internal Oversight and Research, “Offender Data Points,” California Department of Corrections and Rehabilitation, Report, September 2018, 10, <https://sites.cdcr.ca.gov/research/wp-content/uploads/sites/9/2018/07/Offender-Data-Points-as-of-December-31-2017-1.pdf> (accessed March 21, 2019).

²⁰ *Ibid.*

²¹ Department of Corrections: Administrative Services Division, “California Prisoners: Summary Statistics of Felon Prisoners and Parolees 1980,” State of California Youth and Adult Correctional Agency, 27, <https://sites.cdcr.ca.gov/research/wp-content/uploads/sites/9/2018/04/1980-archive.pdf> (accessed March 21, 2019).

²² *Ibid.*

for Asians in the total inmate population are missing and only found within the categorization of others.²³ It seems that when there is less data, then agencies are more likely to separate the data that they receive into different ethnicities and races. Many state agencies do not include Asian as its own race category despite losing significant information in the process and thus, failing to gain any information about or create programs to assist these populations.²⁴

Perceptions and Stereotypes of Asians within the United States

The perception of Asian Americans is one that has been cemented over the course of history despite the reality being proven otherwise. The common stereotypes of Asian Americans include the model minority stereotype, the perpetual foreigner stereotype, and the yellow peril stereotype. Each of these stereotypes, which are described below, are detrimental to Asian Americans and have been used to undermine Asian Americans and their contributions to society. Even stereotypes that can be considered positive are ultimately dangerous because it often hides a connotation that is negative and automatically attributes a trait to a group.²⁵ Multiple times throughout history, the American government has used these stereotypes to form their opinions on Asian Americans as well as to form policies that have harmed the Asian community. Although there are many other stereotypes of Asian Americans, the three stereotypes mentioned have a particularly strong role in the exclusion and discrimination of Asians.

²³ Ibid, 101.

²⁴ The Bureau of Justice does not provide statistics on jail populations. More information on the statistics of California's prison population from 1851-2010 can be found on the California Department of Corrections and Rehabilitation Office of Research website at <https://sites.cdcr.ca.gov/research/archived-research/> (accessed March 21, 2019).

²⁵ Kumari Devarajan, "'Strong' Black Woman? 'Smart' Asian Man? The Downside to Positive Stereotypes," *National Public Radio*, February 17, 2018, <https://www.npr.org/sections/codeswitch/2018/02/17/586181350/strong-black-woman-smart-asian-man-the-downside-to-positive-stereotypes> (accessed March 21, 2019).

In the present day, the model minority stereotype is the one that is most commonly thought of and discussed. Even though the stereotype is rarely recognized by those outside the Asian American community, the belief behind the stereotype is often referenced in jokes, micro-aggressions, or even compliments. The model minority stereotype perpetuates the idea that Asian Americans are all successful.²⁶ While the model minority stereotype has been disguised as a compliment on the successful adaptation of Asian Americans to the United States, the stereotype was promoted for more sinister reasons. When young Asian Americans have high expectations placed on them not only from their family but also society, there is an immense pressure to conform to widespread beliefs.

In 1966, a *U.S. News and World Report* article praised San Francisco's Chinatown by describing it as having "an important racial minority pulling itself from hardship and discrimination to become a model of self-respect and achievement."²⁷ The article goes on further describe how the "large majority are moving ahead by applying the traditional virtues of hard work, thrift, and morality" despite the discrimination the Chinese faced during the 1882 Exclusion Act.²⁸ Unfortunately, although some Chinese do have the experiences mentioned in the article, there is also a vast majority that are not able to "move ahead" even with hard work and morality. The model minority stereotype puts Asian Americans in a vulnerable state since it has been used to further Asians as honorary whites to lower the status of other people of color, while also being used to reduce the struggles Asians themselves face. This problematic stereotype is intimidating because society discourages anyone who does not follow the norm, which includes those who are incarcerated. Asian Americans as a whole became invisible and

²⁶ Frank H. Wu, *Yellow* (New York: Basic Books, 2002), 40.

²⁷ "Success Story of One Minority Group in U.S."

²⁸ *Ibid.*

those who incarcerated face another level of marginalization accompanied with heavy stigma. The model minority has also hurt Asian Americans because the lack of scholarly research on Asian offenders is also due to a lack of interest since Asian Americans often are not viewed as a disadvantaged racial group in society.

The perpetual foreigner stereotype is a stereotype that has been typically applied to Asian Americans and Latinos/Latinas. The name, an accurate depiction of the stereotype, identifies minorities as foreigners and strips them of their American identity.²⁹ The stereotype has a lasting impression on many young Asian Americans who enter into adulthood with an unclear sense of identity. Asian Americans navigate the interstitiality of race by often not being classified as a person of color or as a white person. Even though Asians started arriving in the United States dating back to the mid-19th century when Chinese arrived on the West Coast to work in the mines and on the railroads, Asian Americans have still been viewed as Asian rather than American.³⁰ Although the history of Asian in the United States has substantiated the American identity of Asian Americans, the perpetual foreigner stereotype is one that refuses to budge. The perpetual foreigner stereotype makes it even more difficult for new immigrants to assimilate within the culture. The stereotype increased possible racism and discrimination, pushing juveniles towards crime as a way to find a sense of community.

While the perpetual foreigner stereotype already classified Asian Americans as “others”, the yellow peril is a stereotype that dates back to the 1870s when the Chinese first arrived in

²⁹ Que-Lam Huyh, Thierry Devos and Laura Smalarz, “Perpetual Foreigner in One’s One Land: Potential Implications for Identity and Psychological Adjustment,” *Journal of Social and Clinical Psychology* 30, no. 2 (2011), 134, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3092701/pdf/nihms287138.pdf> (accessed March 21, 2019).

³⁰ Harry H.L. Kitano and Roger Daniels, *Asian Americans: Emerging Minorities* (Upper Saddle River, New Jersey: Prentice-Hall, 1988), 3.

