American Bar Association
Commission on Hispanic Legal Rights and Responsibilities

LATINOS IN THE UNITED STATES:
Overcoming Legal Obstacles, Engaging in Civic Life
GRACIAS

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Francisco Angones
Jose Astigarraga
Norma Cantú
Hon. Ida Castro
Hon. Nelson A. Diaz
Manny Flores
Jimmy K. Goodman
Horacio E. Gutierrez
Hon. Iris Martinez
Maribel Medina
Margaret Moran
Janet Murguía
Mark J. Newman
Angela Oh
Dr. Eduardo J. Padrón
Alma Morales Riojas
Jesse H. Ruiz
Manuel “Manny” Sanchez
Hon. Charles Smith (Ret.)
Carlina Tapia-Ruano
Moises V. Vela Jr.
Mauricio Vivero
Hon. Kim McLane Wardlaw

American Bar Association Commission on Hispanic Legal Rights and Responsibilities

Cesar L. Alvarez, Chair
R. Alex Acosta
Clarissa Cerda
Leticia M. Diaz
Asunción “Sunny” Hostin
Aracely Muñoz Petrich
Jenny Rivera, Rapporteur
Anthony Romero

Thomas A. Saenz
Diana Sen
Allan Tanenbaum
INTRODUCTION .............................................................................................................. 2
PRELIMINARY STATEMENT ............................................................................................ 4
LATINO DIASPORA .......................................................................................................... 7
LATINOS IN THE UNITED STATES ................................................................................. 9
   A. Demographics, Population Shifts, and Citizenship ............................................ 9
   B. Language Use and Access .................................................................................... 10
TAKING RESPONSIBILITY: RESPONDING TO ISSUES WITHIN LATINO COMMUNITIES .......................................................... 13
   A. Building Latino Communities and Pursuing Justice ......................................... 13
   B. Increasing Visibility and Participation in Democracy .......................................... 15
SEX, GENDER EQUALITY AND EQUITY, AND GENDER IDENTITY ........................................ 18
STATE AND FEDERAL LAW ENFORCEMENT ATTACK ON IMMIGRANTS ......................... 21
   A. State Legislation .................................................................................................. 21
   B. The Federal “Secure Communities” Program ...................................................... 23
VIOLENCE AGAINST LATINOS ...................................................................................... 27
VOICES FROM THE LATINO COMMUNITY .................................................................. 30
COMMISSION FACT-GATHERING AND DELIBERATIVE PROCESS .......................... 32
   A. Regional Public Hearings .................................................................................... 32
      1. Midwest Hearing–Chicago ............................................................................. 33
      2. First West Coast Hearing–San Francisco ....................................................... 34
      3. East Coast Hearing –New York City ............................................................. 35
      4. Southeast Hearing–Miami ............................................................................. 36
      5. Southwest Hearing–Austin ........................................................................... 37
      6. Second West Coast Hearing–Los Angeles ..................................................... 39
   B. Latino Law Students Forum ............................................................................... 40
   C. Stakeholder Meetings .......................................................................................... 41
      1. South ............................................................................................................. 41
      2. East Coast ..................................................................................................... 42
      3. Southeast ..................................................................................................... 42
      4. Southwest ................................................................................................... 42
      5. West Coast ................................................................................................... 43
      6. Midwest ....................................................................................................... 43
   D. Meetings with ABA Entities ............................................................................... 44
   E. Meetings with Government and Non-Profit Organizations ................................ 44
F. Meetings with the U.S. Census Bureau ................................................................. 44
G. ABA 2011 Midyear Meeting-Atlanta, GA .......................................................... 44

ABA MEETINGS AND COLLABORATIONS............................................................... 45

ACTION ITEM COMMISSION RESOLUTION 303................................................... 45

CHALLENGES FACING THE LATINO COMMUNITY IN THE UNITED STATES:
SUBSTANTIVE LEGAL ISSUES ................................................................................ 47

A. Employment ........................................................................................................ 48
   1. Employment and income status ................................................................. 48
   2. Discrimination at the workplace ............................................................. 49
   3. Wage theft ............................................................................................... 49
   4. Hazardous workplaces ......................................................................... 50
   5. Legal Framework .................................................................................. 50

B. Housing .............................................................................................................. 51
   1. Discrimination in lending ..................................................................... 51
   2. Segregation and unequal housing opportunities ................................. 51
   3. Legal Framework .................................................................................. 52

C. Education .......................................................................................................... 53
   1. Segregated schools, educational inequality and limited educational
      opportunities .......................................................................................... 53
   2. Higher education and affirmative action ............................................. 55
   3. English language learners ................................................................... 55
   4. Out-of-status immigrant students ...................................................... 55
   5. Legal Framework .................................................................................. 56

D. Health Status and Access to Quality Health Care .............................................. 57
   1. Barriers to quality health care ............................................................. 57
   2. Disparities in health outcomes ............................................................ 58
   3. Legal Framework .................................................................................. 59

E. Criminal Justice .................................................................................................. 59
   1. Overrepresentation of Latinos in the criminal justice system .......... 60
   2. Ethnic and racial profiling and the criminalization of Latino immigrants... 60
   3. Legal Framework .................................................................................. 61
F. Voting Rights

1. Latino underrepresentation and the small number of Latino elected officials
2. Redistricting
3. Vote Suppression
   a. Voter identification laws
   b. Purging of voter registration lists
   c. Voter harassment
4. Legal Framework

G. Media and Latino Images

1. Stereotyping of Latinos
2. Underemployment in the English-language media industry
3. Mistreatment of Latinos within the media industry
4. Hate speech
5. Legal Framework

H. Diversity and Latinos in the Legal Profession

1. Underrepresentation in the legal profession
2. Workplaces tainted by bias and stereotype

RECOMMENDATION

CONCLUSION

ENDNOTES
INTRODUCTION

In October 2010, American Bar Association (“ABA”) President Stephen N. Zack announced the formation of the ABA Presidential Commission on Hispanic Legal Rights and Responsibilities, composed of national and local leaders reflecting a broad range of the public and private legal sectors, and including lawyers and nonlawyers. President Zack appointed Cesar L. Alvarez, Executive Chairman of Greenberg Traurig LLP, to the Commission’s Chair, and appointed as Honorary Chairs the Honorable William Richardson, Honorable Mel Martinez, and Emilio Estefan. The Commission’s mandate is to explore and report on the urgent legal issues and challenges facing the Latino population, the largest ethnic/racial population group in the United States. The Commission is also charged with reporting on the efforts of Latinas and Latinos to address legal hurdles which impede their full participation in America’s civic life.

In furtherance of its mandate, and in order to promote the ABA’s mission to defend liberty and pursue justice, the Commission and its Advisory Committee undertook an extensive fact gathering process. The Commission held public hearings throughout the country, held meetings with stakeholders, government officials and ABA entities, and reviewed existing data and scholarly literature on the status of Latinos in the United States and the legal issues that compel action by the ABA.

This Report presents the Commission’s findings and conclusions, based on the information available to the Commission, including a summary of the demographic and socio-political status of Latinos, the legal obstacles that most adversely affect and define the ability of Latinos to fully participate in civic life, and to fully share in the promise of equality and justice under the law that is at the very core of constitutional guarantees. The Report also describes efforts by Latinas and Latinos to address these obstacles through litigation and advocacy, and the ways in which they assume responsibility for their lives and the continued vibrancy of their communities.

Based on the Commission’s research and analysis of existing data, reports, surveys and testimony submitted to the Commission, it has determined that the ABA’s goal of addressing the legal issues and impediments to full access to justice for the Latino Community can best be addressed by a permanent entity tasked with continued analysis of the legal issues affecting Latinos, and with developing appropriate and necessary recommendations, resolutions and programs. Therefore, the Commission recommends that it be established as a Standing Committee of the ABA.
Welcome to the United States
A Guide for New Immigrants
Latinos are the largest ethnic/racial population group in the United States, currently numbering over 50 million people, reflecting the historical presence of Latinos in America, and the impact of immigration trends. Latinos have a long history in the United States, reaching back over two centuries, marked by great accomplishments in the face of tremendous challenges. Many Latinos have achieved professional success and served in leadership positions, and Latinos continue to contribute to this country's political, social, and cultural life, benefitting all Americans. The legal issues championed by Latinos reflect the core legal principles and values of our constitutional system, and Latino struggles for equal treatment under the law have helped shape U.S. jurisprudence.

Despite their individual and group achievements, Latinos have yet to fully share in the benefits afforded to other members of the broader community in the United States. Based on information gathered by the Commission, it appears that there continue to be significant obstacles to equal and fair treatment for the majority of Latinos. Among the subject areas addressed in its research, the Commission reviewed information about mistreatment related to employment, education, housing, the criminal justice system, health services, access to the legal profession and biased treatment by the media.

Latinos in the U.S. today feel marginalized and believe they receive different adverse treatment based solely on “being Latino.” They are not alone in believing that Latinos are the subjects of different treatment. There is a growing sense within the general public of the discrimination experienced by Latinos. A 2009 survey by the Pew Research Center found that “[s]even-in-ten adults (70%)” responded that “Hispanics face a lot or some discrimination…,” an increase of 4% since 2001. Moreover, almost one in four Americans, 23%, stated that they believed Latinos face “a lot” of discrimination, an increase from the 19% who answered similarly in the 2001 survey. The survey’s finding is undeniable that, “big majorities of the public say there is at least some discrimination against Hispanics.”
“Not knowing the legal system makes ‘new immigrants’ very afraid of going to court for simple issues of traffic violations, and housing issues, we need to make sure that our communities know and are confident of their ability to access the legal system. It should not matter if they are undocumented or do not have money for the attorney.”

Zenaida Mendez, President, National Dominican Women’s Caucus, Written Submission, March 26, 2011, p. 4.

The lack of accurate information about Latinos has helped foster an environment in which Latinos are treated unfairly and at times inhumanely, and caused the scapegoating of Latinos as dangerous outsiders. The role of Latinos in the formation of the United States has been all but invisible to the majority of non-Latinos.11 Today, many non-Latinos know little of the history of Latinos in the U.S., in part due to the general lack of information or misinformation about Latinos, as illustrated by popular media portrayals of Latinos as foreigners with attenuated connections to the United States.12 While the current environment has created particularly harsh circumstances for immigrants, especially those who are out of legal status, all Latinos are vulnerable to attack. The growing rhetoric of hate or antipathy towards Latinos, regardless of status, has escalated.13 This environment has helped breed distrust within the Latino Community of the legal system and its officials, including law enforcement personnel, prosecutors and the judiciary.14

In the wake of the current challenges faced by Latinos, as discussed in this Report, it is critical that the ABA take steps to ensure that this country’s core constitutional and statutory protections apply fully and fairly to Latinos, and the Latino Community have meaningful access to justice.

“Our struggle for immigrant rights is a struggle for freedom. Just like in any other struggle for freedom, this nation has emerged the better for it.”

Juan Salgado, President and CEO of Instituto del Progreso Latino, Midwest Hearing, Chicago, IL, November 12, 2010, Tr. 90.
“[I]t is more important than ever … to share our own stories fairly and accurately, that people outside of the Latino community be exposed to our rich diversity and significant contributions to this country. Without this exposure, Latinos remain in the shadows as second class citizens, instead of real individuals with feelings, values and aspirations.”

Alex Nogales, President and CEO of the National Hispanic Media Coalition, January 13, 2011³
The Latino Community consists of members of various national origin subgroups, who individually, or whose ancestors, migrated to the United States many years ago. Some Latinos in the United States can trace their roots back several centuries while others are more recent arrivals. In order to better understand cultural and country-of-origin differences and the significance, if any, of such differences, the Commission invited testimony on Transnational Communities and heard about issues specific to Mexicans, Puerto Ricans, Cubans and Dominicans. These groups have disparate and dynamic histories associated with their past and current relationships to their countries of national origin and the United States.

The majority of Latinos are U.S. citizens, for whom race, ethnicity and language have had a significant impact on their experiences. Latinos have been “racialized” at different points in U.S. history—sometimes treated as “white” other times as other than “white”—and also considered by the U.S. government to be an ethnic group consisting of individuals who “can be of any race.” Latinos, in particular Afro Latinos and Latinos of mixed racial backgrounds, have been targets for distinct racial oppression, both as a consequence of the legacy of racism in the U.S. and as an expression of racial hierarchies within the Latino Community, with roots in Latin America and the Caribbean. The Latino Community has also faced challenges in successfully developing legal paradigms that best address their unique experiences as an ethnic group. Often working to clarify the ways in which ethnicity differs from race, and the ways in which ethnicity may require different consideration from the historical approaches to race-based discrimination.

In addition to the significant impact of race and ethnicity on Latino lives, Latinos have pointed to the role of language as an important aspect of Latino identity. The Spanish language has always been a source of community cohesion, but it has also been the basis for different treatment of bilingual and monolingual, or Spanish-dominant speakers.

The differences among the groups, however, pale in comparison to the numerous and transformative ways in which Latinos have a shared history of overcoming oppression in the United States. Members of Latino subgroups have faced the sting of discrimination based on ethnicity and national origin. All subgroups continue to struggle mightily to ensure that they are treated fairly. As a general matter, and as discussed in this Report, this common history is based on the continued treatment of Latinos as one monolithic group of outsiders.
A. Demographics, Population Shifts, and Citizenship

According to 2010 Census data, at 50.5 million, Latinos now constitute 16.3% of the total U.S. population. The Latino population increased 43% and accounts for most of the U.S. population growth over the past decade. The Census data establishes that Latinos are the largest minority in the United States. Undoubtedly the Latino population is of significant importance to the current and future economic and political position of the United States. The status and success of the Latino population will be a barometer of the U.S. commitment to equality and social justice.

A large percentage of Latinos, 76%, are concentrated in 9 states: Arizona (1.9 million), California (14 million), Colorado (1 million), Florida (4.2 million), Illinois (2 million), New Mexico (953,000), New Jersey (1.5 million), New York (3.4 million), and Texas (9.5 million). The top five states with the largest Latino population in 2010 were (in descending order): California, Texas, Florida, New York, and Illinois.

The impact of the Latino population growth cannot be understated. Every state saw an increase in its Latino population. In Arizona, California, Nevada, New Mexico, and Texas Latinos are more than one in four of the state’s residents. The Latino population growth was the sole source of population growth in six states: Illinois, Louisiana, Massachusetts, New Jersey, New York, and Rhode Island.

Even in states where Latinos were once a small segment of the population, they have seen their numbers increase, in certain areas exponentially. For example, in nine Southern states the Latino population more than doubled: Alabama (145% population growth from 2000-2010), Arkansas (114%), Kentucky (122%), Mississippi (106%), North Carolina (111%), Tennessee (134%), and South Carolina (148%).

The Latino population is also a very young population. Latinos constitute 23.1% (17.1 million) of children aged 17 and younger. Almost one out of four children in the United States is Latina/o. In comparison, there are over 33 million Latina/o adults, constituting 14.2% of all adults, or one in seven.

There are more Latinos than Latinas in the U.S., but the difference is small, 50.7% male and 49.3% female. However, there is a slight difference between foreign and native-born populations, with the majority of foreign-born Latinos being male.

The five largest subgroup populations (in millions) are Mexican (32.9), Puerto Rican (4.7), Cuban (1.9), Salvadoran (1.8 million), and Dominican (1.5).

The majority of Latinos—74%—are U.S. Citizens. The majority are born in the United States. According to the Pew Hispanic Center, 62.9% of all Latinos in the U.S. are native born, compared with 37.1% who are foreign born. From 2000-2010, the native born Latino population has more than doubled (51.4%) and the foreign born has grown approximately 33.2%.
Despite the fact that the majority, and overwhelming number, of Latinos are native born, much political interest has focused on the foreign-born Latino population, specifically the noncitizen, out-of-status population, and its impact on society. However, as the numbers reflect, this is a small portion of the U.S. Latino population, and of the total U.S. population. In March 2010, only 3.7% of the total U.S. population were unauthorized immigrants (both Latino and non-Latino), and constituted just over one fourth (28%) of the total U.S. foreign-born population. Although it is difficult to provide accurate numbers for this population, the Pew Hispanic Center estimates that 11.2 million unauthorized immigrants (Latino and non-Latino) live in the U.S., representing a decrease in this population over the past several years. The majority of the unauthorized immigrant population is Latino (81%).

Of the 18.8 million foreign-born Latinos in the U.S., 13.3 million, or 26.2%, are noncitizens. According to a recent Pew Hispanic Center report, of the 10.2 million total unauthorized adult immigrants in the United States (Latino and non Latino), nearly two-thirds (63%) have lived in the U.S. for at least 10 years, with over one third (35%) living in the U.S. for 15 years or more. Notably, there are at least 9 million people in “mixed-status” families, meaning families with “at least one unauthorized adult and at least one U.S.-born child.” There are also childless mixed-status Latino households. Thus, the rhetoric and targeting of immigrants has an impact on Latinos individually at a deeply personal level, and also impacts the communities in which they live because their family networks are destabilized by the threat of deportation and government scrutiny.

### B. Language Use and Access

The majority of Latinos are English dominant or literate, and approximately 39% of all Latinos, regardless of age group, speak only English at home. According to self-reported data on English-speaking ability, the majority of Latinos in the United States speak English at least very well. Of Latinos 5-17 years of age 84.5% speak English at least very well, as do 57.7% of those 18 years and older. Amongst the foreign born, almost two-thirds of those 5-17 years old (64.5%) speak English at least very well, as do 29.1% of those 18 years and older. For Latinos who are English dominant or English monolingual, the Spanish language bears cultural significance and may serve as a marker of Latino identity. According to a recent nationwide survey of Latinos, a majority believes, across generations, that it is “very important” that future generations of Latinos in the U.S. speak Spanish. Thus, the Spanish language continues to have a prominent place within the U.S. Latino experience and is a vital component of ethnic and cultural identity.

> “...every courthouse should have an interpreter available, particularly in Spanish. It's impossible to access justice or the court system if there's no one there that speaks your language.”

Adela Carlin, Legal Assistance Foundation of Metropolitan Chicago and Mujeres Latinas en Accion, Midwest Hearing, Chicago, IL, November 12, 2010, Tr. 160.
The Commission heard extensive testimony during its public hearing process on the need for language access throughout the legal system, and the consequences of failing to provide adequate language services. There are a significant number of Latinos, who are Spanish-speaking and Limited English Proficient (LEP), and the overwhelming majority of LEP or Spanish monolingual Latinos do not have interpretive or translation services readily available and cannot pay for those services. Rather, they may depend on family, friends, and the courts to provide such services when they must seek legal assistance.

Language access is particularly critical given the serious issues that arise in legal-related matters, like child custody disputes, immigration proceedings, and eviction actions. Language access issues plague areas where large numbers of Latinos have long called home, and parts of the country where changing demographics require better approaches to new linguistic service needs. For example, the U.S. Department of Justice Civil Rights Division recently issued findings based on its investigation of the North Carolina Administrative Office of the Courts (AOC), where it determined “that the AOC's policies and practices discriminate on the basis of national origin, in violation of federal law, by failing to provide limited English proficient (LEP) individuals with meaningful access to state court proceedings and operations.”50 The Division found significant harm as a consequence of the federal statutory violations.

The AOC's policies and practices have significant consequences for LEP individuals who are parties or witnesses to North Carolina state court proceedings. Among the harms we identified in the course of our investigation are longer incarceration as a result of continuances caused by the failure to locate an interpreter; serious conflicts of interest caused by allowing state prosecutors to interpret for defendants in criminal proceedings; requiring pro se and indigent litigants to proceed with domestic violence, child custody, housing eviction, wage dispute and other important proceedings without an interpreter; and other barriers to accessing court proceedings and other court operations. These harms are the function of not only a state interpreter policy that is unduly restrictive, but also of the failure to implement even this limited policy according to its terms. We further found that the AOC is aware of the harm caused by its court policies and practices on LEP individuals.51

The ABA's recent adoption of Resolution 113 on ABA standards on language access in courts is an important and welcome recognition by the ABA of the impact of language barriers on legal rights, and the urgency of addressing the need for language services in the courts. The Commission commends this important commitment to justice by the ABA, and encourages the ABA to reject any interpretation of the Resolution that would place a financial hurdle to those in need of these services.52
Latinos have a legacy of affinity group social and political activism, focused on building and sustaining vital communities. They work to improve their neighborhoods, the lives of their families, and the lives of recent Latino immigrants, who are following in the footsteps of generations of Latino pioneers. The Commission heard from advocacy groups and professional membership organizations, many established decades ago, some of more recent creation, predominantly founded and staffed by Latinas and Latinos, who are deeply committed to encouraging and enhancing Latino participation in society.

The Commission received testimony and information about the numerous ways in which Latinos have worked individually and collaboratively to address the challenges faced within their communities. The Commission found that historically Latinos have worked to address obstacles to access and success by relying on the strong leadership and determination of members within Latino communities. This testimony, however, was overshadowed by testimony and information about the scope of the challenges facing Latinos that require additional support and effort, beyond those available solely from community-based resources. This Report focuses predominantly on the challenges because they are of such urgency to ensuring equality under the law. However, in the following two sections of this Report, the Commission briefly summarizes some of the efforts of the Latino Community to address issues through community-based initiatives, including litigation strategies.