California as laborers.³¹ White Americans did not like how the population of Chinese immigrants was increasing and the Chinese were seen as taking over their territory. Another well-known example of yellow peril taken to extreme measures was the placement of Japanese Americans in internment camps during World War II because the United States government questioned their loyalty.³² President Franklin D. Roosevelt authorized it with the Executive Order 9066 since it was classified as an action important to the national defense of the United States.³³ However, despite this Nisei were still encouraged to serve in the armed forces and many were drafted or even voluntarily joined. Asian Americans have felt constant pressure to prove their American identity even though they are often unsuccessful. In 1922, a Japanese American who was born in Japan but lived in the United States for twenty years went to the Supreme Court after being found ineligible for citizenship.³⁴ The Supreme Court declared that the Naturalization Act of 1906 only allowed “free white persons” and “persons of African nativity or person of African descent.”³⁵ The ruling upheld that Ozawa was ineligible for citizenship because only Caucasians were considered “white.”³⁶ Despite how the United States claimed Asian Americans as a ‘successful minority’, the government created many barriers to restrict Asians whenever they were viewed as too threatening or foreign.

Regarding criminal activity and Asian Americans, police officers often created photo books of gang members or suspected gang members.³⁷ While racial profiling was illegal, it was still commonly carried out in the 1990s as well as in the present. Some counties had and still

³¹Rhoda J. Yen, “Racial Stereotyping of Asians and Asian Americans and Its Effect on Criminal Justice: A Reflection on the Wayne Lo Case,” *Asian American Law Journal* 7, no. 1 (2000), 7.

³² Helen Zia, *Asian American Dreams: The Emergence of An American People* (New York: Farrar, Straus and Giroux, 2000), 42.

³³ *Ibid.*

³⁴ *Takao Ozawa v. United States*, 260 U.S. 178 (1922).

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ Yen, “Racial Stereotyping of Asians,” 18.

maintain police gang-tracking databases, which included suspected gang members and their names, addresses, telephone numbers, and other personal information.³⁸ Police officers and Asian gang task forces took mugshot-like photographs of possible gang members without receiving their consent and would keep the album book on hand as a reference. The book was supposed to allow eyewitnesses to identify the suspect and so that the police would be able to differentiate between Asian faces.³⁹

In response to the Asian mug-books, there was great backlash and anger from the Asian community particularly because there were also wrongful arrests due to the racial profiling.⁴⁰ There was not solid proof of evidence that the photographs the police took were truly of gang members and it led the general view of all Asians as possible criminals. Police became less lenient of Asian Americans who were involved in criminal activity since they viewed Asian Americans as dangerous because of the yellow peril stereotype. Even if someone was not a gang member, living in neighborhoods associated with gangs or having friends in a gang led police members to consider them guilty by association.

Another article published in 1980 discussed the rising Asian crime and made the direct correlation to immigration.⁴¹ There were some lawsuits made against the police, including one filed after the police raided a sewing shop and home looking for illegal immigrants from China.⁴² The police did not have a warrant and forced entry into the house after an anonymous tip without

³⁸Loren Siegal, "Gangs and the Law," in *Gangs and Society: Alternative Perspectives*, ed. Louis Kontos, *et al.* (New York: Columbia University Press, 2003), 226.

³⁹ De Tran and Iris Yokoi, "O.C. Asians Say Police Photos are Harassment," *Los Angeles Times*, November 15, 1992, http://articles.latimes.com/1992-11-15/news/mn-1093_1_fountain-valley-police-department/2 (accessed March 21, 2019).

⁴⁰ *Ibid.*

⁴¹ Joel Kotkin, "California's Asian Communities Are Seething with Crime," *The Washington Post*, February 13, 1980.

⁴² Seth Faison, "Asian-American Lawsuit Tries to Make a Point: Police Caution," *New York Times*, May 1, 1994, <https://www.nytimes.com/1994/05/01/nyregion/asian-american-lawsuit-tries-to-make-a-point-police-caution.html> (accessed March 21, 2019).

confirming the validity of the tip.⁴³ Even after filing a formal complaint with the police department, there were no responses from the police nor any apologies despite not finding anything illegal in the shop.⁴⁴ Asian crime in the United States was heavily linked to crime with overseas groups and proposed solutions including mass deportation and heavy surveillance.⁴⁵

East Asians and Southeast Asians

While it is important to note the similarities between Asian Americans, there are also the immense differences between each ethnicity as well as differences between individuals belonging to the same ethnicity. Asian Americans have been grouped as others or seen as a cohesive group, which is far from the truth. In 1965, the Immigration and Nationality Act was established, which abolished the national origins quotas and brought in mass immigration.⁴⁶ Immigration preference categories were based mainly on family reunification and professional skills, increasing the flow of highly skilled workers on temporary visas.⁴⁷ There was also more undocumented immigration stemming from a global capacity limit on immigration. These Asian immigrants were a varied group with different skill sets and connections to the United States. East Asians were more likely to be going to the United States for their skills in technology, science or engineering especially during the period of the Cold War.⁴⁸ Southeast Asians were more likely to flee from their home countries because of war or persecution and enter the United States as refugees.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ Kotkin, "California's Asian Communities."

⁴⁶ Lee, *The Making of Asian America*, 285.

⁴⁷ *Ibid.*, 286.

⁴⁸ *Ibid.*, 289.

Even when comparing East Asians and Southeast Asians, there are cultural differences and discrimination between the two groups. Most people think of East Asians when they hear the term Asian Americans, which excludes Southeast Asians from a large portion of the conversation. The main political conflicts happening that caused the second wave of immigration from Asian countries included authoritarian governments and wars. The Vietnam War lasted between 1955 and 1975 and involved multiple countries including Vietnam, Laos, Cambodia. The Refugee Act of 1980 allowed many Southeast Asians to become refugees in the United States and by 1984, refugees made up more than one-fifth of Asian Americans.⁴⁹ In California, 64.6 percent of Asian American and Pacific Islander prisoners are immigrants and refugees.⁵⁰ A population that was significantly affected was the Hmong population, who was severely persecuted because they aided the United States in fighting against the North Vietnamese Communist Party. While Asian Americans are typically seen as having a higher income compared to other races, 27 percent of Hmong families live below the poverty line compared to 11 percent of United States families overall.⁵¹ Laotian youth had four times the expected rate of incarceration for the population size in California, while Cambodian youth had four times the expected rate.⁵²

While there were a significant number of professionals who arrived in the United States, there was also a large population of immigrants who arrived undocumented or as low-skilled workers. These immigrants worked multiple jobs in order to provide their children with a better

⁴⁹ Linda W. Gordon, "Southeast Asian Refugee Migration to the United States," in *Pacific Bridges: The New Immigration from Asia and the Pacific Islands*, ed. James T. Fawcett and Benjamin V. Cariño (New York: Center for Migration Studies, 1987), 157, <https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.2050-411X.1987.tb00959.x> (accessed March 21, 2019).

⁵⁰ Oh, and Umemoto, "Asian Americans and Pacific Islanders," 48.

⁵¹ "Southeast Asian Americans and the School-to-Prison-to-Deportation Pipeline," *Southeast Asia Resource Action Center*, Report, April, 2018, http://www.searac.org/wp-content/uploads/2018/04/SEAA-School-to-Deportation-Pipeline_0.pdf (accessed March 21, 2019).

⁵² *Ibid.*

education or to pay back the fees they owed in return for being smuggled to the United States. Many of these immigrants also had relatives or friends in the city that they were moving to in order to help with their transition. Some Koreans arrived in the United States and pooled resources in a money-lending system called *kye* in order to gather enough money to open small businesses. During the 1992 Los Angeles Riots, many Korean Americans had their shops and businesses terrorized without receiving any assistance from the police.⁵³ Over 1 billion dollars of property were damaged in the six days of unrest while Korean-owned property suffered between 35 to 40 percent of the destruction.⁵⁴ Due to the success of many Korean Americans in Los Angeles, as well as the model minority stereotype, the relations between Korean Americans and African Americans have been historically strained. Many Asian Americans have also failed to acknowledge the system of oppression against African Americans that has been in place for centuries. The tension between African Americans and Asian Americans detracts energy and resources away from tackling issues that affect the two communities and does not address the historical basis of the conflict.

Adaptation to the United States

Due to the varying experiences of Asian immigrants who arrived in the United States, everyone had different experiences in adjusting to American culture. In areas with a large population of Asian Americans, there was stronger resentment against Asians because of their perceived success and threatening, increasing population. In areas with a small population of

⁵³ Kyung Lah, "The LA Riots were a Rude Awakening for Korean-Americans," *CNN*, April 29, 2017, <https://www.cnn.com/2017/04/28/us/la-riots-korean-americans/index.html> (accessed March 21, 2019).

⁵⁴ Chris Fuchs, "Communities Work to Build Understanding 25 Years after LA Riots," *NBC News*, April 25, 2017, <https://www.nbcnews.com/news/asian-america/communities-work-build-understanding-25-years-after-la-riots-n748591> (accessed March 21, 2019).

Asians, Asian Americans were treated as the pushed-aside minority. After arriving to the United States, there were often language barrier obstacles as well as cultural differences. Although immigrants in the United States led different lives after arriving to the country, almost all of them wanted their children to live better lives through the means of education and hard work. The American dream is prevalent among Asian Americans who believed that hard work will pave the road to success and inspired the earliest Asian immigrants to go to America. Asian parents are known to push their children to excel academically so that they will be successful and will not have to suffer the same experiences that the parents went through. Unfortunately, the pressure and expectations lead to resistance from the youth especially those who are already struggling to successfully integrate into their new environment.

Youth who arrived in the United States but did not find the acceptance that they longed for often turned to alternative solutions to find acceptance and community. In California, 30.0 percent of Asian American prisoners were between the age of eighteen and twenty-two, which indicates the trend of juvenile incarceration.⁵⁵ In 1999, there was a change in the judicial process where many states decided to make a shift from rehabilitating child offenders to trying them as adults instead.⁵⁶ The state's "three strikes" law also has worsened the problem of juvenile incarceration; in 1992, almost three in ten youths charged with violent crimes were transferred to adult courts or locked up in secure detention facilities.⁵⁷

Gangs are quick to find emotionally vulnerable teenagers and offer protection, a family, money, and other benefits. In return, the gang members would have to carry out the tasks that

⁵⁵ Oh, and Umamoto, "Asian Americans and Pacific Islanders," 49.

⁵⁶ Jungwon Kim, "Youth in Crisis: As Lawmakers Crack down on Juvenile Crime, Children Become the Biggest Losers," *A. Magazine*, September 20, 1999.

⁵⁷ Peter Baker, "Virginia Debating Crackdown on Violent Teens Along with Nation," *The Washington Post*, January 16, 1996, https://www.washingtonpost.com/archive/local/1996/01/16/virginia-debating-crackdown-on-violent-teens-along-with-nation/04039d03-495e-43de-80f1-9c2d847f0579/?utm_term=.f9564b990bcd (accessed March 21, 2019).

they are given by their gang leaders, which usually included protecting their territory and extorting money.⁵⁸ Gangs were able to provide protection from other gangs or enemies that a gang member had made, and the gang was able to serve as a family. Gang leaders would provide money for gang members' girlfriends' abortions, college tuition, as well as general spending money.⁵⁹ Gang members placed heavy emphasis on the family aspect of gang membership and how the gang will have your back as long as you stay loyal.⁶⁰ Gangs were especially seen as threatening in the 1980's because Asian gangs often partnered with larger crime syndicates back in Asia.⁶¹ Local police in heavily Asian American populated areas specifically targeted gangs or Asians who looked like they belonged to a gang.