A. BUILDING LATINO COMMUNITIES AND PURSING JUSTICE

A responsibility addressed by legions of Latinos has been to ensure that the law treats fairly and justly all members of U.S. society. This commitment to ensure the legal system lives up to constitutional
guarantees of freedom, justice and equality under the law has been led by several organizations, including MALDEF, LatinoJustice PRLDEF, LULAC, the National Council of La Raza, and The ASPIRA Association and its various affiliates throughout the United States.53 These organizations have been at the forefront of fairness and justice campaigns focused on a range of issues, including education, employment, housing, and immigrant rights. They have fought for the opportunity for Latinos to choose elected officials who will represent their interests and concerns in Congress and state legislatures. The Latino-focused bar associations also stand as examples of organizations focused on working with their members to promote opportunities for success.

In addition to a legacy of activism focused on litigation, Latinos in the United States have improved their neighborhoods and lives through Latino nonprofit and charitable organizations.54 In a 2012 report by the W.K. Kellogg Foundation, which compared funding across several communities of color, the Foundation found that, “[t]he Latino was also the only community to place high significance on funding for legal services and programs related to civil and immigrant rights.”55 Latino funding of charitable enterprises goes back to the first Latino fund established in 1967. More established Latino funds focus on scholarship and professional advancement, and the largest number of Latino funds support education-giving priorities. Latino charitable giving is on the rise and 63% of Latino households make charitable donations.56

Advocates working on behalf of Hispanic persons marginalized in society because of national origin, ethnicity, race, and gender have worked to build their own institutions. For example, Latino advocates have created organizations focused on equality for women and for members of the LGBT community, working together to address domestic violence through strategies involving both women and men, ending homophobia in Latino communities through outreach and education campaigns.

“We are not victims. We have found and created many acts of daily resilience and resistance. We argue, complain, file reports, write letters, document hearings, file for fair hearings, sue, call 311, call the police, call people in charge, call the media, scream, intervene in physical situations, fight back with organizations, fight back with friends, do research, sign petitions, force the issues, go to protests, lobby representatives, go to jail, advocate for policies, advocate for ourselves, engage in community education, work street patrols, maintain spirituality, and keep trying.”

Welfare Warriors Research Collaborative, New York Written Submission, p. 4
Latino advocates have also helped to define a more inclusive agenda within organizations that seek to address issues across diverse communities. Working within organizations focused on issue-specific agendas, Latinos and their advocates have sought to make visible to the greater community the daily challenges faced by their Latino neighbors, coworkers, family and friends. Through their efforts they have shined a spotlight on problems that were otherwise invisible, helped to create meaningful access for the voiceless, and assisted these organizations in developing inclusive agendas.

In addition to working on improving the lives of Latinos by focusing on social issues, Latinos have also recognized the importance of ensuring individual economic growth, and the maintenance of a vibrant business community. Indeed, Latinos are important participants in U.S. economic growth. Latinos constitute 14.8% of the civilian labor force and 8% of the permanent federal workforce, and thus constitute a significant part of the U.S. labor pool. Latinas and Latinos have skills vital to U.S. businesses and a strong entrepreneurial spirit. Thousands of Latinos are small business owners. According to a 2010 report, Hispanic-owned businesses lead U.S. business growth at a rate of 43.7% of all business. In 2007, Hispanic-owned business generated $345.2 billion in sales, which reflected a 55% increase from 2002. A 2012 report noted that Latino purchasing power is worth approximately $1 trillion, and is expected to grow another 50% over the next five years.

Despite arguments that out-of-status immigrants fail to pay their fair share and instead impose a financial burden on federal and state governments, a recent report found that in 2010 households headed by unauthorized immigrants, which also may include persons who are U.S. citizens and in-status immigrants, paid $11.2 billion in state and local taxes, including $1.2 billion in personal income taxes, $1.6 billion in property taxes, and $8.4 billion in sales taxes. The states receiving the largest tax revenue from households headed by unauthorized immigrant populations were California ($2.7 billion), Texas ($1.6 billion), Florida ($806.8 million), New York ($662.4 million), and Illinois ($499.2 million).

### B. Increasing Visibility and Participation in Democracy

Latinos have been critical actors in the political history and life of the United States. Latinos have served in the military, and their service has been another important contribution to the nation. There have been Latino Medal of Honor recipients dating back to the Civil War. More than 300,000 Mexican Americans served in World War II, and half a million Latinos served in the military; Puerto Ricans have participated in every major American military conflict. These are but a few examples illustrating this long and extensive service.

Luminaries from the Latino Community serve as role models not only for other Latinos and Latinas, but for the broader society. The successes of Latino lawyers and judges are of great interest.
following the appointment of Justice Sonia Sotomayor to the U.S. Supreme Court. Her personal story of professional success inspires future generations of lawyers, regardless of race, ethnicity, and gender. Her achievements are the source of pride and hope for Latinos who see real opportunities now that the first Latina has taken her seat at the U.S. Supreme Court.

Latinos have worked over the past decade to ensure that their voices are heard in the U.S. political system by increasing voter registration and participation. National organizations like the National Association of Elected Officials, and Voto Latino, as well as state and local get-out-the-vote groups, have actively worked to register Latino eligible voters and remove obstacles to voter participation. The success of those efforts was visible over the last two election cycles when the number of Latinos registered to vote and the number who voted helped define the election results. In 2008, 9% of the electorate was Latino, in 2012 10% of all voters were Latino, and estimates project that the number of Latino voters will grow even more dramatically in the next few years.68

![First West Coast Hearing-San Francisco](image-url)
Sex, Gender Equality and Equity, and Gender Identity

Latinas and Latinos who are members of the LGBTQ community are also targets of discrimination. Unlike Latinas who have some statutory and constitutional recourse for discriminatory practices based on sex, LGBTQ persons are often not legally protected for discrimination based on sexual orientation or gender identity. Although marriage equality is the current focus of attention, LGBTQ people face challenges daily, regardless of their partnership status, including employment and housing discrimination, and limits to quality and appropriate health care. The challenges faced in the greater community are made even more difficult when gender identity intersects with ethnicity and immigration status. In the employment context, an employer may more readily discriminate against an employee with multiple characteristics that trigger bias than against an employee with only a single characteristic.

The gender inequality in the greater community is mirrored and experienced within the Latino Community. As discussed throughout this Report, Latinas are discriminated against based on their sex, as well as on the basis of ethnicity, and immigration status. The Commission heard testimony and the data and scholarly literature confirms that Latinas are targets of sexual abuse and harassment at the workplace, on the street and in their homes. They are also victims of human trafficking. The position of Latinas is thus defined by the intersection of their ethnicity, race, gender, gender identity, and immigration status. Especially disturbing are the limits of current legislative gender equality efforts to address gender inequality as experienced by Latinas. The inability to comprehensively address the legal challenges faced by women in the Latino community further illustrates the need to develop holistic approaches that address the needs of Latinas based on their lived experiences.

Latinas and Latinos who are members of the LGBTQ community are also targets of discrimination. Unlike Latinas who have some statutory and constitutional recourse for discriminatory practices based on sex, LGBTQ persons are often not legally protected for discrimination based on sexual orientation or gender identity. Although marriage equality is the current focus of attention, LGBTQ people face challenges daily, regardless of their partnership status, including employment and housing discrimination, and limits to quality and appropriate health care. The challenges faced in the greater community are made even more difficult when gender identity intersects with ethnicity and immigration status. In the employment context, an employer may more readily discriminate against an employee with multiple characteristics that trigger bias than against an employee with only a single characteristic.

Domestic violence is a universal problem for Latinas around the world. A similar set of factors and conditions reinforce violence against women whether it occurs domestically or broad. These factors include: patriarchal systems; women’s inferior economic status; and gender-bias in societal institutions, such as the family, judicial systems, government, schools and religions.”

“LGBT youth usually cycle through homelessness, foster care, and the juvenile justice system because in many of these settings, they face harassment and physical, verbal and sexual abuse. LGBTQ youth are commonly isolated from other youth, threatened or attacked by youth and service providers, blamed by service providers for their own mistreatment and even denied services outright because of their sexual orientation or gender identity/expression.”

Flore Bermudez, Staff Attorney, Lambda Legal Youth in Out of Home Care Project and Jody Marksamer, Staff Attorney and Youth Project Director, National Center for Lesbian Rights, Written Submission, January 2011, p. 2 (footnotes omitted).

“LGBT Latinos/as are more similar to the general Latino population than dissimilar, yet have unique legal concerns that neither heterosexual Latinos or white LGBT people have to contend with.”

Francisco Duenas, Proyecto Igualdad Coordinator, Lambda Legal, Written testimony.

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Francisco Duenas, Proyecto Igualdad Coordinator, Lambda Legal, Written testimony.

“The National Transgender Discrimination Survey [findings reveal]… Latina and Latino transgender people experienced discrimination at levels significantly higher than their non-transgender Latino/a counterparts as well as their non-Latino transgender counterparts. Furthermore, for Latino/a transgender and gender non-conforming respondents who also reported being non-citizens, rates of discrimination were often even higher.”

LATINOS HAVE HISTORICALLY BEEN TARGETS OF ANTI-IMMIGRANT POLICIES AND NATIVIST EFFORTS TO MARGINALIZE LATINOS AS OUTSIDERS. THESE EFFORTS CONTINUE TODAY. THE RHETORIC LEADS TO A DISCOURSE THAT IMPLIES THAT ALL IMMIGRANTS ARE LATINOS, AND THAT ALL LATINOS ARE RECENT, UNDOCUMENTED IMMIGRANTS. THE RHETORIC EXTENDS BEYOND THE MEDIA AND NATIVIST GROUPS, AND HAS INFLUENCED STATE LEGISLATIVE INITIATIVES IN MANY PARTS OF THE COUNTRY TO TARGET IMMIGRANTS, WITH A NOTICEABLE FOCUS ON LATINO IMMIGRANTS. FEDERAL PROGRAMS THAT RELY ON STATE IDENTIFICATION OF POTENTIAL DEPORTABLE IMMIGRANTS HAVE ALSO RESULTED IN THE TARGETING OF LATINOS. IN PART DUE TO THE UNDERLYING ASSUMPTIONS THAT ALL LATINOS HOLD A QUESTIONABLE IMMIGRATION STATUS, THESE FEDERAL/STATE PROGRAMS CREATE AN ENVIRONMENT IN WHICH NO LATINO IS SAFE FROM LAW ENFORCEMENT PROFILING.

These efforts have turned local police officers, employers, coworkers, neighbors, health care workers, school employees, and strangers on the street to potential informants, with the result that Latinos are treated as if they are exempted from the coverage of the Rule of Law, and not entitled to basic rights, fundamental to our democratic society. Mothers with tenuous or uncertain legal status are threatened with, or fear, being turned over to ICE and separated from their U.S. citizen children.

Throughout the Country, the Commission heard testimony about the harm suffered by individuals and their families, and the damaging effects caused by these programs on Latino communities. It is not surprising that these programs helped foster a growing sense within the Latino Community that a significant number of the public distrusts Latinos.

This section of the Report discusses significant aspects of state and federal programs.

A. State Legislation

A number of states proposed or enacted legislation that targets members of immigrant communities, with significant adverse effects on Latinos. These laws cover several topic areas, and seek to legislate immigrants’ ability to participate in society, unimpeded by government intrusion in their communities. According to the National Conference of State Legislatures, during the first quarter of 2012 legislators introduced 865 bills and resolutions relating to immigrants and refugees, and the top areas of interest for introduced bills were law enforcement (125), employment (119), and public benefits (92).

Challenges to this type of state legislation, filed by the federal government and public interest and immigrants’ rights organizations, had some success in the courts. The Supreme Court’s recent decision addressing the...
legality of Arizona’s legislation is a significant step towards ensuring the rights of immigrants.82

The decision in Arizona v. United States,83 the Supreme Court held that all but one provision of Arizona’s law, “S.B. 1070”, which had served as the model for several state laws, are preempted. Specifically, the Court concluded federal preemption doctrines applied to Arizona S.B. 1070 Section 3, which created a new state misdemeanor for failure to complete or carry registration documentation, a provision based on a similar federal proscription, Section 5(C), which created a new state misdemeanor for an unauthorized immigrant’s knowing application, solicitation or performance of work, a provision without any federal counterpart, and an approach specifically rejected by Congress, and Section 6, which provided for a warrantless arrest by a state officer based on probable cause that the person committed an offense making the person subject to removal from the United States.84 The Supreme Court stated clearly that the Federal Government has "broad, undoubted power over the subject of immigration and the status of aliens."85

The Court determined that the remaining provision, Section 2(B), on its face was not preempted. However, the Court specifically left open the possibility of “other preemption and constitutional challenges to the law as interpreted and applied after it goes into effect.”86 Thus, the Court has left for another day the legality of Section 2(B), and similar laws, which mandate that state officers attempt to ascertain the immigration status of certain persons stopped, detained or arrested, in cases where the officer has reasonable suspicion, “that the person is an alien and is unlawfully present in the United States.”87

“Undocumented parents have to get up and go to work every day. That means they have to drive carefully and make sure they do not get stopped for any reason by police officers. At work they must navigate the reality that raids at work places do happen and theirs can be next.”

Juan Salgado, President and CEO of Instituto del Progreso Latino, Midwest Hearing, Chicago, IL, November 12, 2010, Tr. 85.

“…Latino and immigrant communities can and will organize to fight against such initiatives and to claim our rightful place in this nation.”

Fred Tsao, Policy Director of the Illinois Coalition for Immigrant and Refugee Rights, Midwest Hearing, Chicago, IL, November 12, 2010, Tr. 99.
“America is now at war with the immigrant hands that feed us. Communities and states across the country are enacting a patchwork of highly restrictive laws that will only drive undocumented immigrants further underground and make them even more exploitable by the businesses that employ them and the criminals who prey on them. Immigrant women face the additional danger of sexual assault and rape, crimes they often are afraid to report to police because it could lead to deportation.”

Injustice on Our Plates: Immigrant Women in the US Food Industry (Mary Bauer and Monica Ramirez, authors), Southern Poverty Law Center, Written Submission, p. 5.

Although the Court did not address the potential for profiling, in part because the Court concluded that “[t]he nature and timing of this case counsel caution in evaluating the validity of 2(B),” the issue of profiling was raised by several amici. The issue is now thrown back to the states.

The role of elected officials in furthering a discourse of antipathy towards immigrants, including out-of-status immigrants, often underlies these state legislative efforts, and arguably provides legitimacy to the increased hostility towards Latinos, and the marginalization of Latino communities. Apparent public support for these legislative efforts have made Latinos feel vulnerable and has also significantly impacted Latinos’ perceptions of fairness. According to a 2007 Pew Hispanic Center National Survey of Latinos, “over half of all Hispanic adults in the U.S. worry that they, a family member or a close friend could be deported….” The survey respondents who said their local officials focused “a lot on the issue of illegal immigration in recent months are more likely than other Hispanics to report being the victim of some types of discrimination. For example, nearly one-in-five (19%) of those who perceive a heavy local government focus on illegal immigration report having been treated poorly in government offices very or fairly often.” By contrast, just one-in-nine Hispanics (11%) who perceive that illegal immigration has not been a priority of local officials report receiving poor service in government offices very often or fairly often.

B. THE FEDERAL “SECURE COMMUNITIES” PROGRAM

The “Secure Communities” federal program enlists the assistance of state and local law enforcement in immigration enforcement. According to the federal government, 2,700 jurisdictions are part of Secured Communities. Pursuant to the program state and local law enforcement must submit to the FBI fingerprints of persons they arrest or book, which the FBI sends to Homeland Security. Then, U.S. Immigration and Customs Enforcement (ICE) determines whether the person is removable, in which case ICE issues a detainer and requests that the state or local facility hold the individual up to an additional 48 hours to allow ICE to interview the person and decide whether to pursue removal.

The Commission heard powerful testimony about the adverse impact of this program on Latino immigrants, and their families and communities. Indeed, members of the Latino Community have been leaders in several state and local efforts to limit the impact of Secure Communities by enacting
policies to limit when law enforcement may honor a detainer risk from ICE to hold an individual beyond their ordinary release until ICE can take custody.96

Data provides further information on the harms posed by this program. In a recent study based on a random national sample of 375 persons identified pursuant to the Secure Communities program, and apprehended by ICE after October 1, 2008, researchers found that 39% of those identified for deportation reported having a U.S. citizen family member, and 37% reported having a U.S. citizen child.97 The data also indicated that “93% of the people identified for deportation through Secure Communities are from Latin American countries….”98 Based on their research, the authors concluded that “US citizens are significantly impacted by the Secure Communities program, both through their own apprehension, and through the impact on UC [sic] citizen family members,”99 The authors also stated that they are “concerned that Latinos appear to be disproportionately impacted by Secure Communities.”100 Further, they concluded that the “adjudication process for those processed through Secure Communities points to minimal procedural and due process protections. Thus, individuals who are not meant to be in the system, may have little opportunity to get out.”101

The Task Force on Secure Communities, a subcommittee of the Homeland Security Advisory Council created in June 2011,102 issued its findings and recommendations to the Department of Homeland Security in September 2011. Its findings and recommendations provide further information on the challenges posed by this program.

According to the Task Force,

[t]o the community at large—especially immigrant communities—local law enforcement agencies cooperating with ICE or participating in Secure Communities may be viewed as immigration agents, regardless of the actual role they play in the process. Some local law enforcement agencies and state government officials are uncomfortable with being perceived as a ‘pass-through’ to ICE via Secure Communities.103
The Task Force found that,

the impact of Secure Communities has not been limited to convicted criminals, dangerous and violent offenders, or threats to public safety and national security. Moreover, the program has raised real concerns for some law enforcement agencies because of the adverse impact it has on community policing and the perception that law enforcement agencies are participating in immigration enforcement.\textsuperscript{104}

The Task Force concluded that the program had “resulted in the arrest and deportation of minor offenders and non-criminals.\textsuperscript{105} The effects of this expansive implementation have great impact in the community and unintended impact on law enforcement because, as the Task Force also found, “[i]mmigration enforcement against traffic offenders and others arrested only for minor offenses poses the greatest risks of undermining community policing.”\textsuperscript{106} This is particularly serious given “that the goals of civil immigration enforcement and those of law enforcement agencies are not always aligned and may sometimes be contradictory.”\textsuperscript{107} The public perception of Secure Communities is negative, and no less because, “mixing individuals who have no criminal convictions or who have only low-level convictions with serious offenders is having the unintended consequence of undercutting the credibility of the entire Secure Communities Program.”\textsuperscript{108}
A report from the California State Attorney General's Office found that California experienced a 47% increase in anti-Latino hate crime events in 2010 from the previous year.
Latinos are under attack where they live, work and go to school. These attacks take the form of derision, mockery, dehumanization, and in a troubling growing trend, physical assaults. Latinos have long been the targets of discrimination, bias and violence. However, over the past decade, the hostility towards the Latino community has reached historic proportions. For some sectors of the Latino Community even their neighborhood does not provide places of safety and security.

From 2003-2007, hate crimes targeting Latinos increased 40%. According to federal 2010 data, 9% of all single-bias incidents victims were targeted due to anti-Hispanic ethnicity or national origin bias. California, home to 14 million Latinos, provides useful information about the Latino experience with bias crimes at the state level. A report from the California State Attorney General’s Office found that California experienced a 47% increase in anti-Latino hate crime events in 2010 from the previous year. From 2003-2009, nearly 90% of the hate crime victimizations “were perceived to be racially or ethnically motivated.” The majority of violent hate crimes were interracial, and “[n]early 70% of Hispanic victims of violent hate crime were victimized by white offenders.” Almost all hate crime victims indicated that the offender used hate language, and approximately 23% of hate crimes involved serious violent crimes.

Latinos continued to be targets of hate crimes, even while total hate crime incidents and victimizations decreased from 2008-2010. Hate crime victimizations known to the police declined 9% from 2003-2009, according to Uniform Crime Reporting Program data the percentage of single-bias incidents stemming from ethnicity/national origin bias, remained steady for most of this period, at about 12% of all such incidents. Anti-Hispanic bias constituted about 65% of all ethnicity/national origin single-bias incidents. Moreover, a number of hate crimes against Latinos may be underestimated given that the Uniform Crime Reporting Program data is based on actual counts of offenses reported by law enforcement agencies. The National Crime Victimization Survey found that approximately 49% of ethnicity-based hate crime victimizations are not reported to the police, and that law enforcement officials have been criticized for undercounting bias-motivated crime in local jurisdictions. Data compiled from 2003-2009, indicate that violent hate crime victimization has decreased by 37%. Nevertheless more Latino hate crime victims than non-Latino white and Black victims suspected the offender’s motivation to be ethnic bias.