Gangs can be defined as a primarily exclusive group, have a group name, claim a territory, and engage in criminal and other anti-social behavior on a regular basis.⁶² Many of the Asian gangs classified by law enforcement or media do not fit the criteria that makes up a gang. There have also been cases where Asian gangs have been given names by law enforcement for easy identification and then the gang decides to use the name.⁶³ When young Asian youth carry out a crime, the media is quick to label the youth as gang members even if evidence points to the contrary.⁶⁴ Gangs are something that law enforcement and communities have experience with and knowledge of, which means that if the youth did not fit that criteria then it would mean that they would have to address other pervasive issues. The government has failed to acknowledge the adjustment difficulties that many of the young refugees face after arriving in the United

⁵⁸ Donatella Lorch, "'Hong Kong Boy': A College Student, and a Ghost Shadow," *New York Times*, January 6, 1991.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ William L. Chaze, "Asian Gangs Stake Out Turf in U.S.," *U.S. News & World Report*, November 5, 1984.

⁶² Song and Dombink, "'Good Guys' and Bad Guys," 34.

⁶³ *Ibid.*, 34.

⁶⁴ *Ibid.*, 36.

States and instead turned to stereotyping Asians. The United States also did not provide support for refugees who fled from the Vietnam War, which is something that has had lasting repercussions.

The perception of Asian Americans has led to great stigma regarding those who have “fallen outside of the cracks.” In 1987, the Attorney General of California made a statement about an Asian crime “epidemic” and how the Asian gang have been “preying” on Asian American citizens and new immigrants.⁶⁵ The *New York Times* article summarizing the official’s speech predicted that there would be complaints from California’s Asian population.⁶⁶ Previously, there was backlash from Asian Americans who did not like how crime in the Asian communities was being highlighted because there was a fear of increased bigotry and racism.⁶⁷ Many Asians were committing crimes against other Asian Americans because they were less likely to report crimes to the police. A National Crime Victimization Survey conducted between 2006 to 2010 found that Asian Americans and Pacific Islanders had the highest percentage of unreported crime.⁶⁸ In many of their home countries, police were corrupt and could possibly be working with the gangs themselves. Many Asian Americans also had the fear that the gangs would retaliate if they reported the crime and that the victim would bring shame to their family and community. The failure to report crimes will also lead to a failure in policy change and decreased police vigilance. In order to maintain the minority stereotype and to preserve dignity, many Asian Americans have decided not to report their crimes even if that means that the issue of targeting Asians will not be addressed.

⁶⁵ Robert Lindsey, “Californian Sees Rise in Asian Gangs,” *New York Times*, July 9, 1987.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ Lynn Langton et al., “Victimizations Not Reported to the Police, 2006-2010,” *United States Department of Justice*, August 2012, <https://www.bjs.gov/content/pub/pdf/vnrp0610.pdf> (accessed March 21, 2019).

When fighting for their criminal case, immigrants often do not have the knowledge or resources to fight their case successfully. In the case of Eddy Zheng, his parents did not know how the legal system worked and thought that he should just plead guilty and face punishment.⁶⁹ His family was unfamiliar with the justice system and did not know that he would be charged as an adult and would be sentenced to life in prison.⁷⁰ Since Eddy was sixteen, he did not understand the seriousness of his crimes and thought that he would be released relatively quickly.

While translation errors can be a nuisance in almost all circumstances, court translation mistakes can be the difference between being convicted or being released. There was also the language barrier issue that many immigrants faced; public defenders would have a difficult time explaining to the defendant the legal system process since a translator was only available during the court session. In 1993, an article was published on the lack of interpreters in the New York court system.⁷¹ A specific case detailed that out of desperation, a judge asked a Vietnamese co-defendant to be the interpreter; the conviction was later appealed because the co-defendant complied with the judge's request.⁷² The article revealed a larger trend in the New York city court system; the interpreters are often "overworked, underpaid, undertrained and often unavailable."⁷³ This leads to unfair trials since testimonies can be misunderstood, mistakes can be overlooked and there will often be a delay in the hearings.⁷⁴ There is little to no way of successfully appealing based on faulty interpretation and the interpreters usually have no

⁶⁹ Bernice Chan, "Jailed for Life in California, Denied Parole 12 Times: How Chinese-American Found Redemption after Prison," *South China Morning Post*, December 3, 2018.

⁷⁰ *Ibid.*

⁷¹ Jan Hoffman, "New York's Court Interpreters: Overworked Link," *New York Times*, December 24, 1993, <https://www.nytimes.com/1993/12/24/news/new-york-s-court-interpreters-overworked-link.html> (accessed March 21, 2019).

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

preparation as they jump from one case to another.⁷⁵ While the New York Court system was plagued with inefficient interpreters, other areas such as the Los Angeles county had better trained and paid interpreters. The discrepancy between two major cities is indicative of the lack of regulation and resources available to immigrants. The Court Interpreters Act was signed by President Jimmy Carter in 1978, which established the right of any individual in a federal court case to have a certified court interpreter if there was either a language barrier or a hearing or speech impairment.⁷⁶ Although there was a ruling on federal court cases, there was not a uniform law in different state courts on the right to have an interpreter or for the interpreters to adhere to a certain standard. California was the first state in the United States to adopt laws requiring certain standards for court interpreters and to have certification requirements in 1993.⁷⁷ The attorneys are also notoriously overworked, which also contributes to a larger number of plea deals.

Asian Americans and the Sentencing Process

While there have not been many studies conducted about incarceration that have included Asian Americans, there have been a few studies that have examined the incarceration rates of Asians compared to other races. A study from 2002 examined federal sentencing lengths and found that Asians receive milder sentences compared to whites, who in turn receive less harsh sentences compared to blacks, Hispanics, and Native Americans.⁷⁸ Asians were more likely to be convicted of an economic-related offense, which usually are given “milder sentences than those

⁷⁵ *Ibid.*

⁷⁶ Interpreters in Courts of the United States, 28 U.S.C. § 1827 (1978).