The ongoing politicization of immigration, fueled by the deployment of anti-immigrant rhetoric by some elected officials and candidates for political office, threatens to sustain a climate in which Latinos are targets for hate speech and crimes. Latinos as individuals, and the Latino Community itself, are characterized as dangerous outsiders, and the source of the country’s recent economic and social ills. Much of the recent hostility towards Latinos has its roots in anti-immigrant attitudes sweeping the country. Although a recent report found that “nativist extremist” groups, defined as groups that “harass and confront” persons they consider to be “undocumented”, decreased last year to 184, the report stated that the reduction in groups was due in significant measure to “the way that the movement was co-opted as state legislatures began passing draconian legislation meant to punish undocumented immigrants, effectively stealing the issue away from the nativist groups.”
“Police harassment has been a pervasive problem for Latino LGBT. Twenty percent report that it’s been the most pervasive homophobic experience in their lives.”

Edwin Emilio Corbin-Gutierrez, Association of Latino Men for Action, Midwest Hearing, Chicago, IL, November 12, 2010, Tr. 144.

Violence against Latinos based on other identity and status indicators includes violence based on gender identity and citizenship status. A recent report based on data collected by programs working within LGBTQ communities described violence against Lesbian, Gay, Bisexual and Transgendered individuals, and found that people of color and immigrants were disproportionately impacted by hate violence in 2011.\(^{125}\) The report found that Latino survivors and victims were 29% of all survivors and victims, the second largest survivor/victim group, and reflected a 5% increase from the prior year’s report.\(^{126}\) The report also found that undocumented survivors and victims were overrepresented in the data compared to their numbers in the general population in 2011.\(^{127}\)

Latinas may also face gender-based violence as targets of sex and labor trafficking, domestic violence and sexual harassment at work and in school.\(^{128}\)

Rosie Hidalgo, JD, Director of Public Policy, Casa de Esperanza, Commissioner, ABA Commission on Domestic Violence, Written Submission, Miami Hearing, p. 1.
According to the 2011 National Survey of Latinos by the Pew Hispanic Center,^{129} slightly over half of Latinos most often describe themselves based on their family’s country of national origin.^{130} When asked to specify their race, 36% of survey respondents chose “white”, 26% chose “some other race”, and 25% chose “Hispanic or Latino”. Thus, although the government categorizes Latinos as an ethnic group that can be of any race, the report found that, “the government’s system of ethnic and racial labeling does not fit easily with Latinos’ own sense of identity.”^{131}

The survey respondents divided evenly on their American identity. According to the survey report, “47% say they think of themselves as ‘a typical American’ while an identical share say they think of themselves as ‘very different’ from a typical American.”^{132} However, there was a significant difference between native-born and foreign-born Latinos, with almost double the native born (66%) compared to the foreign born (34%) saying they think of themselves as “a typical American.”^{133}

In a 2010 National Survey of Latinos by the Pew Hispanic Center, 61% of Latinos indicated that “discrimination against Hispanics is a ‘major problem’ preventing Hispanics in general from succeeding in America….“^{134} In addition, 34% of respondents said “they, a member of their family or a close friend have experienced discrimination in the past five years because of their race or ethnic group.”^{135}

As for the causes of discrimination, according to the 2010 National Survey of Latinos, of the respondents who were provided with four choices for the biggest cause of discrimination against Latinos, 36% percent selected immigration status as the biggest cause, 21% selected skin color, 20% chose language skills, and 17% chose income and education levels.^{136}

Notwithstanding the obstacles posed by discrimination, according to the 2011 National Survey of Latinos, 75% of Latinos “say that most people can get ahead if they are willing to work hard….“^{137}

*6% margin responded “don’t know” or “refused”.

Biggest Causes of Discrimination Against Latinos

- Immigration Status: 36%
- Skin Color: 21%
- Language Skills: 20%
- Income & Education: 17%
In its first year, the Commission implemented an ambitious agenda, centered on its fact-finding process, which included hosting six public hearings and eight stakeholder meetings across the United States, cosponsoring a Law Student Forum, and meeting with representatives from ABA entities, the federal government and nonprofit organizations. A total of over 120 persons testified or provided information to the Commission through this process. The Commission also actively participated in ABA events and governance, including cosponsoring Association programming and successfully presenting to the House of Delegates the Commission’s first resolution.

From 2011-2012, during its second year, the Commission proceeded to discuss and analyze the testimony and additional information collected during its inaugural year. On November 12, 2011, the Commission held an all day retreat during which the members discussed the information accumulated during the first year. The members considered data and testimony submitted to the Commission, and data and other information available from the Commission’s independent review of the existing scholarly research and literature on Latinos.

This section of the Report describes the Commission’s fact-gathering process as it evolved during its first year, and leading to its deliberative process in its second year.

A. Regional Public Hearings

In furtherance of its mandate, and as part of its fact finding, the Commission embarked on a series of public hearings across the country, to identify the most pressing issues facing the United States Latino Community, and to determine how the ABA could best address these issues. The Commission selected six hearing locations, which provided Commission Members with an opportunity to collect information on Latinos from different regions of the country, and allowed access to the diverse national origin groups which constitute the Latino Community in the United States. To encourage broad participation in the hearings, the Commission issued public announcements of the hearings in the respective regions and solicited requests to submit and present testimony before the Commission. Electronic submission forms were featured on the Commission’s webpage.

Over the course of the year the Commission received testimony from approximately 80 individuals. The testimony addressed a range of issues that reflect matters of region-specific concern, as well as issues of national urgency for the broad Latino Community. The Commission received testimony on the following topics: housing, foreclosures and homelessness; criminalization of immigrants; access to the courts; issues impacting Lesbian, Gay, Bisexual, Transgender Latinos; issues facing disabled Latinos; the legal landscape and its impact on Latinos; voting rights and responsibilities; Latino youth and the educational pipeline; Latino farmers rights; discrimination against Latinas at the workplace; legal services access; the DREAM Act; transnational Latino communities, including the issues affecting Puerto Ricans and Dominicans; criminal consequences of immigration law and policy; violence against Latinos; domestic violence; health care access, including access for
Spanish speakers; environmental justice; Latinos in the military; the criminal justice system and incarceration; Latinos in the media; Latinos in the legal profession. The witnesses and their testimony topics are presented below, by hearing venue and date.

1. **Midwest Hearing—Chicago**

   The Commission held its first public hearing in the Midwest, in Chicago, Illinois, at Loyola University Chicago Law School, on November 12, 2010. The following witnesses testified before the Commission:

   Commission Member Janet Murguia, President and CEO, National Council of La Raza, testified on the State of Latinos in the United States.

   Honorable Jesse Reyes, Circuit Court of Cook County, Chancery Division, and Dulce Quintero, Program Director for La Casa Norte, testified on the Housing Crisis, Foreclosures and Homelessness in the Latino Community.

   Juan Salgado, President and CEO of Instituto del Progreso Latino, and Fred Tsao, Policy Director of the Illinois Coalition for Immigrant and Refugee Rights, testified on the Criminalization of Immigrants.

   Anita Alvarez, Cook County State’s Attorney, testified on Access to the Courts.

   The Commission also received in person and written testimony submissions from the Hispanic National Bar Association (Robert Maldonado), the Association of Latino Men for Action (Edwin Emilio Corbin-Gutierrez), Wisconsin Hispanic Lawyers Association (Adria D. Maddaleni), Chicago Commission on Human Relations (Refugio Gonzalez), Access Living (Renee Luna), Legal Assistance Foundation of Metropolitan Chicago and Mujeres Latinas en Accion (Adela Carlin), and the Chicago Housing Authority (Edie Diaz).
2. First West Coast Hearing—San Francisco

The Commission held its second public hearing and first West Coast hearing in San Francisco, California, at the San Francisco Unified School District, on January 13, 2011. The following witnesses testified before the Commission:

Commission Member Thomas Saenz, President and General Counsel of the Mexican American Legal Defense and Educational Fund, testified on the Legal Landscape and its Impact on Latinos in the US.

Robert Rubin, Director of Litigation, California Voting Rights Institute, Lawyers Committee for Civil Rights of the San Francisco Bay Area, testified on Voting Rights and Responsibilities.

Ruthe Ashley, State Bar of California, and Armando Castro, Hispanic National Bar Foundation, testified on Latino Youth and the Educational Pipeline.

Fred Pfaeffle, Deputy Assistant Secretary for Civil Rights, U.S. Department of Agriculture, and Juan Sanchez, New Mexico Land Grants Council, testified about Latino Farmers.

Arcelia Hurtado, Executive Director of Equal Rights Advocates, testified on Latinas in the Workplace.

Jose Padilla, Executive Director, and Dan Torres, Attorney, California Rural Legal Services, testified on Latinos and Access to Legal Services.

The Commission also heard in-person testimony from four immigrant Latina/o students about their experiences coming to the U.S. and striving to complete their education. Director of the University of California at Berkley pre law society, Tahitia Dean, and former President of the Santa Clara Bar Association, Christopher Ariola, testified about the challenges facing undergraduate Latina/o students, including severe underrepresentation on campus and increased tuition.
3. East Coast Hearing—New York City

The Commission held its third public hearing on the East Coast in New York City, at New York University School of Law, on March 25, 2011. The following witnesses testified before the Commission:

Jose Luis Morin, Professor and Director of the Puerto Rican Research and Public Policy Institute at John Jay College, City University of New York, testified on Transnational Latino Communities in the United States, specifically on the Puerto Rican Community.

Zenaida Mendez, President and Founder of the National Dominican Women's Caucus, testified on Transnational Latino Communities in the United States, specifically on the Dominican Community.

Manuel Vargas, Senior Counsel at the Immigrant Defense Project, testified on Violence and Criminal Justice in the Latino Community, specifically on the impact on the Latino Community of Immigration-Related Criminal Laws.

David Charney, Staff Attorney, Center for Constitutional Rights, testified on Violence and Criminal Justice in the Latino Community, specifically about Police Brutality and the New York City Police Department.

Richard Rivera, Project Coordinator, Civil Rights Protection Project and former police officer, testified on Police Corruption and Racial Profiling in New Jersey.

Juliana, Latina Domestic Violence Survivor, testified about her personal experience as a domestic violence survivor and the legal challenges she encountered.\textsuperscript{143}

Theo Oshiro, Director of Health Advocacy and Support Services, Make the Road New York, testified about the Urban Environment and Latino Health, specifically about the challenges Latinos face in seeking bilingual medical and prescription services.
Elizabeth Yeampierre, Executive Director, United Puerto Rican Organization of Sunset Park (UPROSE), testified about the Urban Environment and Latino Health, specifically about environmental justice issues impacting the Latino Community.

Larry Schwartzel, Staff Attorney, Racial Justice Program, American Civil Liberties Union, testified on Education and Latino Youth, specifically the school to prison pipeline.

Carmen Mercado, Professor Emeritus, Department of Education for Hunter College, City University of New York, testified on Education and Latino Youth.

The Commission also received in person testimony from survivors of violence and their families Ryan Nuñez, survivor of police violence, and his mother Rebecca Nuñez, and Altagracia Mayi, mother of Manuel Mayi, hate crime victim.144

4. Southeast Hearing—Miami

The Commission held its fourth public hearing in the Southeast in Miami, Florida, on May 20, 2011, at Miami-Dade College. The following witnesses testified before the Commission:

Victoria Mendez and Roland Sanchez-Medina, respectively, President and Immediate Past-President of the Cuban American Bar Association, testified on the experiences of Latino attorneys in Florida.

Raquel Regalado, School Board Member, Miami-Dade County Public schools District 6, testified on the Educational Attainment of Latino Students.

Alex Acosta, Dean, Florida International University College of Law and former U.S. Attorney in Florida, testified on the Educational Attainment of Latino Students, specifically the issues facing law students.

Helen Aguirre Ferre, Opinion Page Editor, Diario Las Americas, Chair of Miami-Dade College, testified on Transnational Latino Communities, specifically on the DREAM ACT.
Jorge Mursuli, President and CEO, Democracia USA, testified about Voting Rights.

Alan Pascal, President, Broward County Hispanic Bar Association, testified about Voting Rights, specifically on judicial elections in Broward County.

Michelle Ortiz, Director, LUCHA Program Florida Immigrant Advocacy Center (FIAC), testified on Human Trafficking.

Carlos J. Martinez, Public Defender, Miami-Dade County, testified on Due Process and Barriers to Access to the Courts.

Robert Parks, Member, ABA Standing Committee on Legal Aid and Indigent Defendants, testified on Language Barriers and Access to the Courts, and discussed the Committee's proposed resolution on national standards and practices for language access to the courts.

Roberto Cruz, Managing Attorney, Community Legal Services of Mid-Florida, Inc., testified on Consumer Lending.

Carlos Rodriguez-Vidal, testified on Transnational Latino Communities in the United States, specifically about the issues facing the population of the Island of Puerto Rico.

Myriam Marquez, Editorial Page Editor, Miami Herald, provided closing remarks.

5. **Southwest Hearing—Austin**

The Commission held its fifth public hearing in the Southwest on June 20, 2011, at Austin City Hall in Austin, Texas. The following witnesses testified before the Commission:

LM Garcia y Griego, Director, University of New Mexico’s Southwest Hispanic Research Institute, testified on Latinos in the Southwest.
Norma Cantu, Professor of Law and Education, University of Texas Law School at Austin, testified about Equity in Education.

Adrienna Wong, Limon Public Interest Fellow, American Civil Liberties Union, Texas, testified about the Latino Federal Prison Population.

Dr. Vincent Fonseca, Former State Epidemiologist, Texas Department of State Health Services, testified on Latino Health.

Nina Perales, Director of Litigation, Mexican American Legal Defense and Educational Fund, testified on Electoral Districts.

Carlos Martinez, president, National Veterans Outreach Program, American GI Forum, testified about Latino Veterans.

Fernando Garcia, Executive Director, Border Network for Human Rights, testified on Border Control and Vigilantism.

Representative Trey Martinez Fisher, Texas House of Representatives, testified on Anti-Immigrant Legislation SB 1070.


The Commission also heard brief in person summaries of written testimony submissions from the following witnesses:

Carlos Salinas, Texas Rio Grande Legal Aid, Austin, Texas, testified about domestic violence and the need for multiple language services.

Honorable John Vasquez, Austin Municipal Court, testified about the criminal justice system.

Fred Pfaffle, Deputy Assistant Secretary for Civil Rights, U.S. Department of Agriculture, testified about the USDA Hispanic and Women Relief Funds and Claims Process.
James Harrington, Executive Director, Texas Civil Rights Project, testified about wage theft.

Hector Gausine, DREAM Act student, testified about his personal experiences and the need for passage of the Act.

6. **Second West Coast Hearing—Los Angeles**

The Commission held its sixth public hearing and second West Coast hearing in Los Angeles, California, on July 12, 2011, at the University of California, Los Angeles, School of Law. This final hearing featured the following witnesses who testified before the Commission:

Alex Nogales, President and CEO, National Hispanic Media Coalition, testified on Latinos in the Media and Film.

Tony Plana, Actor and Director, testified on Latinos in the Media and Film, specifically on his experiences as a Latino actor.


Victor Narro, Project Director, UCLA Downtown Labor Center, testified about Latino Service and Farm Workers.

Maggie Cervantes, New Economics for Women, testified about Latina Economic Independence.

Jessica Karp, Staff Attorney, National Day Laborer Organizing Network, testified on Secure Communities.

Esther Limm and Jessica Price, Jails Project, American Civil Liberties Union of Southern California, testified about the Latino Prison Population in State and County Jails.


Marcia Davalos, Director of Regional Networks, Latino Coalition for a Healthy Los Angeles, testified on Latino Access to Health Care.

The Commission also heard brief in-person summaries of written testimony submissions from the following witnesses:

Nancy Meza, UCLA Alumna, testified in support of the DREAM Act.

Victor Acevedo, President, Mexican American Bar Association (MABA), testified about MABA’s collaborative work with Mexico.
B. Latino Law Students Forum

On March 11, 2011, the Commission co-sponsored with the Hispanic National Bar Association (HNBA) a Forum with Latino Law Students, held during the HNBA midyear meeting in New Orleans. The Forum was intended to provide an opportunity for Latina and Latino law students to discuss the issues faced by these students in the law school admissions process, during law school, and immediately following graduation from law school. The HNBA midyear meeting is also the site for the HNBA annual moot court competition, generally attended by hundreds of law students competing in or attending the competition. The joint program sought to capitalize on this gathering of mostly Latina and Latino law students.

During the Forum, a panel of invited witnesses who work directly with law students spoke on the challenges facing Latina and Latino law students, and the programs that seek to address those challenges. The witnesses were: Edward Carlson, HNBA Law Student Division; Barbara Barreno, Chair, National Latina/o American Law Students Association; Sonji Patrick, Education Director, LatinoJustice/PRLDEF; Sannestine Fortin, Student Ambassador, Council on Legal Education Opportunity; and Natacha Carbajal, Chair, HNBA National Mentoring Program.

The witnesses addressed the following topics: the college to legal education pipeline; financial and academic barriers to higher education and law school admissions; transition from college to law school; mentorship programs; existing pre-law programs; need for Latina and Latino law professors to provide students with support within law schools; need to increase the number of Latina and Latino law students in order to energize the Latino affinity groups; the groups’ needs for financial support from law schools; the LSAT as a barrier to Latina and Latino admissions; bar passage support; and the need for mentorship early in the education process.

In addition, Mr. Carlson summarized reports from students in 13 regions describing their experiences. The student feedback indicated that first generation students know little about the law school admissions process; the application process and law school costs are often insurmountable and affect student selection of which law school to attend; students do part-time programs which adversely affect their ability to participate in externships which are important to their professional development; students lack mentors; there is a need for Latinos at the legislative level; there is a need for diversity in the Boardroom. He presented the following recommendations: increase the audience for prelaw programs; provide cost-saving webinars and podcasts; and coordinate mentorship programs.

Immediately following the testimony the attendees, including witnesses and Commission Members, divided into breakout groups for a working lunch session during which they continued the discussion of issues raised by the witnesses and additional issues of concern raised by the students in attendance. Recommended questions were provided to the groups to initiate the discussion. After lunch the participants reconvened and group representatives reported back on the issues raised in the groups. During this open forum discussion Commissioners had an opportunity to ask questions of participants.

Participants raised the following issues during the open forum: LSAT preparation costs; the difficult transition experienced by Latinos who go to law school outside of their communities, or attend law
school in areas where there are few Latino students and professionals; need for mentoring during law school; how some Latinos who may not want to be visible or “standout” do not take advantage of networking and mentorship opportunities; when students may feel they are imposing on Latino lawyers and mentors; students lack of information about the admissions process, LSAT preparation materials, and financial aid; students need for information about academic preparation in college, including course selection and ways to develop critical thinking skills; the fact that some Latinos do not pursue programs focusing on minorities or Latinos; some Latinos identify by subgroup and not only as Latino or Hispanic; and the affect of time spent away from studying to fundraise for student-initiated programs.

C. Stakeholder Meetings

In addition to the public hearings, the Commission held small, invitation-only group meetings with organizational representatives working on issues impacting the Latino Community. These meetings provided an opportunity for in-depth discussion on issues raised in the hearings and in these small meetings.

The Commission held stakeholder meetings during the following Commission sponsored events:

1. South

Commission members held a meeting with representatives from the Esperanza Charter School focusing on Latino Charter School in New Orleans, Louisiana to discuss the educational and social services challenges facing the students in the school, and the families in the community.

Following the Law Student Forum, Commission members in attendance met with Mickey Landry, the Head Master of the Esperanza Charter School, the only Latino Charter School in New Orleans, and Dan Schwarzenbach. During the meeting the participants discussed the academic and socio-economic challenges facing the students and the Charter School. The School was created by the State in 2006 and is located in a predominantly Latino neighborhood with many children who do not speak English as their first language. They are working with the Hispanic Bar and lawyers to improve opportunities for the students. Currently there are 420 students at Esperanza Charter School, most from Nicaragua and El Salvador, with a small number of Mexican and Puerto Rican students, and an even smaller number of White and African American students. They noted that in order for the Latino students to succeed they must learn the language. They are required to know the students individually and work with the parents to help the children. The staff is bilingual and the School partners with organizations like Catholic Charities to provide social services to the families. The environment focuses on academics. The unique issues for the students at this School are that they are outside the social mainstream, and do not feel they are part of America because they are so new to the area. They also live in poverty. There has been some tension between the African American and Latino students and they are working on this issue.
2. East Coast

The Commission held three meetings in New York City. One meeting with representatives from Latina organizations, a union representative, and the Latino Leadership Alliance of New Jersey. A second meeting with local Latino bar associations from New York and New Jersey. A third meeting with immigrant advocates. These meetings focused on the most significant issues currently facing the respective constituencies represented by the attendees. These issues included the lack of support systems for Latinas, lack of quality health care, patriarchy within the Latino community and the promotion of sexism and sexist stereotypes on Spanish language media, immigration status and its effect on labor participation at the workplace, entrepreneurship among Latinas and within the Dominican community, stereotypes of Latinas as not smart or as failing to contribute to the community, severe health problems of Puerto Rican and Dominican women who worked in the garment industry, Latina home attendants treated terribly and asked to provide work outside their job description, Latino youth are more internet connected, students face financial barriers to attending four-year colleges, the gender gap in college with more Latinas compared to Latinos attending, LGBT issues within the Latino community and the need to address homophobia, the need for mentorship programs, how Latinas do not know about their rights at the workplace and are harassed and discriminated against, the abusive treatment of immigrants at the workplace, the deportation of many legal permanent residents due to the focus on low level crimes, the increased number of ICE raids in New York City, Secured Communities’ negative impact on Latinos and its uneven application throughout New York State, racial profiling by law enforcement, anti-immigrant ordinances on Long Island, the wage abuse and physical attacks on day laborers, Domestic Workers Rights Act, experiences of mixed-status families in New York, diversity in law enforcement, law school pipeline, mentorship for law students and newly admitted lawyers, and birthright citizenship.

3. Southeast

The Commission held a meeting with representatives from local Latino bar associations in Florida, focusing on the continued need for diversity on the bench, immigration reform, efforts to end divisiveness among various Latino organizations by working together, mentorship programs, how ABA programs can assist Latino professionals, and legal services for moderate and low-income clients.

4. Southwest

The Commission held meetings with representatives from legal services, small business owners, and Latino bar associations. These meetings focused on immigration issues, education of Latinos and segregated schools, DREAM Act, wage abuse of undocumented workers, language access to the courts, developing Latino leadership within the legal profession, local law enforcement of immigration laws, negative impact of secured
communities, domestic violence and VAWA projects, opportunities for ABA amicus briefs on issues impacting the Latino Community, challenges facing Latino business to securing business contracts, wage abuse of Latino employees, experiences of Latina business owners, access to Latino lawyers for Latino business owners, challenges associated with E-verify use, access to capital, women and minority business centers, diversity of experience of the U.S. Latino community, increased deportation of Latinos, the need for mentorship across generations, the benefits to students of early exposure to the legal profession and the law school pipeline, and job placement and recruitment.

5. West Coast

The Commission Members attended meetings with representatives from LGBTQ associations and Latino bar associations. These meetings focused on challenges affecting Latinos within the LGBTQ community, homelessness, HIV infection and other health care issues, discrimination in social and legal services provision, language barriers, challenges facing Latino trans individuals, difficulty in securing assistance from Latino organizations for persons who are LGBTQ, lack of information about LGBTQ Latinos, recent studies by the Williams Institute at UCLA, hate crime against Latinos based on sexual and gender identity, how gender identity-based discrimination or misinformation affects access to social and medical services and shelters, Latina lesbians in the military, lack of legislative legal protections based on gender identity, LGBTQ youths’ negative health outcomes, same-sex couples in rural communities, judicial appointments, insufficient numbers of Latino lawyers relative to the Latino population, and ABA programs that may assist Latina lawyers’ professional development.

6. Midwest

The Commission held a meeting with representatives from the Legal Assistance Foundation of Metropolitan Chicago (LAF), focusing on the work and challenges of the office. The LAF has approximately 15 people on staff, including 85 lawyers. It runs a statewide Migrant Project which serves a client base that is approximately 99% Latino. They represent seasonal workers. The project’s biggest challenge is dealing with the isolation of the clients. The issues for the female clients in this project are domestic violence, trafficking and sexual harassment. LAF members from the following LAF Practice Groups attended the meeting: Employment, Migrant Project, and Community Engagement Project. The substantive areas they address in the various LAF Practice Groups include labor trafficking, wage theft, sexual harassment of female clients, and migrant workers rights. Staff discussed the need for attorneys to work on these issues and the lack of bilingual and bicultural staff. They also noted that there are no attorney’s fees for migrant worker cases. They recommended the ABA identify pro bono counsel to work on wage theft, and other migrant worker issues. They also suggested the ABA and law school clinics consider training law firm volunteers who wish to assist on cases, but who lack appropriate and sufficient training.
D. Meetings with ABA Entities

The Commission held stakeholder meetings with representatives from the Standing Committee on Election Law, Section of Individual Rights and Responsibilities, Commission on Domestic Violence and the Commission on Immigration. The meeting participants discussed the work of the Commission and the respective Association entities, and explored potential collaborations.

During these meetings, the participants raised the following issues:

**Commission on Immigration**: The need for diversity on the Immigration Court; anti-notario fraud campaign; projects focused on people in immigration detention; same-sex partners’ immigration issues; efforts to secure right to counsel in immigration proceedings; the need for bilingual immigration lawyers; birthright citizenship.

**Section of Individual Rights and Responsibilities**: Defining race and addressing the myth of a post-racial society; public education; challenges faced by LGBT members in minority communities; human trafficking; mortgage modification scams.

**Standing Committee on Election Law**: Voter participation and redistricting; genetic testing; social justice and health disparities; juvenile drug courts; public interest career pathways.

E. Meetings with Government and Non-Profit Organizations

The Commission met with a representative from the National Council of La Raza (NCLR) to discuss the NCLR’s data collection and research papers on issues relevant to the Commission’s work. The Commission also met with a lawyer from the U.S. Department of Housing and Urban Development (HUD) to discuss HUD initiatives addressing housing matters affecting Latinos, including the foreclosure crisis.

F. Meeting with the U.S. Census Bureau

The Commission held a special meeting with representatives from the U.S. Census Bureau, Partnership and Data Services Program (PDSP) during its visit to the Southeast. During this meeting, the PDSP presented to the Commission its recent U.S. Census 2010 data on the Latino population. They also introduced the Commission to the various interactive programs available on the Census website.

G. ABA 2011 Midyear Meeting—Atlanta, GA

At the ABA Midyear Meeting in Atlanta, Georgia, on February 11, 2011, Commission Chair Cesar Alvarez provided an update to the Board of Governors on the work of the Commission. Chair Alvarez also provided an update to the Women’s Caucus and the Minority Caucus of the ABA House of Delegates. Commissioner Thomas Saenz and Commissioner and Reporter Jenny Rivera also attended. The Commission also held a meeting with the Southern Poverty Law Center, focusing on the Center’s recent reports on Latinos and Latinas in the South.
ABA MEETINGS AND COLLABORATIONS

In the fall of 2010, the Commission collaborated with the ABA Standing Committee on Lawyer Referral and Information Service in the development of an ABA Approved Attorney Referral System for minimum wage, overtime, and family medical leave. This toll-free phone referral service was funded by the U.S. Department of Labor. The Commission spearheaded the translation of the referral service from English to Spanish, making sure that the translation was culturally competent and linguistically sensitive to the diverse Spanish speaking communities. In spring of 2011, the Commission also provided guidance to the ABA Center on Children and the Law regarding the translation of its guides for fathers.

At the ABA 2011 Annual meeting, held August 4-9, 2011, in Toronto, Canada, the Commission served as a co-sponsor and Members participated in two ABA programs. Commissioner Thomas Saenz served as a panelist on the program entitled, The Battle Over Birthright Citizenship: History, International Perspectives, and the Path Ahead. The program was sponsored by the ABA Commission on Immigration, and also featured Dr. John C. Eastman, Honorable Bruce Einhorn, Professor Roger Smith and Professor Margaret Stock. Commissioner and Commission Reporter Professor Jenny Rivera served as a panelist on the program entitled, Facilitating Diversity: Similar Countries, Different Experiences; How Historical Context Informs How We Address Diversity Today in the U.S. and Canada. The program was sponsored by the ABA Commission on Racial and Ethnic Diversity in the Profession, and also featured Fred W. Alvarez, Joseph K. West, Kate Boer, and Associate Professor Sonia Lawrence, Osgoode School of Law at York University.

In addition to its participation in these CLE programs, the Commission provided a series of briefings to ABA stakeholders, and addressed the California Delegation to the ABA and the Women’s and Minority Caucuses. The Commission also helped convene a special breakfast of the Latino members of the ABA House of Delegates. During the meeting, President Zack, Chair Alvarez, Commissioner and Reporter Rivera and Commissioner Saenz, discussed the work-to-date of the Commission, including preliminary observations based on the Commission’s public hearings, and the Commission’s Resolution 303.

The Commission joined approximately 16 other co-sponsors in support of the Standing Committee on Legal Aid and Indigent Defendants’ proposed ABA Standards for Language Access in Courts. Resolution 113 passed at the 2012 Mid Year meeting, held in New Orleans, Louisiana, February 1-7, 2012.

ACTION ITEM COMMISSION RESOLUTION 303

The Commission successfully presented Resolution 303 to the Association House of Delegates for adoption as ABA policy at the 2011 Annual Meeting. Commission Chair Alvarez and Commission Member Saenz presented Resolution 303 on birthright citizenship, which urges Congress to reject any proposed amendment or efforts to limit or eliminate U.S. citizenship under the Constitution. The Resolution passed by voice vote. ABA co-sponsoring entities included the ABA Commission on Racial and Ethnic Diversity in the Profession, ABA Standing Committee on Legal Aid and Indigent Defendants, ABA Commission on Immigration, ABA Commission on Youth at Risk, ABA Council on Racial and Ethnic Diversity in the Educational Pipeline, ABA Section of Individual Rights and Responsibilities and the ABA Section of Litigation.
The Commission considered the many issues raised during the public hearings and meetings with stakeholders, as well as the available research contained in the scholarly literature on Latinos, and selected eight substantive areas to present in this Report. The eight substantive areas are employment, housing, education, health, criminal justice, voting rights, media and Latino images, and diversity in the legal profession. The Commission selected these areas based on its conclusion that these are critical areas in which large numbers of Latinos have significant unmet legal needs, and that the ability to respond to those legal needs depends on an understanding of how Latino national origin, race, immigration, language, and gender status are implicated in each of these areas.

Latinos, as a group, face obstacles to equality under the law, and have not yet reaped the full benefits of U.S. political and economic systems. Many factors contribute to the difficulty Latinos face in the United States, including current socio-economic conditions in our diverse communities. The legal barriers to Latinos’ access to justice and the courts include: discrimination in employment and housing, and the abuse of vulnerable Latino workers and tenants; a highly segregated public education system in which the majority of Latino children attend public schools that do not have sufficient resources to address the educational needs of Latino students, and which fails to provide a quality education in compliance with constitutional and statutory requirements; limited access to integrated quality health care, compounded by legal obstacles to health coverage and pharmacy services for immigrant and Spanish monolingual and Spanish-dominant Latinos; denial of voting rights, including the construction of legal obstacles to the exercise of the franchise and the selection of Latino candidates that represent their concerns, and voter harassment; and racial and ethnic profiling of Latinos in their neighborhoods and their workplaces, facilitated and sanctioned by government officials and policies.

In this section, the Report presents within each substantive area a brief explanation of the challenges facing Latinos, and the representative statutory legal framework applicable to the area. Federal and state constitutional provisions, including due process and equal protection guarantees, while not specifically

“[O]ften discriminators choose to engage in discrimination against Latinos by proxy. They don’t label what they are doing as discrimination against Latinos per se, but as discrimination on the basis of language, accent, citizenship, alienage, legal status or other proxies they view as applying in large part to the Latino community. This phenomenon of discrimination by proxy has precipitated a struggle ongoing in the legal community with how to apply existing doctrines prohibiting discrimination against the Latino community.”

Thomas Saenz, President and General Counsel, Mexican American Legal Defense and Educational Fund, Testimony, First West Coast Hearing, San Francisco, CA, January 13, 2011, Tr. 27-28.
mentioned in the subject area discussions, are broadly deployed in legal challenges on behalf of Latinos. The Commission notes and recognizes the singular importance of constitutional provisions to ensuring equality under the law. However, the descriptions included in this section of the Report are intended to provide a nonexhaustive introductory survey to eight specific subject areas relevant to Latinos in the United States.¹⁵⁹

The Commission intends that this section of the Report provide guidance to assist the ABA as it continues to identify and implement a comprehensive approach to addressing the legal issues impacting the country’s largest ethnic group, and the challenges ABA members face in providing legal services to Latino clients.

A. Employment

In the area of employment, Latinos continue to face discrimination based on race, national origin, language, sex, gender identity, and immigration status. Unlawful practices create significant barriers to Latino employment and workplace productivity, and subject Latinos to hostile environments where they are targets of harassment, wage theft and, for some Latinos, threats of deportation.

1. Employment and income status

According to a Department of Labor August 2010 report, Latinos have higher rates of unemployment compared to Whites. The Hispanic unemployment rate in 2009 was 12.1% compared with 8.5% for Whites.¹⁶⁰ The unemployment rate varies somewhat by age group. Thus, in 2008, Latinos between 16 and 24 years old had a 13% unemployment rate, and Latinos over 25 years old had a 6% unemployment rate.¹⁶¹

Employed Latinos have lower median incomes than their White counterparts. In 2007, Latino males had a median income of $33,000 compared to White males whose median income was $50,000. Latino males with at least a bachelor’s degree had a median income of $54,000, compared to similarly

“With its current lack of both diversity and cultural competence, the civil rights enforcement system has been simply unable to adequately enforce anti-discrimination laws on behalf of Latinos.”

Janet Murguia, President and CEO, National Council of La Raza, Written Testimony, November 12, 2010, pp. 10-11.

“Hispanics who are both undocumented and LGBT face intersecting discrimination that leaves them vulnerable. For example, Hispanics who are discriminated against in employment or suffer bias-motivated attacks often will not report violations for fear of deportation.”

Robert Maldonado, Chair, LGBT Section, Hispanic National Bar Association, Midwest Hearing, Chicago, IL, November 12, 2010, Tr. 141.
educated White males whose median income was $71,000. Latinas had a $30,000 median income compared to White females who had a $38,000 median income. White females with at least a bachelor's degree had median earnings of $50,000 compared to $43,000 for Latinas with at least a bachelor's degree. Latinas with at least a doctorate or a first professional degree had a median income of $80,000 compared to $100,000 for White males in this category. Latino males with at least a doctorate or a first professional degree had a median income of $80,000 compared to $100,000 for White males in this category.

Latino workers constitute a vulnerable workforce, holding low paying jobs, and employed mostly in the service industry. In contrast, Latinos are underrepresented in supervisory, managerial and professional positions. According to the Department of Labor Current Population Survey in January 2011, 18.9% of Latinos worked in management, professional, and related occupations compared with 37.9% of Whites; and 26.4% of Latinos worked in service occupations compared with 16.6% of Whites in these occupations. The percentage of Latinas working in management and service jobs was higher than Latino males: 15.3% of Latinos and 24.1% of Latinas worked in management related positions, and 21.8% of Latinos and 33.2% of Latinas worked in service occupations.

2. Discrimination at the workplace

At their workplaces Latinos face discrimination based on their race, national origin, language, sex, gender identity, and immigration status. Latino workers are treated differently based on being Latino.

Latino workers are the targets of discriminatory practices and policies that limit their opportunities and relegate them to low paying jobs, working long hours under stressful and oppressive working conditions. Latinas are subject to sexual harassment and adverse treatment based on their gender and race/ethnicity. Latina and Latino workers are admonished not to speak Spanish at the workplace.

The number of individual charges of discrimination in employment, based on national origin, filed with the Equal Employment Opportunity Commission has increased steadily from 1997 to 2011, from 8.3% to 11.8% of all charges. In two states with large Latino populations the total national origin individual charge filings for year 2011 were a significant percentage of the total state’s filings, as well as a significant percentage of the total U.S. national origin charges: California’s national origin charges were 18.9% of the state’s total charges and 11.5% of the total U.S. national origin charges; and the national origin charges for Texas were 17.5% of all the state’s charges, and represented 14.7% of the total U.S. national origin charges.

3. Wage theft

Latinos are also targets of wage theft, including employer violations of minimum wage laws. The Commission heard testimony of how immigrants, including out-of-status immigrants, are vulnerable to this type of exploitive practice. The data indicate that minimum wage law violations are widespread and that all workers are vulnerable to this unlawful practice, but that foreign-born Latinos experience minimum wage violations at particularly high levels. For example, a 2008 survey of 4,387 workers in low-wage industries in Chicago, Los Angeles and New York City, found that 25.9% of all workers in the sample experienced minimum wage violations; the rate was almost one third for Latino workers, and foreign-born Latino workers had a 35% rate of minimum wage
violation, which was “double the rate of U.S.-born Latinos and nearly six times the rate of U.S.-born Whites.” The survey also found that gender, as well as nativity, race, and ethnicity affected worker minimum wage violation rates, and that women experienced higher violation rates. Latina workers experienced a 40% minimum wage violation rate compared to 24% for Latino male workers.

Echoing the testimony presented to the Commission, the survey report authors concluded that wage theft has a devastating impact on workers, communities and the economy.

Wage theft not only depresses the already meager earnings of low-wage workers, it also adversely impacts their communities and the local economies of which they are part. Low-income families spend the large majority of their earnings on basic necessities, such as food, clothing and housing. Their expenditures circulate through local economies, supporting businesses and job. Wage theft robs local communities of this spending, and ultimately limits economic growth.

4. **Hazardous workplaces**

In many industries Latinos confront dangerous and unhealthy environments. Their workplaces are often some of the most hazardous in the country—from working in environments surrounded by toxic chemicals, to workplaces in which they handle dangerous machinery, and workplaces where the nature of the work causes debilitating illnesses. Conditions are especially harsh for agricultural workers and workers in food processing factories where a significant number of workers are Latino.

According to a 2010 report based on interviews with Latina farm and factory workers, Latinas suffered “injuries from the repetitive strenuous movement required to keep up with the voracious production demands.” The farm workers were “sickened by pesticides and toxic chemicals.” The meat and poultry processing workers reported laboring “long hours in bone-chilling temperatures with inadequate safety equipment.” Children who work in the fields are especially vulnerable to exploitation and the effects of dangerous working conditions, including pesticide related illnesses, because of their developing bodies. Restaurant workers also suffer from exposure to cleaning chemicals and dangerous working environments that may result in burns or cuts.

5. **Legal framework**

Federal statutes and regulations that have provided some protections to Latinos in the employment context include: Title VII, prohibiting discrimination by certain employers, based on inter alia, race, national origin, and sex; the Americans with Disabilities Act, Title I, prohibiting discrimination on the basis of disability; the Age Discrimination in Employment Act, prohibiting discrimination based on age; Age Discrimination Act of 1975, prohibiting discrimination based on age in federally financed programs; Fair Labor Standards Act, setting forth fair labor standards and providing certain protections for certain employees; Immigration Reform and Control Act of 1986, prohibiting discrimination based on national origin, and in certain circumstances, based on citizenship, however this section does not protect an “unauthorized alien”; and Equal Employment Opportunity Commission Guidelines, including, §1604.11 (sexual harassment), §1606.1 (national
origin definition), §1606.2 (disparate impact applies to national origin), §1606.7 (English-only rules), §1606.8 (harassment based on national origin).

These statutes, and state statutes and local laws that provide similar protections, have significantly improved employment opportunities for Latinos, and reduced workplace hostility at their places of employment. Nevertheless, these laws are no panacea and have significant limitations. For example, they suffer from inadequate enforcement by the federal government, barriers to securing plaintiff’s counsel, exclusion of certain categories of workers and employers from statutory coverage, including, for example domestic workers and small employers, and judicial interpretations that narrow the scope of the statutory protections, place procedural hurdles on plaintiffs, and increase the plaintiff’s burden of proof.

B. Housing

Studies show that segregated neighborhoods are still very much a reality in America. In areas with large African-American populations, declines in segregation have been minimal or nonexistent, and levels of Hispanic segregation are rising, in part due to immigration.


Latinos are subjected to a range of housing discriminatory practices which limit their access to housing opportunities, regardless of income status. These include predatory lending, steering, and discrimination based on race, national origin, sex, and gender identity.

1. Discrimination in lending

Today, 47.8% of Latinos are homeowners, compared to 74.4% of Whites, over a four percent drop from 2007. There are several obstacles faced by Latino prospective and existing homeowners, including foreclosures due to the housing bubble, and persistent residential housing segregation. While the housing bubble and the mortgage foreclosure crisis deeply affected Americans throughout the country, Latinos have been disproportionately affected by the rate of foreclosures. One report concluded that among recent borrowers, nearly 8% of Latinos lost their homes to foreclosures, almost double the 4.5% rate for Whites. The report also found that Latinos “are more likely to be at imminent risk of foreclosure” than non-Latino White borrowers. The report estimated that 17% of Latino homeowners “already have lost or are at imminent risk of losing their home.”

2. Segregation and unequal housing opportunities

Discrimination in housing against Latinos based on national origin resulting in segregation and unequal housing opportunities is a persistent problem. Each year from 2007 to 2010, of the total
annual housing discrimination complaints filed with the U.S. Department of Housing and Urban Development and Federal Housing Assistance Program agencies, approximately 8% charged national origin discrimination against Hispanics or Latinos.  

Latinos live in segregated neighborhoods throughout the country. A recent study on segregation of Black and Latino children found that from 2000-2010 residential segregation in the 100 largest metropolitan areas (where the majority of Black and Latino children live) fell only moderately. The study also found that “Latino segregation remained in the upper end of the moderate range” of the dissimilarity index, a segregation measure applied by the researchers. With respect to the experience of segregated living, the researchers noted that:

Decades of research on residential segregation in the U.S. reveal that black and Latino children grow up not only in separate neighborhoods than their white peers, but in largely unequal neighborhoods as well. Neighborhoods where minority children reside have much lower homeownership rates, lower income levels, higher rates of unemployment and higher poverty than those where white children live. In fact, in very few instances do the very best neighborhoods where black and Hispanic children live have opportunities and amenities close to the average level of neighborhoods where white children live. Disparities in opportunities remain even when comparing poor minority children with poor white children.