⁷⁷ “Court Interpreters Program Fact Sheet,” *Judicial Council of California*, April 2017, https://www.courts.ca.gov/documents/Fact_Sheet- Court_Interpreter.pdf (accessed March 21, 2019), 2.

⁷⁸ Everett and Wojtkiewicz, “Difference, Disparity, and Race/Ethnic Bias,” 197.

convicted of offenses such as drug, violent, firearms, or immigration offenses.”⁷⁹ While examining the offense levels of those in the federal court, 56.3 percent of Asians were convicted of an offense level between 1-10 out of 43 offense levels.⁸⁰ The study also found that almost ninety percent of Asian Americans had a criminal history level between 1 to 2 compared to seventy-five percent of whites in the same category.⁸¹ Almost half of the Asian American cases tried were in the West region.⁸² It is difficult to differentiate whether the shorter sentencing length that Asian Americans receive is due to the offense type and criminal history or because of their race. The researchers found that race differences are not completely explained by offense-related characteristics and that there were still substantial differences when the offense-related factors were controlled.⁸³

Although Asians had a shorter sentencing in the federal sentencing system, most sentencing occurs at the state level. Overall, Asians are treated more leniently than other racial and ethnic groups at the incarceration decision and is the race that is the least likely to be incarcerated.⁸⁴ A 2015 study found that the likelihood of Asian Americans being incarcerated is the lowest compared to other races and that they have the second shortest sentences, only having a longer sentence than whites.⁸⁵ One possible factor in why Asian Americans are given short sentences or have a less likely chance of being incarcerated is due to the model minority stereotype. The model minority stereotype will lead to a perception of Asian Americans as less dangerous and therefore needing less formal social control, incarceration.⁸⁶

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*, 199.

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Ibid.*, 207.

⁸⁴ Franklin and Fearn, “Sentencing Asian Offenders in State Courts,” 105.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*, 100.

The model minority stereotype is one that has tangible effects on the criminal justice system and while it often can be beneficial to individual offenders, the stereotype and lighter sentencing masks some of the problems Asian Americans face. The original intent of the model minority stereotype, to pit minorities against one another, especially African Americans and Asians is still enforced through the unfair sentencing. Asian Americans as model minorities erases some of the systemic issues that plague minorities and people of color. Asians are less likely to be convicted of drug-related or public order crimes and more likely than other racial groups to be convicted of property crimes: burglary, theft, auto theft, etc.⁸⁷ A finding of the study showed that when the criminal history and offense seriousness was controlled, Asian offenders were even less likely to be incarcerated compared to white offenders.⁸⁸ After relevant legal factors were controlled, the study found that Asians were treated the same as Whites and Blacks and slightly more leniently than Hispanics during the in/out decision, which is where the judge decides whether the offender should be incarcerated.⁸⁹

While multiple studies have found that Asian Americans tend to commit less violent crimes and receive shorter sentences, there has been data from 2004 that found that 64 percent of Asian American inmates in California were incarcerated for violent offenses.⁹⁰ The same study found that over one-fifth of Asian American inmates in California serve sentences of twenty-five or more years and serve the longest sentences compared to other races.⁹¹ Even though there is a shorter sentence on average for Asian Americans compared to other minorities, many of the juveniles sentenced were given life sentences or other excessively harsh punishments.

⁸⁷ *Ibid.*, 106.

⁸⁸ *Ibid.*, 109.

⁸⁹ *Ibid.*, 113.

⁹⁰ Oh and Umemoto, "Asian Americans and Pacific Islanders," 50.

⁹¹ *Ibid.*, 51.

The perceptions of Asian Americans have a crucial role in how Asians are sentenced or treated within the criminal justice system. Although there have been increases in Asian American crime and gangs especially in the 1970's and 1980's, Asian Americans still are not heavily linked with crime.⁹² A study investigated the classification of Asians who have come into contact with the criminal justice system and found that arrests, convictions, and incarceration lead to a lower chance of being classified as Asian.⁹³ As an Asian American person came into repeated contact with the criminal justice system, it decreased their odds of being viewed as Asian and increased their odds of being classified as Native American, especially with alcohol-related offenses.⁹⁴ "Asianness" is seen as being incongruent with crime while there are multiple stereotypes linking blackness and crime. Since being Asian and crime is seen as contradictory, Asian Americans remain eligible for racial reclassification and therefore continue receiving more lenient sentencing.⁹⁵ Race and classification as well as crime still remain heavily tied to racial inequalities and perceptions of the past, leading to problematic racial profiling.

Racial stereotyping is influenced by the model minority stereotypes which supports idea that Asian Americans are easier victims of crime even though Asians typically are not viewed as victims of racial discrimination.⁹⁶ It is also difficult to convince juries to identify with the Asian victim because of the yellow peril stereotype, which would undermine the victim status of Asian Americans. In some cases, the defendant will attribute their criminal acts to their culture during their trial and defense.⁹⁷ Cultural defense proves to be detrimental to Asian Americans as a whole since it perpetuates the yellow peril stereotype and promotes the view of Asians as

⁹² Saperstein, Penner, and Kizer, "The Criminal Justice System," 108.

⁹³ *Ibid.*, 114.

⁹⁴ *Ibid.*, 116.

⁹⁵ *Ibid.*, 117.

⁹⁶ Yen, "Racial Stereotyping of Asians," 12.

⁹⁷ *Ibid.*, 20.

primitive and backwards. However, in specific cases, culture as a defense can be beneficial if the jury is able to take into consideration the defendant's cultural and socioeconomic background.⁹⁸ While culture does play a role in social problems, there are many other reasons and historical practices that have exacerbated social problems in the Asian Americans communities.