In the wave of anti-immigrant lawmaking in recent years, Latino immigrants have also faced the danger of local laws mandating that landlords check immigration status or that localities check immigration status before providing a required permit to rent.

### 3. Legal framework

Latino plaintiffs and their advocates have relied on various federal statutes to address discrimination related to housing. These statutes include: the Fair Housing Act, which prohibits discrimination in the sale or rental of housing, and prohibits discriminatory advertisements, based on race, color, sex, familial status, national origin, or handicap; the Equal Credit Opportunity Act, which prohibits discrimination on the basis of race with respect to credit transactions; Title VI which prohibits discrimination based on race and national origin in any program receiving federal financial assistance; and the Housing Community Development Act of 1974, Title I, which prohibits discrimination based on race and national origin in any program receiving federal financial assistance. To the extent that federal statutes do not address discrimination based on sexual orientation or gender identity, several states prohibit discrimination in housing based on these protected characteristics.
C. EDUCATION

Latinos continue to face legal barriers to appropriately resourced public K-12 education, as well as discrimination based on race, national origin, language, sex, gender identity, and immigration status. Latinos have long fought for equal opportunities to adequate quality education, including access to bilingual education programs and advance placement programs.

Latino students under 18 years old constitute the second largest group of students in the schools, and are the fastest growing sector of the student population. In 2007-2008 Latino students constituted 21.2% of the public school elementary and secondary enrolled students. Regionally there is some variability in population numbers, but there are consistently high numbers of Latino students. For example, the percentage of public primary and secondary Latino students in 2007-2008 by region was (in descending order): West, 38.4%; South, 20%; Northeast, 15.4%; and Midwest 8.5%.

The future of the United States is inextricably linked to the success of this growing population of students. They will be the future workers, business owners, voters, elected officials and leaders in the legal profession. Nevertheless, by all measures the educational system is failing to adequately serve the needs of Latino students, and prepare them for civic life. The result is a growing sense among Latino students of despair, and disenchantment with American society. This sense of hopelessness has affected the dreams of Latino youth. In 2004, less than one fourth of Latino 12th graders (28.2%) expected to attain a bachelor's degree.

1. Segregated schools, educational inequality and limited educational opportunities

The majority of Latino children attend public schools, which are highly segregated and often have low graduation rates. In 2006-2007, 40% of Latino students attended public schools whose student population was 90-100% minority. This represents a disturbing reality for Latinos and, as one scholar indicated, reflects segregation patterns worse than those that existed in 1988, when Latinos were in schools “with average enrollments of one-third white, and one-third of Latinos were in intensely segregated schools. Now [Latinos] are in schools with almost three-fourths minority students on average and about 40% are in intensely segregated schools.”

Latino students also attend schools that have large numbers of children living below the poverty line. In 2006-2007, 40% of Latino students attended schools with 70—100% poor children, and only one fifth of Latinos attend a school with 0-30% poor children, although the majority of white students attend such schools. In the 2005-2006 school year, 46% of Latino and 44% of Black “students composed the vast majority of students attending school in high-poverty urban areas, while fewer than 10% of their White peers attended such schools.” Schools with large numbers of children living in poverty have significant resource challenges, yet “some states with large Latino populations spend significantly less on students in high-poverty school districts than those in low-poverty districts.”

Latino students have higher high school dropout rates, lower rates of high school completion, and lower rates of participation in advance placement courses compared to White students. The
percentage of 16-24 year old high school dropouts in 2007 who were Latino was 19.9%, compared with 6.1% of White students. The Latino dropout rate is affected by the higher dropout rate for Latinos born out of the U.S., compared with U.S.-born Latinos, 34.3% and 11.5%, respectively. For Whites born outside the U.S. the dropout rate was 21.2% and for Whites born in the U.S. the rate was 7.7. The disparity in high school graduation rates in 2007 between Latino and White students was almost 20%: Latino students’ graduation rate was 62.3% compared with 80.3% for White students. From 1999-2008, the number of Latinos taking advanced placement examinations increased dramatically, although the number still lagged significantly behind their White peers. In 2007, a mere 7% of Latinos completed calculus and another 13% completed advanced science courses, compared with 16% and 20% of White students, respectively. Moreover, “[s]egregated black and Latino schools have less prepared teachers and classmates, and lower achievement and graduation.”

Young Latinas face additional challenges to success. A joint effort by the National Women’s Law Center and the Mexican American Legal Defense and Educational Fund surveyed Latina high school students across the country and adult program staff working with Latina students, and canvassed the available academic literature on Latino students. The organizations found that despite Latina students’ high aspirations for their educational future, they had lower expectations of actual educational attainment. These lower expectations are due to a complex set of interdependent factors, including poverty and limited access to quality educational programs, language barriers, immigration status of students and family members, diminished expectations of education officials and relatives, gender stereotypes, students’ parenting and care giving responsibilities, and obstacles to parental involvement in schools. As other studies indicate, the teenage pregnancy rate for Latinas has decreased over the past few years, but nevertheless is still higher than the rate for White female teens. In 2007, Latinas 15-19 years old had a birth rate of 82 per 1,000, compared with White female teens that had a rate of 27 per 1,000. This has an adverse impact on Latinas educational opportunities.
2. Higher education and affirmative action

The total number of Latino students enrolled in institutions of higher education is low. In 2008, the total percentage of 18-24 year old Latinos enrolled in colleges and universities was 25.8%, compared with 44.2% for Whites and 32.1% for Blacks. Moreover, a greater percentage of Latinas enrolled in higher education institutions: 28.9% of Latinas compared with 23% of Latinos.

In 2008, only 11% of Latinos, ages 25 to 29 had at least a bachelor's degree, compared with 33% of Whites. Of the degrees conferred on Latinos in 2008, 48% were bachelor's degrees and 36% were associate's degrees. Master's degrees accounted for 14% of the degrees conferred on Latinos, and doctor's degrees were .9%.

Pre-college programs seek to better prepare students for college and to make them viable candidates for acceptance in a highly competitive application process. However, there are not enough programs to serve the growing Latino population and the resources for such programming are limited.

Latino students may also face government-imposed barriers to higher education. For example, some states bar undocumented students from attending university, or charge these students out-of-state or international tuition rates.

The ability to develop programs that are designed for the needs of Latino students are also under constant attack. Moreover, attempts to take national origin and race into consideration in the admissions process are vulnerable to constitutional challenges. Although affirmative action has provided opportunities for many students, the continued viability of affirmative action and its applicability for the future generations of Latino students remains uncertain and contentious.

3. English language learners

Over 4.6 million students enrolled in public school in the 2009-2010 school year were English Language Learners (ELL)—students for whom English is a second language and who are not yet proficient in English—and accounted for 9.7% of the total public school enrollment. Latino students and their parents who are Limited English Proficient have faced obstacles to access to education. Even with statutory mandates that seek to ensure access to educational services for students, they and their families continue to face obstacles, for example, due to a lack of properly drafted, language appropriate educational documents. Advocacy and legal recourse is particularly difficult or an illusory remedy for parents and students who are LEP because of the language barriers and lack of information on administrative protocols. Moreover, school districts can be resistant to addressing the needs of ELL students and their parents, or simply fail to utilize available resources that would permit them to better serve these students.

4. Out-of-status immigrant students

In *Plyler v. Doe*, the Supreme Court prohibited discrimination against undocumented students. Notwithstanding this decision, there are attacks on the rights of immigrant students to attend
public schools. For example, localities request documentation, which intimidates parents and increases fears of reporting by local authorities increasing the risk of deportation. This has serious implications for the Latino community because the majority of the 800,000 undocumented immigrant students in grades K through 12 are Latino.  

These efforts undermine education for immigrant students, flout legal requirements, and reflect a wrongheaded approach to educational policy. Moreover, these illegal and discriminatory efforts potentially discourage Latino students, regardless of their status, from staying in school, which puts these students in peril of employment hardships in the future.

It is estimated that 1.4 million persons may be eligible for deferred status under this policy, including 700,000 who are under the age of 18 and currently enrolled in school.

Legislative efforts to provide a path to legalization for out-of-status youth recognize and support educational success. The Development, Relief and Education for Alien Minors Act (DREAM ACT), was introduced August 1, 2001, and reintroduced almost a decade later on May 11, 2011. The DREAM Act “provides a strong incentive for unauthorized children now enrolled in elementary or secondary school to obtain a high school diploma and further education.” This would be an outcome that would benefit the students covered by the DREAM Act and have a positive impact on the U.S. economy. It is morally the right thing to do. However, the bill has failed to pass and advocates have turned to the states.

Although legislative efforts at the federal level are stalled in Congress, on June 15, 2012, the Secretary of the Department of Homeland Security (DHS) announced that pursuant to her prosecutorial discretion, effective immediately, DHS would consider for deferred action for a two year period certain young individuals brought into the U.S. as children. It is estimated that 1.4 million persons may be eligible for deferred status under this policy, including 700,000 who are under the age of 18 and currently enrolled in school. The decision was lauded as a positive step towards addressing the problems with the existing immigration system, and also of providing some hope to students who would be covered by the DREAM Act. However, the policy does not grant any substantive right, and does not provide a long-term solution to the immigration system problems, which can only be addressed through appropriate immigration reform.

5. Legal framework

Latinos have relied on several federal statutes in their efforts to secure access to equal and quality education. The following have proved indispensible in the legal struggle for educational opportunity: Title VI, which prohibits discrimination based on race and national origin in any
program receiving federal financial assistance,\textsuperscript{239} Title IX, which prohibits discrimination based on sex in education programs or activities receiving federal financial assistance;\textsuperscript{240} Education of Individuals with Disabilities Act, which ensures a free appropriate public education for children with disabilities, including the creation of an Individualized Education Program;\textsuperscript{241} Section 504 of the Rehabilitation Act, which prohibits discrimination based on disability in federally financed programs and activities;\textsuperscript{242} and the Elementary and Secondary Education Act, specifically the former Bilingual Education Act, which in its original version promoted appropriate education for students who are not English proficient.\textsuperscript{243}

Significant litigation in this area has focused on school desegregation,\textsuperscript{244} bilingual education,\textsuperscript{245} discriminatory placement in special education programs,\textsuperscript{246} immigrant children's access to education,\textsuperscript{247} and school financing and fiscal equity.\textsuperscript{248}

D. **Health Status and Access to Quality Health Care**

Access to quality health care is a priority concern for many Latinos given the limited access to affordable, culturally and linguistically appropriate services, and the fact that many Latinos lack health insurance. Legal obstacles to improving access to health care, and attendant health outcomes, include legal exclusion from certain publicly funded health insurance programs, exclusion of certain immigrants from the Patient Protection and Affordable Care Act\textsuperscript{249} exchange system, and the failure to provide adequate Spanish-language medical and pharmacy services. As the Latino population has increased, the need for bilingual health care providers and professionals has also increased.

1. **Barriers to quality health care**

A significant portion of the Latino population does not have health insurance, and over five million Latinas are dependent on Medicaid coverage for their health care.\textsuperscript{250} In 2007, the private health insurance coverage for persons under age 65 was 41.7% for Latinos, compared with 76.2% for Whites.\textsuperscript{251} Within the Latino population, Mexicans were least likely to be insured (37.9%), and Cubans were mostly likely to be insured (64.8%).\textsuperscript{252} Based on 2007 data, one study found that over half of Latinos who are noncitizens are uninsured (57.6%), compared with Latinos who are U.S. born (21.2%) or naturalized (27.1%).\textsuperscript{253} Moreover, while a significant number of Latinos receive their health insurance through their employment (40.3%); this rate lags behind the rates for Whites (65.5%) and Blacks (49.5%).\textsuperscript{254} Although public health coverage rates were similar for Latinos (28.3%) and Whites (26.7%), Latinos were more likely to depend on Medicaid or the Children's Health Insurance Program (CHIP). Also, Whites were more likely to be covered under Medicare because the White population is older compared to the Latino population,\textsuperscript{255} a statistic affected, in part, by the 5 year preclusion from participation in Medicare of legal permanent residents.\textsuperscript{256} A large number of these Latinos are children. Indeed, in 2007, 64.6% of Latinos covered by Medicaid or CHIP were children under 18 years of age.\textsuperscript{257} Moreover, the majority of Latinos covered by Medicaid or CHIP in 2007 were citizens.\textsuperscript{258} This is not surprising given that, at the time, undocumented and many legal immigrants were not eligible for this coverage.\textsuperscript{259}
Lack of health insurance affects health coverage and access to quality health care, and also affects continuity of care. In 2005, only 46.5% of all uninsured Latinos had a consistent source of health care. There is also a difference in rates of insurance coverage based on language dominance. A 2008 study based on data from 2003-2005, concluded that 55% of Spanish speaking and 23% of English-speaking Latinos were uninsured. This may correlate with foreign and native-born status, respectively.

In addition to barriers based on access to coverage, some Latinos face additional barriers based on lack of appropriate and adequate language services and the need for culturally competent service provision. For example, according to 2007 data, 12.1% of Latinos reported that their provider “sometimes or never explains their medical situations in a way that they can understand,” compared to 7.3% of Whites. A 1999 study found that Spanish-dominant Latinos were more likely than English-dominant Latinos to describe communication with their providers as “fair,” “poor,” or “very poor.” For Limited English Proficient Latinos, they face challenges in understanding their health care-related treatment and medicine labels, and one study found that as a result they were four times more likely to suffer a bad reaction due to problems understanding instructions. This same study found that disparities for LEP patients decrease when their providers speak to them in their primary language. Recent efforts have also focused on the need for language accessible services at pharmacies for prescription medications. The underrepresentation of Latinos in the health professions further exacerbates this access issue. Latinos account for only 5.9% of U.S. health care professionals.

Latinas also face unique barriers associated with access to health services, including reproductive health services. For example, women are more often responsible for their family's health care needs, jobs held by Latinas may not provide health insurance coverage, and at times women have paid more for health insurance than men. Costs associated with health care have impacted Latinas' ability to address their family planning needs: 50% of women, including Latinas, ages 18 to 34 indicate that the cost of contraceptives has prevented consistent use. Gender identity and sexual orientation also affects healthcare access for LGBT persons who face discrimination based on their identity.

### 2. Disparities in health outcomes

Latinos experience various health care and health outcome disparities from Whites and Blacks, and there are health care differences even among Latino subgroups. Disparities exist in rates of diabetes, asthma, HIV/AIDS and certain cancers. For example, among persons 20 years and older, 10.4% of Latinos have physician-diagnosed diabetes, compared with 6.6% of Whites, 11.8% of Blacks, and 7.5% of Asians. Among Latinos, diabetes rates vary: 8.2% of Cubans, 11.9% of Mexicans, and 12.6% of Puerto Ricans are diagnosed with diabetes. Latino asthma prevalence rates from 2005-2007 was 6.4%, lower than the 7.7% rate for Whites and 9.4% rate for Blacks. However, the asthma rate for Puerto Ricans was 15.6%, significantly higher than rates for Whites and Blacks, and more than double the rate for Latinos overall. Asthma rates for Puerto Rican children under 18 (20%) is also higher than the rate for Latino children overall (9%), and for White children (7.9%).

Latinos also have high rates of HIV infection. In 2006, the Latino rate was three times the rate for Whites. Latinos constitute 19% of people from the U.S. and the U.S. Territories diagnosed with
Aids since the beginning of the AIDS epidemic, and Puerto Rico has the sixth-highest rate of AIDS cases in the U.S.

Latino rates are higher than for Whites for certain cancers, specifically, liver, gallbladder, stomach and cervix. Latinas are diagnosed with cervical cancer at almost twice the rate of White women. According to one study, low-income Latina immigrants “demonstrated less knowledge regarding cervical cancer and were less likely to receive a Pap smear than low-income non-Latinas.” Latinas have a history with forced sterilization which has impacted their reproductive health-related experiences. In particular, women of Mexican and Puerto Rican descent have been the subject of forced sterilization, at times sanctioned by the government.

Latinos also have low rates of dental services. For example, Latino children ages 2-17 are less likely (62.7%) than White children (78.6%) to have visited the dentist within the past year, and Mexican children are the least likely (59.7%) to have had a dental visit compared with Central or South American (65.7%), Cuban (69.6%), and Puerto Rican (71.8%) children.

Some researchers have identified a “Latino mortality paradox,” or “The Hispanic Paradox”, which refers to Latinos disproportionate adverse health outcomes and low social economic status while simultaneously showing strong indicators in certain health areas and a lower all-cause mortality rate. For example, despite having low levels of access to early prenatal care, Latinas’ rate for low birth weight infants (6.9%) is lower than the rates for Whites (7.3%), and Blacks (14%). Some Latinos also suffer from high rates of overweight and obesity—conditions often cited as factors in adverse health conditions. While some of the disparities in health status between native born and foreign-born Latinos are due to acculturation to the American diet and lifestyle, there is little focus on equal access for Latinos to healthy food and educational services diet and nutrition.

3. Legal framework

Laws and legal resources that address some of the access and disparity issues include Title VI, which prohibits discrimination based on national origin in federally funded programs; Executive Order 13166 and Department of Justice and interpretive guidance on serving Limited English Proficient individuals in compliance with Title VI; the Department of Health and Human Services’ Title VI regulations and guidance on providing services to Limited English Proficient persons; the Children’s Health Insurance Program (CHIP) which provides health coverage to certain persons ineligible for other federal coverage and unable to afford private health insurance, and the Patient Protection and Affordable Care Act.

The Supreme Court’s recent decision in National Federation of Independent Business et al. v. Sebelius, et al., upholding the Patient Protection and Affordable Care Act, allows the federal and state governments to pursue a health care system intended to provide some uninsured with coverage and expanded coverage to others who are already insured. However, recent efforts at the federal level to scuttle the Act, and at the state level to refuse to implement the Act, continue to imperil future health care access for Latinos who would come within the Act’s coverage.
E. **Criminal Justice System**

Latinos are disproportionately impacted by the abuses and biases in the existing criminal justice system, both as victims and as the accused. All too often their interactions with criminal justice officials result in severe adverse consequences for them and their families. Among the concerns brought before the Commission were: inadequate legal services, especially for the poor and for out of status immigrants; lack of appropriate bilingual services; the criminalization of immigrants; draconian sentencing laws; and racial and ethnic profiling resulting in disproportionate arrests of Latinos; and policy brutality.

1. **Overrepresentation of Latinos in the criminal justice system**

Latinos constitute 20% of inmates in federal, state, and local prison/jails. Nationwide, Latino incarceration is nearly double that of Whites. In 2010, 327,200 Hispanic males, and 18,700 Hispanic females were incarcerated under state and federal jurisdiction. Immigrants have been a recent focus of law enforcement, resulting in increased rates of arrest and detention. According to the U.S. Department of Justice, from 2005-2009, while all federal arrests increased at an annual rate of 7.1%, immigration arrests increased 23%. At 46% of all federal arrests, immigration offenses were the most common bases of all arrests in 2009, and had increased from a 27% rate in 2005. Over half (56%) of all federal arrests occurred in five federal judicial districts along the U.S.-Mexico border. Latinos were 45.6% of persons arrested by the Drug Enforcement Administration in 2009, compared with 26.3% of Whites and 25.5% of Blacks/African Americans.

According to 2009 data, defendants in immigration cases were most likely to be detained compared to other defendants at a staggering 94.8% detention rate. This rate outpaced the rate for defendants charged with offenses involving a violent crime (86.9%) or weapons (82.3%). In 2009, defendants in immigration cases constituted 43% of all defendants detained prior to case disposition. Ninety-seven percent of immigration defendants were convicted; the majority accepted a guilty plea, compared with 91% of all defendants, of whom 87.9% accepted a guilty plea. The cases have also had a significant impact on the work of public defenders. In 2009, cases involving immigration offenses constituted 49% of cases terminated with a public defender, almost double the next largest category of cases (drug offenses—18%).

2. **Ethnic and racial profiling and the criminalization of Latino immigrants**

Latinos and African Americans are targets of aggressive police practices. Profiling by law enforcement officials and agencies based on race and ethnicity has been a longstanding complaint of communities of color, and has been the focus of several lawsuits. Profiling of Latino immigrants has been of particular concern as states and localities deploy resources to identify and detain “illegal immigrants.” These concerns are heightened given the Supreme Court’s recent decision upholding Arizona’s law that requires officers to verify the immigration status of persons stopped, detained or arrested on legitimate grounds, when officers have “reasonable suspicion” to believe “the person is an alien and is unlawfully present in the United States.”
Recently the Department of Justice Civil Rights Division found that the East Haven, Connecticut Police Department (EHPD) “engages in a pattern or practice of systematically discriminating against Latinos in violation of the Fourteenth Amendment to the Constitution, Title VI, and the Safe Streets Act.” The DOJ found that the EHPD “engages in discriminatory policing against Latinos, including but not limited to targeting Latinos for discriminatory traffic enforcement, treating Latino drivers more harshly than non-Latino drivers after a traffic stop, and intentionally and woefully failing to design and implement internal systems of control that would identify, track, and prevent such misconduct.” The DOJ also found that this pattern of conduct “is deeply rooted in the Department’s culture and substantially interferes with the ability of the EHPD to deliver services to the entire East Haven Community.”

The Puerto Rico Police Department (PRPD) merits mention because it is the second largest law enforcement agency in the country and the Department of Justice recently issued its findings that PRPD officers’ aggressive police tactics violated individual rights, the federal constitution and various federal statutes. The DOJ found reasonable cause to believe that PRPD officers engage in a pattern and practice of:

- excessive force in violation of the Fourth Amendment;
- unreasonable force and other misconduct designed to suppress the exercise of protected First Amendment rights; and
- unlawful searches and seizures in violation of the Fourth Amendment.

The DOJ also found evidence of PRPD violations of the Fourteenth Amendment, the Safe Streets Act and Title VI, and discrimination targeting persons of Dominican descent, as well as the failure to police sex crimes and domestic violence incidents.

The PRPD violations are widespread, and the use of excessive force is particularly notable because it appears to be an established and accepted policing practice. “Improper and unconstitutional uses of force are rampant throughout the PRPD. Force is frequently used when it is unnecessary and gratuitous, and is often the first and last option considered by PRPD officers.” Violation of rights is the norm.

PRPD regularly violates the constitutional rights of civilians through illegal searches, detentions, and arrests. In particular, we found a pattern and practice of PRPD officers conducting searches of civilians’ homes without warrants or consent and in the absence of any exigent circumstance or exception that would render such a search permissible under the Fourth Amendment. Our findings also indicate that officers plant evidence during searches, rely on excessive force and intimidation as search aids, and proceed with searches even when knowing that the address, identity of the individual, or other pertinent information is incorrect. The evidence we uncovered further demonstrates that PRPD officers engage in a regular pattern of detaining and arresting individuals without reasonable suspicion or probable cause in violation of the Fourth Amendment, and that supervisors and members of specialized units are often involved in these unlawful acts.
3. Legal framework

Challenges to unlawful and disparate conduct in the criminal justice context have relied on constitutional and statutory protections, including the Fourth,\(^{319}\) Fifth,\(^{320}\) and Fourteenth\(^{321}\) Amendments to the United States Constitution prohibiting unlawful searches and seizures, and the due process and equal protection clauses; Title 42 U.S.C. § 1983, which provides for a cause of action for deprivation of rights based on conduct under color of law;\(^{322}\) and state constitutional due process and equal protection guarantees.

F. Voting Rights

According to the National Association of Latino Elected and Appointed Officials, as of 2012, a mere 5,850 Latinos in elected offices across the country and only 9 Latinos serve in statewide offices.

1. Latino underrepresentation and the small number of Latino elected officials

Latinos are woefully underrepresented in the federal and state legislatures. According to the National Association of Latino Elected and Appointed Officials, as of 2012, a mere 5,850 Latinos in elected offices across the country and only nine Latinos serve in statewide offices.\(^{323}\) At the federal level, this includes only 27 members of congress: two Latino senators and 25 Latino members of the House of Representatives.\(^{324}\) This disproportionate underrepresentation undermines the ability of Latinos to address issues that uniquely impact their communities, and influence policy-making decisions. It also erodes Latinos’ confidence in our democratic system of government. Representational government requires that Latinos not only be able to have a genuine and meaningful opportunity to select a candidate that best reflects their interests and concerns, but also requires that the largest ethnic minority group have a significant and meaningful presence within our legislative and executive branches of government.

2. Redistricting

Redistricting often plays an important role in providing the type of environment in which Latinos have an opportunity to vote for a candidate that best represents their interests. Redistricting is a contentious process that can be manipulated in ways that reduce the opportunity for Latinos to select their preferred candidates, and reduces the possibility of greater democratic engagement by Latino voters and prospective candidates. It taints the electoral process because it can create districts in which Latinos are marginalized, and where they must struggle to gain the attention of incumbents.
and challengers. With every redistricting cycle Latinos expend resources challenging efforts to limit their electoral choices.325

3. Vote Suppression

Latinos have relied on the Voting Rights Act326 to provide opportunities for equal access for Latinos to the franchise, as well as to improve the opportunity for Latinos to select candidates of their choice. Latino candidates and voters have sued when state and local officials have acted to deny or obstruct voter participation, and, on occasion, the federal government has also acted to prevent practices that violate Latino voting rights. While efforts to undermine Latino voter participation are all too common, recent efforts have been especially pernicious, and range from statutory obstacles affecting voter registration and election-day voting, to aggressive voter intimidation tactics. This section describes three types of vote suppression efforts: voter identification laws, purging of eligible voter lists, and voter harassment.

a. Voter identification laws

Voter identification laws require prospective voters to present some type of government accepted identification in order to exercise their right to vote.327 These voter identification laws have a negative disproportionate impact on people who lack the type of identification required under the laws, including a driver's license.328 The strictest versions of this legislation, such as those that exist in Pennsylvania, Indiana, and Georgia, require voters to provide a state or federally-issued photographic identification.329 Less restrictive statutes, such as those passed in Connecticut and Delaware, allow voters to waive the identification requirement by signing a statement or affidavit attesting to their identity.330 In Idaho, a person who knowingly provides false information on such an affidavit is guilty of a felony.331 Other laws have attempted to require proof of citizenship to register to vote.332

b. Purging of voter registration lists

Voter suppression efforts have been employed to disenfranchise the Latino Community by striking eligible Latino voters from the voter registration rolls.333 Recently, the Department of Justice threatened to sue Florida if the state did not halt its purge of the voter rolls, done in part by challenging the citizen status of approximately 182,000 listed voters.334 The DOJ informed the state that the voter purging violates the Voting Rights Act because it has a disproportionate effect on minorities, and because the purge exceeds the statutorily permissible cut–off date set forth in the National Voter Registration Act.335

c. Voter harassment

Harassment of Latino voters includes same-day challenges to eligibility at the polls, denial of Spanish-language ballots, and physically and verbally threatening behavior to discourage voting.336 Aggressive and targeted inquiries focused on Latinos’ eligibility to vote are not unusual, including demands to establish timely voter registration, citizenship, and competence to vote. For example,
although Latinos are entitled to bilingual ballots in accordance with the requirements of the Voting Rights Act, in federal and state elections Latinos complain that they have been denied ballots in Spanish, either through a direct denial to such a ballot, or by harassment efforts to discourage voting using such a ballot.

Some Latinos have a well-founded fear of violence or of being arrested if they try to vote, and face intimidation and harassment at their polling sites. Election-day voter harassment tactics occur despite statutory prohibitions on various forms of election-day harassment and misconduct, and despite efforts to educate voters on their rights and lawful responses to voter harassment. Harassment can and does reduce voter turnout and voter participation.

4. Legal framework

Legal challenges to anti-voter legislation and government action have relied predominantly on the Voting Rights Act of 1965, which prohibits government action that denies access to the ballot based on race, color and linguistic minority status. The VRA prohibits voter dilution, and provides for federal preclearance of certain state and local policies, practices or procedures that may adversely impact on voters. The VRA also mandates the provision of bilingual ballots in accordance with the statute. There are also challenges based on redistricting, and challenges that may rely on state constitutional and statutory provisions related to the voting process.

G. Media and Latino Images

“The network news audience continues to learn little about the Latino community by watching the evening news. Latinos also rarely see themselves or their issues covered by these media outlets.”


“Poor coverage of communities of color has real consequences for our society.”

* * *

“It is unfortunate that such a significant portion of stories [in 2005] portrayed Latinos as criminals. This coverage reinforces a negative stereotype and when stories about other topics involving Latinos are not covered, this type of coverage paints an unbalanced picture of the contributions Latinos make to our society.”

“We believe the lack of newsroom diversity at these networks is the primary reason for their poor coverage of Latinos. Unfortunately, the nation’s news media have historically failed to ensure that their newsrooms, as well as their news coverage, reflect the communities they serve.”


1. Stereotyping of Latinos

Media images of Latinas and Latinos influence community perceptions as well as policy. With some notable exceptions, the depiction of Latinos has been limited to negative portrayals and caricatures. These include stereotypes that Latino males are “macho” and Latinas are sexually provocative; that Latinos are inherently lazy individuals involved in violent gangs or other criminal behavior; and that Latinos are undocumented immigrants who take jobs from “real Americans.” These portrayals go hand in hand with assumptions about how Latinos are responsible for all sorts of problems in U.S. society, ranging from economic downturns to increased drug trafficking. Today there are few positive popular media images of Latinos, and the few that exist must compete with the negative portrayals for screen time, which outnumber the positive images.

The popular culture images have significant impact on American “pop culture,” but they are not the only images influencing popular discourse on “Latinos in the U.S.” The media portrayals in news programming are similarly few in number and unbalanced. The National Association of Hispanic Journalists’ analysis of network news in 2005 found that a mere .83%, or 105, of the 12,600 stories aired on ABC, CBS, and NBC were exclusively about Latinos or Latino-related issues. The report found that the top five topics in Latino stories were on domestic government, crime, human interest, immigration, and sports. There was an increase from the prior year of Latinos portrayed in crime stories, and in most of the stories they were portrayed as perpetrators. Moreover, Latinos were nearly absent from general news coverage and “remain practically invisible on the evening news.”

Recent media coverage is also heavily focused on issues related to immigration, with many portraying Latino immigrants in a negative light. Although of tremendous importance to the Latino community, the current coverage of immigration issues presents several concerns. First, the overwhelming focus on Latino
immigrants as a “problem” is not only inaccurate, but it also provides “cover” for those who seek
to demonize Latino immigrants. Second, this coverage presents Latinos as “outsiders” which is
an inaccurate depiction of the history and contributions of Latinos in the United States. Third, it
suggests that other political and social issues are of limited or no significance to Latinos, a wholly
incorrect presentation of the range and depth of substantive matters discussed and debated within
the Latino Community. The testimony and research available to the Commission presents a wide
range of political and social issues that capture the hearts and minds of Latinos in their professional
and personal lives. Certainly media can make room for additional coverage of a full range of areas
of concern to the largest ethnic/racial population group in the country. Fourth, to the extent that the
immigration coverage presents Latino immigrants negatively, the coverage further limits the range of
positive images for Latinas and Latinos at a time when the Latino Community is growing in size and
impact on the U.S. economy, and is helping to define the Country’s political future.

A report on coverage of Latinos in U.S. news magazines succinctly described the impact of
presenting Latinos as “problem[s] for U.S. politics, culture and society in general.”

Such narrowly focused stereotypical representations of the Latino community make
it difficult for the society to see the broader array of Latino roles and contributions
in American communities. Sadly, such representation may often make it difficult for
Latinos to also see themselves beyond these one-dimensional depictions.

2. Underemployment in the English-language media industry

These media portrayals are only part of the problem. Latinas and Latinos are underrepresented
in the English-language media; they are completely shutout or represent a small number of
professionals in front of and behind the camera, and are rarely in decision-making or managerial
positions in all parts of the media industry. As a general matter, Latinos are a small percentage
of employees within the various media outlets. According to a special report by the Equal
Employment Opportunity Commission, Latinos were a mere 10.5% of employees in the Cable
Network and Program Distribution industry group, 8.5% in the Radio & Television Broadcasting
group, and 6.3% in the Newspaper/Periodicals/Book/Database Publishers industry group. In every
category of industry groups, the percentage of Latino office and clerical workers was at least double
the number of Latino officials/managers. As noted in the report, in the publishing industry,
Latinos and African Americans “are more highly represented in the lower paying jobs.”

A 2011 survey by the Association of Black Journalists found that People of Color were only 12% of
the newsroom management positions—the people “who set the news agenda and make coverage and
personnel decisions”—at the 228 television stations surveyed. Of the 1,157 managers, 1,017 were
White, 81 were Black, 42 were Hispanic, 16 were Asian, and one was Native American. According
to the survey, over half of the stations had no diversity in the management positions, and many were
in television markets with a significant population of people of color. In its 2006 Report, the
National Association of Hispanic Journalists scrutinized coverage during a sample two week period
and found that with one exception, Latino journalists were nearly nonexistent during the sample
period.
3. Mistreatment of Latinos within the media industry

Even when Latinos are hired to work in media outlets, they often face difficult workplaces which undermine their success. Typical challenges include unequal treatment compared to non Latino peers, blatant stereotyping of Latinos and the Latino Community, and a general hostile work environment where employees face discrimination based on a combination of race, national origin, and gender. It is no surprise that Latinos in these workplaces find it difficult to come forward and tell their stories. Indeed, litigation is rare.362

4. Hate speech

Hate speech against Latinos through media outlets has increased over the past years. According to a 2009 Petition for Inquiry filed by the National Hispanic Media Coalition to the Federal Communications Commission, “hate speech targeting Latinos and other vulnerable populations is widespread across the media and is on the rise.” The Petition further noted that talk show hosts on radio, television and cable “habitually editorialize against immigration by attacking the character and morality of the immigrants themselves.” A pilot study of talk radio published in 2011 concluded that the qualitative analysis of broadcast segments that were the subject of the study revealed “a significant incidence of speech that incorporates targeted statements, unsubstantiated claims, divisive language, and indexical terms related to political nativism.” In addition, a recurring pattern defined vulnerable groups “as antithetical to core American values...,” and framed Latino immigrants “as criminals and, by extension, as an imminent threat to the American public.”

5. Legal framework

Federal statutes and guidelines that have provided some protections to Latinos for discrimination in employment in various media outlets include Title VII, prohibiting discrimination by certain employers, based on inter alia, race, national origin, and sex; Equal Employment Opportunity Commission Guidelines, including, §1604.11 (sexual harassment), §1606.1 (national origin definition), §1606.2 (disparate impact applies to national origin), §1606.7 (English-only rules), §1606.8 (harassment based on national origin); and 42 U.S.C. § 1981, which prohibits racial discrimination in the making and enforcing of contracts.369

H. Diversity and Latinos in the Legal Profession

“If race, gender, and social class are determinants for entry into the profession and for the attainment of certain positions within the profession, it may imply that these same attributes affect the sorts of treatment individuals will receive by legal institutions, in part because they do not have access to lawyers who share a similar social background.”

“The importance of the legal profession in today’s society is unquestionable. Lawyers are often powerful players in social, economic and political circles and as women and minorities become an increasing part of this profession, their ability to obtain public and private influence is increasing.”


“[W]orkplace diversity encompasses and goes beyond the traditional concept of equal employment opportunity. In its broadest sense, diversity adds differing skills, family structures, educational levels, ages, and cultural and social backgrounds. An emphasis on diversity encourages organizations to address more thoughtfully and thoroughly the needs of their employees from all groups, as well as the public they serve.”


“[L]awyers are very often key players in designing and activating the institutional mechanisms through which property is transferred, economic exchange is planned and enforced, injuries are compensated, crime is punished, marriages are dissolved and disputes are resolved. The ideologies and incentives of the lawyers engaged in these functions directly influence the lived experience of Americans, including whether they feel fairly treated by legal institutions.


The ABA has worked to diversify the legal profession, recognizing the moral imperative and practical need to better represent the diverse communities that constitute the United States population. It has also worked to address diversity within its own ranks. While we can point to some success in increasing diversity and improving the opportunities for advancement and success within the legal profession, there is still much work to be done. Lawyers of color continue to face obstacles to professional success, and women of color in the legal profession continue to experience sexism and gender-related obstacles to equality.
1. Underrepresentation in the legal profession

Latinos are a small percentage of the legal profession—a reality across all sectors, public and private. Latinos constitute a mere 3.3% of all lawyers, 4.5% of judges, magistrates and judicial workers, and 3.1% of law professors. Despite the strides women have made in the legal profession, Latina lawyers continue to be underrepresented, and account for a mere 1.2% of lawyers and approximately 2% of judges.

The number of Latino law students is disproportionately small, and unless admission rates change dramatically, they cannot meet the increased need for Latino lawyers. For example, according to fall 2011 data from the Law School Admissions Council, Hispanics constituted 8.9% of applicants, and 7.6% of matriculants to ABA-approved law schools. Hispanics earned 7.1% of JD degrees in 2009-2010. Thus, as the ABA has recognized through its institutional commitment to educational pipeline programming, there is a great need for educational pipeline programs that provide guidance and encouragement to prospective Latino law students and lawyers.

The underrepresentation of Latinos in the legal profession is a contributing factor to the under provision of legal services to Latino clients. The last decade's growth of the Latino population emphasizes the urgent need to address this underrepresentation within all sectors of the profession.

2. Workplaces tainted by bias and stereotype

There is limited data on the professional workplace and career experiences of Latino legal professionals. There is

“[I]f the ABA accepts that law schools have the obligation to prepare students for the practice of law, it then follows that laws schools must account for the changing demographics in our country when fulfilling this obligation. The growing need for Spanish-speaking lawyers cannot be ignored and must be addressed by our law schools.”

Janet Murguia, President and CEO, National Council of La Raza, Midwest Hearing, Chicago, IL, November 12, 2010, Tr. 34.
some data on the experiences of Latina lawyers, and it suggests that they face obstacles in their professional careers, including overcoming stereotypes and biases about their competence and leadership abilities.\textsuperscript{383} A 2009 nationwide study of over 600 Latina attorneys by the Hispanic National Bar Association Commission on Latinas in the Legal Profession, found that the Latinas in the study “believe their legitimacy, qualifications, and abilities as attorneys are often questioned or devalued by their employers, coworkers, clients, and the general population.”\textsuperscript{384} These lawyers reported that, “they are often mistaken for someone other than the attorney (e.g. court reporter, interpreter, or paralegal) both in the workplace and in court…. [and] their accomplishments are attributed to undeserved ‘affirmative action’ benefits, rather than achievements based on merit and ability.”\textsuperscript{385} The study found that the intersection of gender, ethnicity and race had a significant impact on these Latinas.

As ethnically and racially diverse females, the Latinas [in this study] appear to have encountered a multilayered glass ceiling that acts as a three-way threat to their careers. Although gender, ethnicity, and race are intertwined, gender bias and stereotyping appear to be the greatest obstacle to their retention and career advancement. At their workplaces, the Latinas have confronted gender and cultural expectations and assumptions about their roles as attorneys. They have been subjected to overt sexism, lacked influential mentors, and struggled with the conflicting demands of career and motherhood.

A follow up HNBA study of Latinas in the public interest sector found Latinas working in this sector of the profession faced similar challenges, and faced the additional challenge of the devaluation of public interest work and public interest sector jobs.\textsuperscript{386} This finding is particularly troubling because attorneys working in the public interest sector provide much needed legal services to Latino clients.\textsuperscript{387}
RECOMMENDATION

Based on the information presented to the Commission during its public hearings and its review of the available data, the Commission recommends that the ABA establish the Commission on Hispanic Legal Rights and Responsibilities as a Standing Committee, charged with continuing to explore and promote solutions, for the ABA’s consideration, to the myriad of issues impacting on the Latino Community’s access to social justice and the courts.

This Report presents preliminary information for the ABA’s consideration, with the goal of providing a foundation upon which to expand on the work that has been started during the past two years. The witnesses and stakeholders who provided valuable information to the Commission expect that their hopes were not misplaced that the ABA would take the lead in addressing these difficult issues. These individuals and organizations candidly described the challenges facing Latino lawyers, clients, and members of the broader Latino Community. The Commission recommends Standing Committee status as a concrete response to the need for immediate and continued action.

CONCLUSION

The history of Latinos in the United States is one of significant contributions to our legal system, economy and civic life. It is a vibrant and multilayered history. Today’s Latinos are proud descendants of Latino pioneers, as well as beneficiaries of the sacrifices and hard work of those who struggled for equality under the law.

At present, the anti-Latino sentiments that fuel legislation and violent actions against Latinos threaten the ability of Latinos to engage equally in the political and social life of the United States, and to share equally in the American Dream. The ABA must act now and must act forcefully to ensure that Latinos can participate in our democratic society, equally, and with confidence that they will be treated justly under the law.

The United States is at a crossroads. As the number of Latinos exceeds the 50 million mark, and Latino participation in all aspects of American life expands daily, the future of the U.S. is inextricably intertwined with, and dependent upon, the success of this large and growing Latino Community. Swift and comprehensive action is necessary to end unjust treatment of Latinos within our legal system and our broader communities. Nothing less will do.
ENDNOTES


2. Throughout this Report, the terms “Latina,” “Latino,” and “Hispanic” are used interchangeably and refer to persons living in the United States who are of Hispanic descent. The term “Latino,” unless stated otherwise, applies to all persons of Hispanic descent, regardless of gender identification. References to “Latino Community” and “Hispanic Community” are to the associational group of persons of Hispanic descent living in the United States, connected by shared heritage, cultures, countries of national origin and the Spanish language.

3. NILP Guest Commentary: Alex Nogales, “Holding the Television Throughout this Report, the terms “Latina,” “Latino,” and “Hispanic” are used interchangeably and refer to persons living in the United States who are of Hispanic descent. The term “Latino,” unless stated otherwise, applies to all persons of Hispanic descent, regardless of gender identification. References to “Latino Community” and “Hispanic Community” are to the associational group of persons of Hispanic descent living in the United States, connected by shared heritage, cultures, countries of national origin and the Spanish language.