After inmates have finished serving their time, they are released into society and have to go through the re-entry process. California's Department of Corrections has contracts with 19 re-entry centers but none of the centers have programs specific to Asian American ex-offenders and their families.⁹⁹ There were five known non-profit programs in 2005 that provided services to Asian Americans although the programs did not receive any government funding to provide the services.¹⁰⁰ The lack of programs and services targeted towards Asian Americans harms the community because ex-offenders will be more likely to reoffend without support from those around them. A major goal of incarceration is to punish and reduce the chances of committing another crime after the offender is released. In 2003, four inmates at San Quentin State Prison proposed an education program that would include classes that reflected their cultural history and identity.¹⁰¹ However, the program was turned down because some of the inmates bypassed some of the regulations needed in order to circulate materials to the outside and the inmates were thrown into solitary confinement for their actions.¹⁰² Although the class was not able to pass at that time, the Asian American Prisoner Support Committee was able to start a program later at San Quentin State Prison called ROOTS, Restoring Our Original True Selves, to learn about

⁹⁸ Harvey Gee, "Asian/Americans as Criminal Defendants," in *Asian/Americans, Education, and Crime: The Model Minority as Victim and Perpetrator*, ed. Daisy Ball and Nicholas Daniel Hartlep (Lanham: Lexington Books, 2017), 41.

⁹⁹ Oh, and Umemoto, "Asian Americans and Pacific Islanders," 52.

¹⁰⁰ *Ibid.*

¹⁰¹ Lim, "Asian American Studies Denied."

¹⁰² *Ibid.*

Asian American and Pacific Islander history, culture and identity.¹⁰³ The ROOTS program is held weekly in the prison and it tries to integrate Asian American culture and identity with trauma, mental health, and reentry.¹⁰⁴

Stigma and Incarcerated Asian Americans

While perceptions of Asian Americans in the United States can influence incarceration, Asian cultural beliefs also interact with American perceptions. In many Asian cultures, “saving face” is very important in social interactions and has to do with maintaining dignity and honor as well as keeping up appearances. Rather than the definition of the physical face, “face” is more of the conception of oneself and an outward image is presented with one that is internally consistent.¹⁰⁵ It is important to avoid face-threatening acts and to also help save the face of others.

The United States celebrates individualistic achievements while most Asian countries and cultures are collectivist societies. A person is not only responsible of saving face for themselves but also for others around them especially their family. When a Vietnamese youth was sentenced to life in prison without parole, his sister expressed anger towards him especially because it has caused hardship for the whole family.¹⁰⁶ The sister also said “he made us lose face” and that she lies to family back in Vietnam about life in the United States and has hidden her brother’s

¹⁰³ Kimberly Yam, “Asian-American Prison Program Teaches About Honors Inmates’ Cultural Struggles,” *Huffington Post*, May 3, 2018, https://www.huffingtonpost.com/entry/asian-american-studies-program-california-prison-us_5ade42e8e4b0b2e81132737b (accessed March 21, 2019).

¹⁰⁴ Paul Jung, *et al.*, “Asian Americans and Pacific Islanders Behind Bars: Exposing the School to Prison to Deportation Pipeline,” Report, December 2015, 2, http://www.searac.org/wp-content/uploads/2018/04/18877-AAPIs-Behind-Bars_web.pdf (accessed March 21, 2019).

¹⁰⁵ Erving Goffman, “On Face-work: An Analysis of Ritual Elements of Social Interaction,” *Psychiatry: Interpersonal and Biological Processes* 18, no. 3 (1955), 300.

¹⁰⁶ Mark Arax, “Lost in L.A.: Some Vietnamese Teenagers from the Second Immigrant Wave Have Been Alienated by American Life and Taken Refuge in Crime,” *Los Angeles Times*, December 13, 1987.

troubles from their family.¹⁰⁷ It is not just an isolated incident of family members lying to other family and friends about their incarcerated family member. Eddy Zheng missed his grandpa's funeral because he was incarcerated, and his family lied and said that he was away for school.¹⁰⁸ Zheng also could not write letters or call extended family because the phone number and address of the prison would show his actual location.¹⁰⁹ The fear of losing face prevented conversations about mass incarceration and criminalization of Asian Americans within the community. In order to truly understand the increasing incarceration rates for Asian Americans, other issues including the history of Asians in American society and cultural values and perceptions must be investigated.

The Asian American community has tried to hide members who do not resemble the successful Asians that the model minority stereotype depicts. Even though there are certain Asian Americans who have been shunned because of their criminal activity, others have been hailed as a model of success after being reformed. Lawrence Wu was previously a gang member with an attempted murder charge that was later dropped.¹¹⁰ After the murder charge, he recognized that he could have been in jail or dead and decided that he needed to turn his life around. He had previously dropped out of high school and then later went back to get a certificate of high school equivalency.¹¹¹ After many years of hard work, he was accepted into Columbia Law School to become a corporate tax lawyer and also became the editor in chief of the Columbia Law Review.¹¹² His classmates at Columbia who were interviewed were very

¹⁰⁷ *Ibid.*

¹⁰⁸ Eddy Zheng, "Difficult Chanting Sutras," in *Other: An Asian & Pacific Islander Prisoners' Anthology*, ed. Eddy Zheng (California: Asian Prisoner Support Committee, 2007), 89.

¹⁰⁹ *Ibid.*, 91.

¹¹⁰ Associated Press, "Former Gang Member Gains New Perspective on the Law," *The New York Times*, November 26, 1998.

¹¹¹ *Ibid.*

¹¹² *Ibid.*

surprised to find out about Wu's past as a gang member because it seems like a contradiction of the model minority stereotype. The model minority stereotype excludes criminal behavior because of the poor image it brings to Asians.