4. NILP Guest Commentary: Alex Nogales, “Holding the Television Throughout this Report, the terms “Latina,” “Latino,” and “Hispanic” are used interchangeably and refer to persons living in the United States who are of Hispanic descent. The term “Latino,” unless stated otherwise, applies to all persons of Hispanic descent, regardless of gender identification. References to “Latino Community” and “Hispanic Community” are to the associational group of persons of Hispanic descent living in the United States, connected by shared heritage, cultures, countries of national origin and the Spanish language.


6. This information includes census data, federal and state government data, ethnographic reports, policy statements, and testimony to the Commission from a broad range of the U.S. population, such as lawyers, advocates, and individuals from various backgrounds, experience, and age groups.

7. See discussion infra SUBSTANTIVE LEGAL ISSUES.


9. Id.

10. Id. at 37.

11. A comprehensive history of Latinos in the United States, including recent immigrants, and their contributions to America’s economic, social, and political life, is beyond the scope of this Report or the Commission’s mandate. Such history, however, is significant. See Cecilia Garcia, Hispanic Trends in the United States. Available at http://www.ma.iup.edu/Pueblo/latino_cultures/contrib.html. The Commission acknowledges that Latinos have been and continue to be vital members of U.S. society, and that their contributions have helped define legal and political rights in this country.


14. See Pew Research Ctr., Hispanics and Arizona’s New Immigration Law 4 (2010), http://www.pewhispanic.org/files/2010/04/68.pdf (stating that less than half (45%) of Latinos said “they had a great deal or fair amount of confidence that police officers in their communities would treat Latinos fairly”); see also Letter from the Department of Justice Civil Rights Division Technical Assistance to Steve Levy, Executive, Suffolk County Police Department (Sept. 13, 2011), http://www.justice.gov/crt/about/spd/documents/suffolkPD_TA_9-13-11.pdf (discussing the preliminary recommendations based on its ongoing joint investigation with the U.S. Attorney’s Office for the Eastern District of New York, of the Suffolk County Police Department, pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 and stating that the Suffolk County Police Department’s policy on the collection and use of information on immigration status was vague, did not provide guidance to officers, and therefore was subject to abuse, and that the policy for investigation of hate crimes was inconsistent with the duty to provide services to limited English proficient Individuals); S. Poverty Law Ctr., Climate of Fear: Latino Immigrants in Suffolk County, N.Y. (2009), http://www.splcenter.org/get-informed/publications/climate-of-fear-latino-immigrants-in-suffolk-county-ny (discussing actions and statements by officials that contribute to anti-immigrant hate violence); S. Poverty Law Ctr., Voices From the Shadows (2009), http://www.splcenter.org/publications/climate-of-fear-latino-immigrants-in-suffolk-county-ny/voices-from-the-shadows (discussing Latino immigrants’ fear and distrust of law enforcement in Suffolk County, New York based on officials’ perceived inaction and complicity in anti-immigrant violence).


16. Seth Motel, Eileen Pattem, Pew Research Ctr., The 10 Largest Hispanic Origin Groups: Characteristics, Rankings, Top Counties 10 (2012), http://www.pewhispanic.org/files/2012/06/The-10-Largest-Hispanic-Origin-Groups.pdf (74% of Latinos are U.S. Citizens). The Latino subgroups with the largest percentage of U.S. citizens are Puerto Ricans (99%), Cubans (75%) and Mexicans (73%), who also account for the three largest Latino subgroup populations, totaling 77.8% of the total Latino U.S. population.


20. Id.

21. Id. at 2, 6. The population numbers in parentheses are based on the data in Table 6 of the document, and rounded off to the nearest hundred thousand.

22. Id. at 6 (based on population data by state set forth in Table 6 of the document).

23. Id. (based on population data by state set forth in Table 6 of the document).

24. Id.

25. Id. at 3.

26. Id.

27. Id.

28. Id. at 1.

29. Id. at Appendix Table 3.


32. Id. at Table 7, http://www.pewhispanic.org/2012/02/21/statistical-portrait-of-hispanics-in-the-united-states-2010/#7. The category included within the subgroup listings labeled, “All other Spanish/Hispanic/Latino,” with an estimated population of 1.6 million, is not included in the text as one of the largest subgroups because it is a consolidated category, and does not provide numbers for a discreet national origin subgroup.

33. The 10 LARGEST HISPANIC ORIGIN GROUPS, supra note 16 at 10. Ninety nine percent of Puerto Ricans, 74% of Cubans, and 73% of Mexicans are U.S. citizens.

34. SETh MOTEL, PEw RESEARCH CTR., STATISTIcAL PORTRAIT OF HISPANICS IN THE UNIITED STATES, 2010, supra note 30, references for “native born” includes persons born in Puerto Rico and other U.S. territories, and “foreign born” includes naturalized citizens and noncitizens.

35. Id. at Table 4, http://www.pewhispanic.org/2012/02/21/statistical-portrait-of-hispanics-in-the-united-states-2010/#4.

36. Id. at Table 5, http://www.pewhispanic.org/2012/02/21/statistical-portrait-of-hispanics-in-the-united-states-2010/#5.


38. Id. at 5. This population also constituted 5.2% of the U.S. labor force.

39. Id.


42. PAUL TAYLOR ET AL., UNAUTHORIZED IMMIGRANTS: LENGTH OF RESIDENCY, supra note 37 at 3.

43. Id. at 6.


46. Seth Motel, Statistical Portrait of Hispanics in the United States, supra

47. Pew Research Ctr., When Labels Don’t Fit: Hispanics and Their Views of Identity 24 (2012), http://www.pewhispanic.org/files/2012/04/PHC-Hispanic-identity.pdf (stating that 75% of Latinos said it is “very important” and 20% said it is “somewhat important” for future generations in the U.S. to speak Spanish, for a total of 95% of the survey respondents).

48. The Pew Survey found that while the majority of survey respondents stated that “Latinos in the U.S. have many different cultures rather than a common culture,” the majority “expressed a strong, shared connection to the Spanish language.” Id. at 2.

49. Chandasi Pandya et al., Migration Police Institute, LEP Data Brief: Limited English Proficient Individuals in the United States: Number, Share, Growth, and Linguistic Diversity 6 (December 2011), http://www.migrationinformation.org/integration/LEPdatabrief.pdf (explaining that Spanish-speaking Limited English Proficient (LEP) persons account for 66% of the 25.2 million LEP persons in the U.S.). This statistic may include non Latino Spanish speakers, but the overwhelming population reflected in this statistic is Latino.

50. Letter from Thomas E. Perez, Assistant Attorney Gen., U.S. Dep’t of Justice, Civil Rights Div., to Honorable John W. Smith, Dir. of North Carolina Admin. Office of the Courts (Mar. 8, 2012) (stating that indigent parties were treated differently; and that the aoc policy “seeks to promote full and equal participation in the legal profession through a philosophical difference of opinion, or an exercise in abstract theorizing. Given the budgetary challenges faced by the states, and in some cases the many demands placed on our judiciary to provide a range of services with limited resources, the Commission is concerned that language access services will fall victim to competing financial demands.”)


52. The Commission’s concern reflects more a pragmatic realism, and commitment to statutory interpretation that ensures access, than a philosophical difference of opinion, or an exercise in abstract theorizing. Given the budgetary challenges faced by the states, and in some cases the many demands placed on our judiciary to provide a range of services with limited resources, the Commission is concerned that language access services will fall victim to competing financial demands.


56. Id.


60. Hispanic Association on Corporate Responsibility, 1020 HACR Corporate Inclusion Index 12 (2010), http://www.hacr.org/include/docFormat_list.asp?docRecNo=736&docType=0.

61. Id.


64. Id. See Figure 1 and Table 1.


66. Id. at 37, 43.


69. The discussions throughout this Report of gender and gender-related issues are intended to provide information and analyses specific to the experiences of persons who are of Hispanic heritage. However, the Commission recognizes that there are ABA entities that address gender issues within a broader community framework. See The ABA Commission on Domestic and Sexual Violence, which seeks to “increase access to justice for victims of domestic violence, sexual assault and stalking by mobilizing the legal profession,” http://www.americanbar.org/groups/domestic_violence.html; the Commission on Sexual Orientation and Gender Identity, which “seeks to promote full and equal participation in the legal profession by persons of differing sexual orientations and gender identities,”


74. See note 204 infra.

75. See Julia Preston, Same-Sex Couples Granted Protection in Deportations, N.Y. TIMES, Sept. 28, 2012, at A1 (discussing Department of Homeland Security’s decision to treat family relationships under its guidelines in deportation-review cases to include long-term same-sex couples).

76. During its fact-gathering process, the Commission received extensive testimony and information on the status of Latino immigrants, and problems with U.S. immigration policy. The Commission’s discussion of immigrants and the attack on immigrants presented in several sections of this Report reflects the information presented to the Commission, and the impassioned voices of advocates for immigration reform. These portions of the Report are not intended to, and do not, serve as an analysis of existing immigration law or proposals for change. Instead, the Commission recognizes the work done by the ABA’s Commission on Immigration, which “directs the Association’s efforts to ensure fair treatment and full due process rights for immigrants and refugees within the United States.” See http://www.americanbar.org/groups/public_services/immigration.html. The Commission on Immigration’s recent publication, Reforming The Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases, provides a comprehensive, extensively well researched, and thoughtful review of the current system for determining whether to deport or remove noncitizens. See http://www.americanbar.org/content dam/aba/publications/commission_on_immigration/ coli_complete_full_report.authcheckdam.pdf. It is one example of the ABA’s institutional work on immigration matters. The Commission on Hispanic Legal Rights and Responsibilities hopes that, in the future, it will be able to work on issues of mutual interest with the Commission on Immigration.


80. NATIONAL CONFERENCE OF STATE LEGISLATORS, 2012 IMMIGRATION-RELATED LAWS supra note 79.

81. Id.


84. Id.

85. Id. at 2498.

86. Id. at 2510.

87. Id. at 2507 (citing Ariz. Rev. Stat. Ann. § 11-1051(B) (West 2012)).

88. Id. at 2510.

89. See discussion infra note 310 (citing several Amicus Curiae Briefs on behalf of Respondent United States arguing S.B. 1070 will result in profiling of Latinos, regardless of citizenship status).


92. Id. at 35.

93. Id.

95. Id. See also Shadi Masri, ICE’s Initiation of Secure Communities Program Draws More Criticism Than Praise, 25 Geo IMMIGR. L.J. 533 (2011).

96. See e.g., California Assembly Bill 1081 (2011-12 session) (pending bill to restrict honoring of ICE detainers statewide). See also Julia Preston, Despite Opposition, Immigration Agency to Expand Fingerprint Program, N.Y. TIMES, May 12, 2012, at A10.


98. Id. at 5-6.

99. Id. at 13.

100. Id.

101. Id.

102. Homeland Security Advisory Council, Task Force on Secure Communities Findings and Recommendations 4 (2011), https://www.dhs.gov/xlibrary/assets/hsac-task-force-on-secure-communities.pdf. The Homeland Security Advisory Council “is comprised of leaders from state and local government, first responder agencies, the private sector, and academia, provides advice and recommendations to the Secretary on matters related to homeland security.” Id. The Task Force is a volunteer group composed of “local and state law enforcement and homeland security officials, attorneys with expertise in immigration practice and criminal law, labor union officials who represent federal immigration enforcement workers, academics, social service agency leaders, and others.” The Task Force “was asked to consider how Immigration and Customs Enforcement (ICE) may improve the Secure Communities Program, including how to address some of the concerns about the program that ‘relate to [its] impact on community policing and the possibility of racial profiling,’ and ‘how to best focus on individuals who pose a true public safety or national security threat.’” The Task Force “was specifically charged with making recommendations ‘on how ICE can adjust the Secure Communities program to mitigate potential impacts on community policing practices, including whether and how to implement policy regarding the removals of individuals charged with, but not convicted of, minor traffic offenses who have no other criminal history.’” Id. See also, Dept. of Homeland Security, Protecting the Homeland: ICE Response to the Task Force on Secure Communities Findings and Recommendations (2012)(setting forth Immigration and Customs Enforcement’s response to Task Force recommendations which were adopted by the Homeland Security Advisory Council in November 2011), http://www.ice.gov/doclib/secure-communities/pdf/hsac-sc-taskforce-report.pdf.


104. Id. at 12.


107. Id. at 25.

108. Id. at 29.

109. S. Poverty Law Ctr., Anti-Latino Hate Crime Up for Fourth Year (2008) (“The FBI’s latest report also found, as it has in most years, that schools and colleges were the third largest venue for hate crimes (with 11.3% of the total reported on campuses), after ‘in or near residences or homes’ (30.5%) and ‘on highways, roads, alleys, or streets’ (18.9%).”), http://www.splcenter.org/intel/intelreport/article.jsp?aid=990.

110. Id.


114. Id. at 9.

115. Id. at 1.

116. Id. at 3, 9.

117. Id. at 9.


119. The FBI’s Uniform Crime Reports and the National Crime Victimization Survey data cannot easily be compared because of differences in methodology and crime coverage, but according to the NCVS once the data are restricted to the same types of violent crimes, the discrepancy in the number of hate crime victimizations can be accounted for, in part, by the fact that 54% of victims in the NCVS did not report to the police. Lynn Langston and Michael Planty, U.S. Dept. of Justice, Bureau of Justice Statistics, Hate Crime, 2003-2009 2 (June 2011), http://bjs.ojp.usdoj.gov/content/pub/pdf/hc0309.pdf.
See IMMIGRATION, MTT ROMNEY CAMPAIGN WEBSITE (stating that “[a] porous border allows illegal immigrants to enter the United States, violent cartel members and terrorist possibly among them. Certain states and municipalities grant benefits to illegal immigrants that act as magnets that draw illegal immigrants across the border”), http://www.mittromney.com/issues/immigration; RICK SANTORUM CAMPAIGN WEBSITE (stating, “[the policies of the Obama administration have left us today with a serious problem: an exposed border and a nation vulnerable to drug cartels, violent criminals, and terrorists”), http://www.ricksantorum.com/immigration-reform-securing-and-strengthening-americas; MARK SMITH, THE GUARDIAN, JOHN MCCAIN BLAMES ILLEGAL IMMIGRANTS FOR ARIZONA WILDFIRES (June 20, 2011), (Senator McCain (R-AZ) stated that substantial evidence exists that some Arizona wildfires were caused by “persons who crossed our border illegally. The answer to that part of the problem is to get a secure border.” Senator Jon Kyl and Representative Paul Gosar said they too had heard that illegal immigrants start fires, but could not point to any evidence in support), http://www.guardian.co.uk/world/2011/jun/21/john-mccain-blames-immigrants-wildfires; SCOTT ROTHSCILD, LI-WORLD.com (Mar. 14, 2011), KANSAS LEGISLATOR SUGGESTS USING HUNTERS IN HELICOPTERS TO CONTROL ILLEGAL IMMIGRATION, LIKENS IMMIGRANTS TO FERAL HOES, (Kansas State Representative Virgil Peck (R-Tyro) said his comment, made during a House Appropriations Committee on state spending for controlling feral swine, that “it might be a good idea to control illegal immigration the way the feral hog population has been controlled: with gunmen shooting from helicopters...” was a joke, but that it reflected “frustration with the problem of illegal immigration”), http://www2.liworld.com/news/2011/mar/14/legislators-comment-illegal-immigration-criticized; TENNESSEE LAWMAKER CALLS SOME ILLEGAL IMMIGRANTS “RATS”, CNN.COM (Nov. 12, 2010) (during fiscal review committee meeting of lawmakers and state officials, Tennessee State Representative Curry Todd reacted to an answer to his question regarding proof of citizenship for access to state assistance, that “[they can go out there like rats and multiply,” http://www.cnn.com/2010/US/11/12/tennessee-lawmaker.remark/index.html; see also LOZANO v. HAZLETON, 496 F.Supp. 2d 477, 507-510, (M.D.Pa. 2007)(in federal lawsuit finding unlawful local ordinances seeking to regulate immigrant access to housing and employment opportunities, court grants certain plaintiffs right to proceed anonymously based, in part, on court’s determination that “record of hostility to the plaintiffs in the lawsuit and the climate of fear and hostility surrounding the debate over the ordinances creates a justified fear about revealing the anonymous plaintiffs’ identities.”), aff’d in part, vacated in part, 620 F.3d 170 (3d Cir. 2010), cert. granted, judgment vacated sub nom, City of Hazelton, Pa. v. Lozano, 131 S.Ct. 2958, 180 L.Ed.2d 243 (2011)(judgment vacated, and case remanded to the United States Court of Appeals for the Third Circuit for further consideration in light of Chamber of Commerce of United States of America v. Whiting, 563 U.S. ——, 131 S.Ct. 1968, 179 L.Ed.2d 1031 (2011))).

Kevin R. Johnson, It’s the Economy, Stupid: The Hijacking of the Debate Over Immigration Reform by Monsters, Ghosts, and Goblins (or the War on Drugs, War on Terror, Narcoterrorists, Etc.), 13 CHAP. L. REV. 583, 612 (2010); ARMANDO NAVARRO, THE IMMIGRATION CRISIS: NATIVISM, ARMED VIOLENCE, AND THE RISE OF COUNTERRAISING MASS MOVEMENT (AltaMira Press 2009). See LEADERSHIP CONF. ON CRV. & HUM. RTS., THE STATE OF HATE: ESCALATING HATE VIOLENCE AGAINST IMMIGRANTS (June 2008) (“Increase in violence against Hispanics correlates closely with the increasingly heated debate over Comprehensive Immigration Reform and an escalation in the level of anti-immigrant vitriol on radio, television, and the Internet”); PEW HISPANIC CTR., 2007 NATIONAL SURVEY OF LATINOS: AS ILLEGAL IMMIGRATION ISSUE HEATS UP, LATINOS FEEL A CHILL 35 (2007) (“Latinos who say their local officials have focused a lot on the issue of illegal immigration in recent months are more likely than other Hispanics to report being the victim of some types of discrimination. For example, nearly one-in-five (19%) of those who perceive a heavy local government focus on illegal immigration report having been treated poorly in government offices very or fairly often. By contrast, just one-in-nine Hispanics (11%) who perceive that illegal immigration has not been a priority of local officials report receiving poor service in government offices very often or fairly often”), http://www.pewhispanic.org/files/reports/84.pdf.

MARK POTOK, S. POVERTY LAW CTR., THE ‘PATRIOT’ MOVEMENT EXPLODES (2012), http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2012/spring/the-year-in-hate-and-extremism. See STATE AND FEDERAL LAW ENFORCEMENT ATTACK ON IMMIGRANTS, supra notes 77-93 and accompanying text, on state-based legislative efforts that seek to punish immigrants deemed to be “undocumented,” as well as persons who provide services to such immigrants within their borders.


Id. at 24 (cautioning figures may reflect a higher percentage of people of color living in regions covered by the report as well as the results of the dedicated outreach to communities of color).

Id. at 27.


The substantive considerations and results of the commission's first year covered September 2010 to August 2011, which ended at the close of the ABA Annual Meeting.


The substantive considerations and results of the Commission's deliberations during its second year are set forth infra, in the Report's section titled, CHALLENGES FACING THE LATINO COMMUNITY IN THE UNITED STATES: SUBSTANTIVE LEGAL ISSUES.

To the extent technologically feasible, information about the hearings have been made available on line at the Commission's page on the Association's website, http://www.americanbar.org/advocacy/commission_on_hispanic_legal_rights_responsibilities.html.

The Latino Community in the United States is heterogeneous and consists of members from many countries and regions, including Mexico, Puerto Rico, Cuba, Dominican Republic, and Central and South America.

Actual name withheld to protect the witness and ensure her privacy.

These descriptions relate the witnesses' testimony regarding the nature of incidents they experienced and described before the Commission.

The co-chairs of the Forum were HNBA President and ABA Commissioner Diana Sen, and Professor Jenny Rivera, ABA Commissioner and Reporter.

The Hispanic National Bar Association Law Student Division (HNBA-LSD) is part of the Hispanic National Bar Association. The HNBA-LSD is a national organization governed by its members. Its mission "is to increase the number of Latino/a law students involved with the HNBA and HNBA-LSD, to encourage the participation of Latino [sic] students in developing and remaining responsive to the social, political, and academic promotion of the Latino/a community and to encourage and promote the recruitment, academic achievement, and retention of Latino/a law students." See http://www.hnba.com/about-the-lsd.

The National Latina/o Law Student Association (NLLSA) is an organization run by and for Latina/o law students and provides a forum for national discussion on issues affecting the Latina/o community. "Founded on principles of social, ethnic, racial, gender and sexual equality, NLLSA is focused on advancing Latina/o academic success and commitment to community service. NLLSA is fueled by a progressive coalition-building approach to addressing the legal issues affecting Latinos around the nation." See http://www.nllsa.org.

The Education Division of LatinoJustice PRLDEF has provided services to prospective law students and law students for 37 years. Among its many programs the Education Division hosts an annual Law Day for prospective law students attended by law school representatives, provides LSAT preparation, and presents information workshops on law school for admitted students. See http://latinojustice.org/legal_education.

The Council on Legal Education Opportunity (CLEO) has a long history of working on programs to increase diversity in the profession, including weeklong programs that prepare accepted students for law school. For more information on CLEO, see http://www.cleoscholars.com.

The HNBA Mentoring Program Committee “was created to address the dearth of Latino lawyers and the pipeline problems faced by young Hispanics. The Committee created and oversees the HNBA’s National Mentoring Program, a joint project with the Hispanic National Bar Foundation, which is designed to help increase the number of Hispanics who go to law school and to support their successful transition into legal careers.” See http://www.hnba.com/stand-alone-committees.

Commission Members Francisco Angones, Jose Astigarraga and Commission Members and Forum Co-chairs Jenny Rivera and Diana Sen participated in the program.

Mr. Landry returned to serve as the Head Master Lafayette Charter School after he was appointed the New Head Master of Esperanza.

Commission Member and Reporter Jenny Rivera and Commission Director Aracely Muñoz Petrich attended these meetings.

Commission Member and Reporter Jenny Rivera and Commission Director Aracely Muñoz Petrich attended these meetings.

See discussion ACTION ITEM COMMISSION RESOLUTION 303, infra note 157 and accompanying text.

The Commission cosponsored the Standing Committee’s Resolution 122, which was withdrawn from submission at the 2011 Midyear meeting, and subsequently submitted with revisions for adoption at the 2012 Annual Meeting as Resolution 133.


Legal advocates have relied on several federal and state constitutional and statutory provisions to address the myriad legal issues discussed in this Report. The legal framework presented for each substantive area provides a brief reference to the most significant statutory legal bases of protections, and is not exhaustive of the provisions supporting the range of legal claims and rights implicated by the issues discussed in these substantive areas. General constitutional references are not included with the exception of the discussion of the
criminal justice legal framework.

159. Each substantive area merits a fuller discussion than the Commission is able to present in this Report at this time. It is the hope of the Commission that its recommendation for Standing Committee status will be adopted, and that in the near future ABA members will determine whether to provide more extensive discussion of these and other issues.


163. Id. at http://nces.ed.gov/pubs2010/2010015/tables/table_29.asp. Numbers were unavailable for Latinas with a doctorate or first professional degree, but Latinas with a Master’s degree earned a median income of $52,000 compared to $55,000 for White females.


165. Id. (race/ethnic and gender breakdown for these occupations were: 15.3% of Latinos work in management related positions compared with 34.8% of White males; 24.1% of Latinas worked in management related positions compared with 41.5% of White females; 21.8% of Latinos worked in service occupations compared with 13.6% of White males; and 33.2% of Latinas worked in service occupations compared with 20% of White females).


170. Id. at 42.

171. Id. at 43.

172. Id.

173. Id. at 50.

and farming industries in several states, including Florida, California, North Carolina, New York, Iowa and Arkansas, describing harsh working conditions, inhumane treatment and illegal harassment, and which concludes that the “laws that protect these workers are grossly inadequate”).

The adverse health consequences of these dangerous and unhealthy workplace environments fall particularly harshly upon the Latino community because many heavily Latino-populated neighborhoods face environmental pollution problems and are battlegrounds for environmental justice struggles.


184. C.F.R. § 1604 Part 1604 (title VII guidelines on national origin).


186. See, e.g., 29 U.S.C. § 213(a)(15) (excluding individuals in “domestic service employment” from minimum wage requirements); 29 U.S.C. § 213(b)(21) (excluding individuals “employed in domestic service” from maximum hour limitations).


192. Id. at 3.

193. Id.

194. U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, ANNUAL REPORT, supra 187 at 20, Table 1.


197. Id.


199. See e.g., Villas at Parkside Partners v. City of Farmers Branch, No. 10-10751 (5th Cir. March 21, 2012) (striking down one such ordinance).


207. Id.


210. Id. at 13.

211. Id. at 15.

212. National Council of La Raza, Missing Out, supra note 205 at 8, Figure 5.

213. Id. at 8 (citing The Funding Gap 2008 (Washington, DC: The Education Trust, 2008)). There has been significant litigation to address fiscal inequity in education and its impact on educational opportunities. Latinos have been noticeable participants in these cases, and have served as named plaintiffs in several. See e.g. San Antonio Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973); Campaign for Fiscal Equity v. State of New York, 100 N.Y. 2d 693, 769 N.Y.S. 2d 106, 801 N.E. 2d 326 (2003); Serrano v. Priest, 5 Cal. 3d 584, 487 P.2d 1241 (1971).


215. Id. (percentages do not include numbers from Puerto Rico).

216. Id.


223. Id.

224. Id. at http://nces.ed.gov/pubs2010/2010015/indicator7_27.asp.


227. See Grutter v. Bollinger, 539 U.S. 306 (2003)(upholding admissions process which considers race and ethnicity because law school had a compelling interest in attaining a diverse student body); Gratz v. Bollinger, 539 U.S. 244 (2003)(university’s undergraduate admissions policy which takes race into consideration violated Equal Protection Clause. See also Fisher v. Univ. of Texas at Austin, 631 F.3d 213 (5th Cir. 2011), cert. granted, 132 S.Ct. 1536 (2012)(university admission policy supported by compelling interest in diversity).


229. See e.g. Southern Poverty Law Center and Advocates for Children’s Services Title VI complaint to the U.S. Department of Education’s Office of Civil Rights charging discrimination by North Carolina’s Wake...


235. Memorandum from Janet Napolitano, supra note 231.


237. See e.g., Keyes v. School Dist. No. 1, Denver, Colorado, 413 U.S. 189 (1973)(Latinos are an identifiable class for purposes of the 14th Amendment and schools with predominant population of blacks and Latinos may properly be classified as “segregated”); Mendez v. Westminster Sch. Dist. of Orange Cnty, 64 F.Supp. 544 (S.D. Cal. 1946), aff’d, 161 F.2d 774 (9th Cir. 1947)(affirming lower court decision that segregation of Latino children was unconstitutional).

238. The 2002 No Child Left Behind Act, renamed the Bilingual Education Act to the English Language Acquisition, Language Enhancement, and Academic Achievement Act, focuses on achieving language acquisition. 20 U.S.C. §§ 6801-7014.

239. See e.g., Serna v. Portales, 499 F.2d 1147 (10th Cir. 1974)(failure to provide appropriate instruction to ensure Spanish surnamed students “receive a meaningful education” violates title VI); Bilingual Education Act to the English Language acquisition, Language Enhancement, and Academic Achievement Act, Title VII of the Elementary and Secondary Education Act of 1968.

240. See e.g., Riley v. Ambach, 668 F.2d 635 (2d Cir. 1981). See e.g., Riley v. Ambach, 668 F.2d 635 (2d Cir. 1981).


242. See e.g., San Antonio Independent Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973)(education is not a fundamental right under the U.S. Constitution, wealth is not a suspect classification and Texas public school financing system based, in part, on property values is not unconstitutional). See e.g., San Antonio Independent Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973)(education is not a fundamental right under the U.S. Constitution, wealth is not a suspect classification and Texas public school financing system based, in part, on property values is not unconstitutional).

violates the federal and California constitutions), aff’d, 18 Cal. 3d 728, 135 Cal. Rptr. 345, 557 P.2d 929 (1976).


254. Id. (citing CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC), NATIONAL CENTER FOR HEALTH STATISTICS (NCHS), HEALTH, UNITED STATES, 2009, table 137).


259. In 2009, Congress amended the law and permitted states under section 214 of the Children’s Health Insurance Program Reauthorization Act (CHIPRA), Pub L. 111-3, “to cover certain children and pregnant women in both Medicaid and the Children’s Health Insurance Program (CHIP) who are ‘lawfully residing in the United States.’ As a result of this change, states were able to choose to cover lawfully residing certain pregnant women and children lawfully residing in the U.S. See Center for Medicaid, CHIP and Survey & Certification, Department of Health & Human Services, Centers for Medicare & Medicaid Services, Letter from Cindy Mann, Deputy Administrator and Director, to State Health Officials (July 1, 2010) (guidance letter on implementation of CHIPRA, informing state health officials that section 214 “may be applied to pregnant women in Medicaid and CHIP and/or to children up to age 19 for CHIP or up to age 21 for Medicaid (including targeted low-income children described in section 1905(u)(2)(B) of the [Social Security Act]),’ http://cefact.shef遺ge.gov/edu/cms-filesystem-action?file=policy/2009%20chip%20reauth shr0006.pdf.


266. Id.

267. See e.g., Press Release, Attorney General’s Office of the State of New York, Cuomo Announces Agreement With Major Pharmacies To Provide Customers With Prescription Medication Instructions In Their Primary Language, (April 21, 2009) (New York State Attorney General entered agreement with several large pharmacies and stores requiring them to provide consultation services about prescriptions in customers’ primary language and written prescription information in certain languages, including Spanish), http://www.ag.ny.gov/press-release/cuomo-announces-agreements-major-pharmacies.


273. Id.


275. Id.


motorists), State troopers resulting in stop and searches of African American case where United States alleged racial profiling by New Jersey 99-5970 (McL)(D.N.J. December 30, 1999)(consent decree in U.S. v. New Jersey discrimination case Latino police trainee alleged command personnel of Mt. Prospect Martinez v. Village crime Unit officers); New Jersey v. Soto 1999)(alleging racial and ethnic profiling by New York city's Street Puerto Rican Rights v. The New York City, 191 F.R.D. 52 (S.D.N.Y. 1999) class action complaint alleging operation clean halls results in unlawful stops, searches, summons and arrests with a disparate impact on blacks and Latino private residential apartment residents), http://www.nyclu.org/files/releases/Clean_Halls_complaint_3.28.12.PDF; 99-1998)(class certification denied and dismissed in action alleging Illinois state troopers stop, detain and search Latinos and African Americans based on race and ethnicity), aff'd, 251 F.3d 612 (7th Cir. 2001); Brown v. City of Oneonta, 221 F.3d 329 (2d Cir. 2000) (suspect's description is a legitimate classification where it is based on victim's description and race is not the sole characteristic used by police); U.S. v. Montero-Camarga, 208 F.3d 1122, 1134-1135 (9th Cir.), cert. denied, Sanchez-Guillen v. United States, 531 U.S. 889 (2000)(Court holds in challenge to Border Patrol conduct that although "racial or ethnic appearance may be one factor relevant to reasonable suspicion or probable cause where a particular suspect has been identified as having a specific racial or ethnic appearance," Hispanic appearance "may not be considered as a relevant factor where particularized or individualized suspicion is required"); Ligon, supra note 308 (class action complaint alleging Operation Clean Halls results in unlawful stops, searches, summons and arrests with a disparate impact on blacks and Latino private residential apartment residents), http://www.nyclu.org/files/releases/Clean_Halls_complaint_3.28.12.PDF; Floyd et al. v. The City of New York, et al., ___ F.R.D. ___, 2012 WL 1868637 (S.D.N.Y.)(SAS) (class certified in case challenging New York City’s "stop and frisk" program, alleging profiling based on race and national origin); Rodriguez v. California Highway Patrol, 89 F.Supp.2d 1131, 1137 (N.D. Cal. 2000)(class action complaint alleging racial profiling integral to drug interdiction program involving targeting of African American and Latino motorists for stops, detentions, interrogations and searches); Martinez v. Village of Mt. Prospect, 92 F.Supp.2d 780 (N.D. Ill. 2000)(in employment discrimination case Latino police trainee alleged command personnel told him to target Latinos for traffic stops); U.S. v. New Jersey, No. 99-5970 (MCL)[D.N.J. December 30, 1999)(consent decree in case where United States alleged racial profiling by New Jersey State Troopers resulting in stop and searches of African American motorists), http://www.state.nj.us/lps/jointapp.htm; Congress for Puerto Rican Rights v. The New York City, 191 F.R.D. 52 (S.D.N.Y. 1999)(alleging racial and ethnic profiling by New York City's Street Crime Unit officers); New Jersey v. Soto, 324 N.J. Super. 66, 734 A.2d 350 (1996)(policy of targeting Blacks for investigation and arrest). See also AMY FAARIEL, JACK McDEVITT, LISA BAILEY, CARSTEN ANDRESEN, ERICA PEARCE, NORTHEASTERN UNIVERSITY INSTITUTE ON RACE AND JUSTICE, MASSACHUSETTS RACIAL AND GENDER PROFILING FINAL REPORT 3 (May 2004) (finding 249 out of 366 Massachusetts law enforcement agencies had substantial racial and gender disparities in one of the following four categories discussed in the report, citations to residents, citations to drivers, searches and written warnings). See e.g., Ligon et al., v. City of New York et al., (S.D.N.Y. March 28, 2012). See e.g., Chavez v. Illinois State Police, 27 F.Supp.2d 1053 (N.D. Ill. 1998)(class certification denied and dismissed in action alleging Illinois state troopers stop, detain and search Latinos and African Americans based on race and ethnicity), aff'd, 251 F.3d 612 (7th Cir. 2001); Brown v. City of Oneonta, 221 F.3d 329 (2d Cir. 2000) (suspect's description is a legitimate classification where it is based on victim's description and race is not the sole characteristic used by police); U.S. v. Montero-Camarga, 208 F.3d 1122, 1134-1135 (9th Cir.), cert. denied, Sanchez-Guillen v. United States, 531 U.S. 889 (2000)(Court holds in challenge to Border Patrol conduct that although "racial or ethnic appearance may be one factor relevant to reasonable suspicion or probable cause where a particular suspect has been identified as having a specific racial or ethnic appearance," Hispanic appearance "may not be considered as a relevant factor where particularized or individualized suspicion is required"); Ligon, supra note 308 (class action complaint alleging Operation Clean Halls results in unlawful stops, searches, summons and arrests with a disparate impact on blacks and Latino private residential apartment residents), http://www.nyclu.org/files/releases/Clean_Halls_complaint_3.28.12.PDF; Floyd et al. v. The City of New York, et al., ___ F.R.D. ___, 2012 WL 1868637 (S.D.N.Y.)(SAS) (class certified in case challenging New York City’s “stop and frisk” program, alleging profiling based on race and national origin); Rodriguez v. California Highway Patrol, 89 F.Supp.2d 1131, 1137 (N.D. Cal. 2000)(class action complaint alleging racial profiling integral to drug interdiction program involving targeting of African American and Latino motorists for stops, detentions, interrogations and searches); Martinez v. Village of Mt. Prospect, 92 F.Supp.2d 780 (N.D. Ill. 2000)(in employment discrimination case Latino police trainee alleged command personnel told him to target Latinos for traffic stops); U.S. v. New Jersey, No. 99-5970 (MCL)[D.N.J. December 30, 1999)(consent decree in case where United States alleged racial profiling by New Jersey State Troopers resulting in stop and searches of African American motorists), http://www.state.nj.us/lps/jointapp.htm; Congress for Puerto Rican Rights v. The New York City, 191 F.R.D. 52 (S.D.N.Y. 1999)(alleging racial and ethnic profiling by New York City’s Street Crime Unit officers); New Jersey v. Soto, 324 N.J. Super. 66, 734 A.2d 350 (1996)(policy of targeting Blacks for investigation and arrest). See also AMY FAARIEL, JACK McDEVITT, LISA BAILEY, CARSTEN ANDRESEN, ERICA PEARCE, NORTHEASTERN UNIVERSITY INSTITUTE ON RACE AND JUSTICE, MASSACHUSETTS RACIAL AND GENDER PROFILING FINAL REPORT 3 (May 2004) (finding 249 out of 366 Massachusetts law enforcement agencies had substantial racial and gender disparities in one of the following four

332. See e.g., League of United Latin American Citizens v. Perry, 548 U.S. 399 (2006); Garza v. County of Los Angeles, 918 F.3d 763 (9th Cir. 1990).


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332. See e.g., Crawford v. Marion, 553 U.S. 181 (2008)(upholding photo identification requirement); Gonzalez v. Arizona, 677 F.3d 383 (9th Cir. 2011)(naturalized citizen denied opportunity to vote despite providing driver’s license and naturalization certificate number); Frank v. Walker, No. 31-1110-CV (E.D. Wis. Dec. 13, 2011)(photo identification requirement challenge).

328. See e.g., Crawford v. Marion, 553 U.S. 181 (2008)(upholding photo identification requirement); Gonzalez v. Arizona, 677 F.3d 383 (9th Cir. 2011)(naturalized citizen denied opportunity to vote despite providing driver’s license and naturalization certificate number); Frank v. Walker, No. 31-1110-CV (E.D. Wis. Dec. 13, 2011)(photo identification requirement challenge).


332. See e.g., Gonzalez v. Arizona, No. 08-17094 (9th Cir. April 17, 2012) (en banc) (strikings Arizona Proposition 200 requirement of proof of citizenship to register for federal elections).


334. See Marc Caputo and Patricia Mazzei, Hispanics, NPs more likely
to face noncitizen voter purge than Whites, *The Miami Herald* (May 12, 2012). [http://www.miamiherald.com/2012/05/12/v-print/2796905/noncitizen-voter-hunt-targets.html](http://www.miamiherald.com/2012/05/12/v-print/2796905/noncitizen-voter-hunt-targets.html). Latinos are disproportionately affected by this purge and it is estimated that approximately 58% of voters on this purge list are Latinos. See Editorial, Florida's Discriminatory Voter Purge, *The N.Y. Times* (May 31, 2012), [http://www.nytimes.com/2012/06/01/opinion/florida-discriminatory-voter-purge.html](http://www.nytimes.com/2012/06/01/opinion/florida-discriminatory-voter-purge.html). These voters were identified by matching voter rolls against lists maintained by the Florida Department of Highway Safety and Motor Vehicles (“DHSMV”). See Marc Caputo, supra. However, citizenship documentation is not required to procure a Florida driver's license. When voters “match” individuals whose DHSMV or juror forms indicate they are noncitizens they are removed from the voter roll if they do not respond to notification within 30 days.


337. See e.g., Vargas v. Hudson Cnty Bd. of Elections, 949 F.2d 665 (3d Cir. 1991); Perez-Santiago v. Volusia County, 2010 WL 917872 (M.D. Fla 2010).

338. See e.g. Perez-Santiago v. Volusia County, 2010 WL 917872 (M.D. Fla. 2010)(denial of Spanish language ballots and assistance).


343. Id. at 3, 14.

344. Id. at 20.

345. Id. at 6 (“Accurate news coverage of Latinos is a crucial issue since 27 million people watch the evening news each night and are influenced by these programs.”).

346. Id. (historically the Network Brownout Reports have found Latinos “too often portrayed as criminals or undocumented immigrants … [A focus which] becomes unfair when it comprises an overabundance of the network’s coverage of the Latino community.”).

347. Id. at 4. Only five of these stories were reported by Latino journalists. Id. at 11.

348. Id. at 4.

349. Id.

350. Id. at 5, 7.


374. The ABA’s Commission on Racial and Ethnic Diversity in the Profession seeks to address the lack of racial and ethnic diversity in the legal profession by increasing diversity in all areas of the legal profession. See http://www.americanbar.org/groups/diversity/racial_ethnic_diversity.html.

375. The ABA’s Center for Racial and Ethnic Diversity “serves as the leading advocate for diversity within the ABA …[and] provides the framework for effective utilization of ABA resources committed to diversity, and helps to maintain racial and ethnic diversity as a priority issue for the ABA.” See http://www.americanbar.org/groups/diversity.html.


381. Id.

382. The ABA Council for Racial and Ethnic Diversity in the Educational Pipeline is an incubator for activities that foster educational pipelines leading to the legal profession, http://www.americanbar.org/groups/diversity/diversity_pipeline.html.

383. JILL L. CRUZ AND MELINDA S. MOLINA, FEW AND FAR BETWEEN: THE REALITY OF LATINA LAWYERS, HISPANIC NATIONAL BAR ASSOCIATION, COMMISSION ON LATINAS IN THE LEGAL PROFESSION (2009)(national study of Latina lawyers reporting the participants’ experiences and professional challenges, including facing gendered and race based stereotypes about Latina lawyers, as well as individual feelings of isolation), http://www.hnba.com/publications/statistics-of-latinas-in-the-profession-report; La Voz de la Abogada Latina, supra note 379, (study of Latina lawyers working in the public interest sector, describing the participants’ experiences and professional challenges, including facing gendered, race and ethnic-based stereotypes about Latina lawyers, and colleagues’ doubts about Latina lawyers’ competence and abilities as professionals).

384. Few and Far Between, supra note 383 at 8.

385. Id. at 9.

386. La Voz de la Abogada Latina, supra note 379 at 9.

387. Id. at 19. The report summarizing the study noted that, “public interest lawyers provide critically needed legal services to our diverse communities. They advocate on behalf of the poor and those with limited access to legal counsel. They help shape judicial interpretation of civil rights and civil liberties and have made creative arguments for expanding the rights of people of color and women of all colors.” Id. (internal footnote omitted).
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Stephen N. Zack, President 2010-2011, American Bar Association
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ABA Commission on Domestic Violence
ABA Commission on Immigration
ABA Commission on Racial & Ethnic Diversity in the Profession
ABA Commission on Women in the Profession
ABA Coalition on Racial and Ethnic Justice
ABA Division for Public Education
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ABA Standing Committee on Legal Aid and Indigent Defendants