Deportation of Asian Americans

Incarceration not only leads to issues with re-entry after an inmate is released but also leads to issues with immigration. An aggravated felony can lead to deportation, which makes one ineligible for a U.S. visa or green card. In 1966, the definition of aggravated felonies was expanded where misdemeanor assault convictions would still qualify for removal.¹¹³ The United States has been pressuring countries to sign agreements that would allow repatriation and in 2002, Cambodia started accepting returnees.¹¹⁴ Aggravated felons do not qualify for deportation waivers and it is very difficult to postpone deportation or appeal it.¹¹⁵ Due to these factors, aggravated felons have been moving towards requesting pardons from the governor of their state, which would wipe their criminal behavior so that they would be eligible to stay in the United States and receive citizenship.

Many ex-convicts arrived in the United States legally and qualified for citizenship but did not know that they had to fill out the paperwork.¹¹⁶ Daniel Maher was born in Macau and was supposed to be extradited back to China since Macau is a special administrative region belonging to the People's Republic of China. He was arrested at the age of 20 for his participation in a drug-related armed robbery and the United States tried to deport him to China, which failed

¹¹³ Stacy Nguyen, "Local Cambodian Men are Facing Deportation for Crimes from their Youth," *Northwest Asian Weekly* 33, no. 25 (2014), 5-12.

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ Adiel Kaplan, "Cambodians Use Pardons to Beat Trump Admin's Deportation Orders," *NBC News*, December 13, 2018, <https://www.nbcnews.com/politics/immigration/cambodians-use-pardons-beat-trump-admin-s-deportation-orders-n945996> (accessed March 21, 2019).

because China and the United States did not have an agreement in 2002.¹¹⁷ Maher was released from the detention center after one and a half years and in 2015, the United States Immigration and Customs Enforcement tried to get him deported again.¹¹⁸ Maher was granted a full pardon by Governor Brown in 2018 that cleared him of his criminal record.¹¹⁹ While Maher was able to stay in the United States because of community support, deportations overall for Asian Americans have increased with an increased emphasis on Southeast Asian Americans. The United States has been able to leverage their power over Southeast Asian countries more successfully with sanctions while the United States has to tread more carefully with East Asian countries because of crucial business and trade relationships. There is also a larger population of South East Asians who have been incarcerated compared to East Asians, which is another reason why they might have been targeted more heavily by the government.

The United States has been pressuring countries to sign agreements of repatriation as well as pressuring countries to take more people back. From the period of 1998 to 2015, over 15,000 Southeast Asians have received final orders for deportation and over eighty percent of the orders were because of old criminal offenses rather than current ones.¹²⁰ The Trump administration has been working on another agreement with Cambodia and the number of removals to Cambodia increased after the new agreement was signed in early 2018.¹²¹

¹¹⁷ Sasha Khokha, "Should a Mistake Made Long Ago Doom This Immigrant's Future?," *KQED News*, April 21, 2017, <https://www.kqed.org/news/11416893/should-a-mistake-made-long-ago-doom-this-immigrants-future> (accessed March 21, 2019).

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

¹²⁰ "Asian Americans and Pacific Islanders Behind Bars," 2.

¹²¹ *Ibid.*

The Trump administration forced visa restrictions on Cambodia because the country was being uncooperative about taking their people back.¹²² The sanction placed upon Cambodia will implement a visa suspension on certain categories of visa applicants and could be expanded to include more applicants if the government of Cambodia does not cooperate with the United States.¹²³ In 2018, the Trump administration also imposed visa sanctions on Myanmar and Laos by suspending visa issues to higher level officials; the United States government is waiting for Myanmar and Laos to issue travel documents for the deportees.¹²⁴ Many Southeast Asians who are being deported arrived in the United States as refugees and some have also been granted green cards.¹²⁵ The White House has also unsuccessfully tried to negotiate with Vietnam to take back refugees that had immigrated before 1995, who had previously been protected under another agreement. The deportation of certain immigrants can lead to potentially dangerous futures for the deportees especially because many Southeast Asians fled their countries because of serious threats to their personal safety.

While research and data on Asian Americans and incarceration is still lacking, there are many facets that still need to be explored. Mental illness is a strong component of criminal activity and the vulnerability of young minds can also lead to a greater chance of committing crimes. Youth are more susceptible to peer pressure and are prone to making decisions that are more shortsighted rather than carefully weighing their options. The court system has been

¹²² David Shortell, "U.S. to Sanction 4 Countries for Refusing Deportations," *CNN*, August 24, 2017, <https://www.cnn.com/2017/08/23/politics/trump-visa-sanctions-immigration/index.html> (accessed March 21, 2019).

¹²³ "DHS Announces Implementation of Visa Sanctions on Four Countries," United States Department of Homeland Security, Press Release, September 13, 2017.

¹²⁴ Laignee Barron, "U.S. Imposes Visa Sanctions on Myanmar and Laos Over Their Refusal to Accept Deportees," *Time Magazine*, July 11, 2018, <http://time.com/5335281/us-visa-sanctions-myanmar-laos/> (accessed March 21, 2019).

¹²⁵ Charles Dunst, "Dozens More Cambodian Immigrants to Be Deported from U.S., Officials Say," *The New York Times*, December 12, 2018, <https://www.nytimes.com/2018/12/12/world/asia/trump-deport-cambodians.html> (accessed March 21, 2019).

alternating between sending children to rehabilitation programs and trying the youth as adults. Some of the children are not even able to understand the charges that are brought up against them and even if they understand that their actions were bad, they might not have been aware of the possible repercussions of their actions.

Current Policies and Incarceration

Asian youth were found to be more than twice as likely to be tried as adults in the 1990s compared to white youth in California.¹²⁶ In 1996, Los Angeles County found Asians and other youth to be three times more likely to be transferred to adult court after being found unfit for juvenile court.¹²⁷ In the same year, adult courts were also considerably more likely to sentence African American and Asian offenders to prison than White and Hispanic offenders.¹²⁸ The likelihood that an Asian offender would be sentenced to prison if tried in adult court was 67.2 percent while the likelihood that a White juvenile would be sentenced if tried in adult court was 46.3 percent.¹²⁹ In 2012, a U.S. Supreme Court ruling found life sentences without parole sentences for juveniles was unconstitutional for crimes excluding murder.¹³⁰ The ruling would allow convicted youths to be re-sentenced and consider the age and home environment of the juveniles. In 2018, Governor Jerry Brown of California signed Senate Bill 1437, which no longer held accomplices in a crime responsible for murders if they were not responsible for the homicide.¹³¹ Previously, if someone was killed with the original intent of burglary or robbery,

¹²⁶ “Asian Americans and Pacific Islanders Behind Bars,” 2.

¹²⁷ Mike Males, and Dan Macallair, “The Color of Justice: An Analysis of Juvenile Adult Court Transfers in California, Report, January 2000, 5, <http://www.cjcj.org/uploads/cjcj/documents/coj.pdf> (accessed March 21, 2019).

¹²⁸ *Ibid.*, 7.

¹²⁹ *Ibid.*

¹³⁰ *Miller v. Alabama*, 567 U.S. 460 (2012).

¹³¹ Amelia McDonnell-Parry, “New California Law Could Reduce Hundreds of Felony Murder Sentences,” *Rolling Stone*, October 1, 2018, <https://www.rollingstone.com/culture/culture-news/california-felony-murder-reduce-hundreds-sentences-731491/> (accessed March 21, 2019).

everyone else who took part in the felony would be charged with murder even if they were not present.¹³² These two laws will hopefully restrict some of the mass incarceration that provides little room for mistakes even if the defendant was underage at the time of the crime.

There has been an increase in organizations and programs that are targeted at Asian Americans and those who have been previously incarcerated. Asian community leaders have started paying attention to the incarcerated population and need to continue advocating for a better solution to work on keeping people especially youth from going behind bars. Due to decades of tension between Asian Americans and other racial minorities, there has been a lack of cooperation to address issues that each community has in common. There is a great difference in the histories of Asian Americans who arrived willingly in the United States and African Americans who were forced into slavery in the United States, but there is still room to improve relations without one another instead of working against one another. The gang books that were used to target Asian Americans are still used mainly on African-Americans and Latino men to “shed light on the worst of the worst”, which is mainly only effective in causing more terror in the community and perpetuating stereotyping.¹³³

Conclusion

The studies that have incorporated Asian Americans in a significant method have addressed Asian Americans within the context of comparison with other races. It is also equally important to understand how Asians are treated among the different ethnicities and whether there are variations between the different subgroups. It is also important for policymakers to recognize

¹³² *Ibid.*

¹³³ Dahleen Glanton, “Column: ‘Gang Book’ is Long on Casting Blame but Short on Solutions,” *Chicago Tribune*, June 14, 2018, <https://www.chicagotribune.com/news/columnists/glanton/ct-met-glanton-column-gang-book-20180613-story.html> (accessed March 21, 2019).

the differences in sentencing and should work to sentence difference races and ethnicities impartially. There have also been a lack of studies incorporating incarcerated or previously incarcerated female Asian Americans as well as female gang members. The death penalty is still used in many states, however there also is not enough information to learn about the small population of Asian Americans on death row.

The overall court system is one that needs to be evaluated in the effectiveness of the goals that it has in punishment and reform. Increasing the numbers of Asian Americans on a jury would help to ensure a fairer ruling where the sentence is not dictated by extent of which the jury can identify with the defendant's background. Education about incarceration and providing proper community resources is also important to keep youth out of jails. If juveniles can find a supportive community, then more of them would not be motivated to engage in criminal activity. Each Asian American has had a different experience and American society has to improve the treatment of Asian Americans to reflect those differences. President Trump surprisingly approved the First Step Act on December 21st, 2018, which was a major step in criminal reform.¹³⁴ The Act would reduce sentencing for some drug charges or lower-level offenses as well as changing the "three strikes" penalty and would reduce the sentencing disparity between crack and powder cocaine.¹³⁵ The legislation also created new programs to improve prison conditions and prepare prisoners for re-entry as well as expanding time credit programs so that there would be reduced time behind bars.¹³⁶ This long overdue act will start to bridge the gap

¹³⁴ Nicholas Fandos and Maggie Haberman, "Trump Embraces a Path to Revise U.S. Sentencing and Prison Laws," *The New York Times*, November 14, 2018, <https://www.nytimes.com/2018/11/14/us/politics/prison-sentencing-trump.html> (accessed March 21, 2019).

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

between racial sentencing and disparity for all minorities, including Asian Americans so that eventually there can be equal sentencing and a true sense of justice.

On March 19, 2019, the Supreme Court ruled 5-4 in the case of *Nielsen v. Preap* that any undocumented immigrant can end up in detention without a bond hearing because of previous crimes.¹³⁷ Even if a person had committed only a minor crime many years ago, they could still be put into indefinite detention without an opportunity to be released. The ruling made by the Supreme Court endorses mass incarceration and uproots families even if the conviction is as simple as possessing marijuana. The immigration system as well as the incarceration system has been shaped by a strong historical basis, and it is the responsibility of the government to fix these broken systems that have been shaped by factors outside of an individual's control. The link between immigration, incarceration, and deportation is important in noting because there are correlational effects as well as possible causal effects. The negative associations between criminality and immigration as well as the dangerous stereotypes have exacerbated the issues of incarceration of Asian Americans. The topic of Asian Americans in the criminal justice system needs more academic research and subsequently, policy changes so that there are fewer corresponding factors between adaptation to the United States and criminal behavior. The sociological and historical factors that have worked against those who have been incarcerated must be acknowledged so that reform can be made to fix the brokenness in the criminal justice system.

¹³⁷ Adam Liptak, "Immigrants Facing Deportation Must Be Detained After Release From Criminal Custody, Justices Rule," *New York Times*, March 19, 2019, <https://www.nytimes.com/2019/03/19/us/politics/immigrants-deported-custody-release.html> (accessed March 21, 2019).

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