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Luz E. Herrera & Pilar M. Hernández-Escontrías, *The Network for Justice: Pursuing a Latinx Civil Rights Agenda*, 21 Harv. Latinx L. Rev. 165 (2018).

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THE NETWORK FOR JUSTICE: PURSUING A LATINX CIVIL RIGHTS AGENDA

Luz E. Herrera and Pilar Margarita Hernández Escontrías*

ABSTRACT

This article explores the need to develop a Latinx-focused network that advances law and policy.¹ The Network for Justice is necessary to build upon the existing infrastructure in the legal sector to support the rapidly changing demographic profile of the United States. Latinxs are no longer a small or regionally concentrated population and cannot be discounted as a foreign population. Latinxs reside in every state in our nation and, in some communities, comprise a majority of the population.

The goal of the Network for Justice is to facilitate and support local and state-wide efforts to connect community advocates to formal channels of creating or defending law and policy. This article provides a rationale for building a national network that connects existing advocacy institutions and community organizations, with law schools, academic institutions, lawyers, and policy makers. The building blocks for a Network for Justice that support law and policy to advance Latinx civil rights are already in place but this effort requires greater coordination to more effectively advance common interests. This model draws first and foremost from the existing community resources, recognizing that the foundational core of such a network should rest in the hands of Latinxs themselves.

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¹ Throughout this article, we employ the term "Latinx." In so doing, we reject the gender binary that is inherent linguistically in both "Latino/as" and its newest form Latin@s. We use Census data that references "Hispanic," to mean Latinx. The term Latinx is both gender-neutral and does not exclusively honor Spanish origin.

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“We educated, privileged lawyers have a professional and moral duty to represent the underrepresented in our society, to ensure that justice exists for all, both legal and economic justice.”

– Justice Sonia Sotomayor²

I. INTRODUCTION

The U.S. Census Bureau estimates that in the coming decades, whites will cease to constitute a majority in the United States.³ While the white population in 2060 will account for 43.6 percent of Americans, Latinxs will make up 28.6 percent; African Americans, 14.3 percent; and Asian Americans, 9.3 percent.⁴ This dramatic demographic shift in the nation’s overall racial and ethnic composition is unparalleled.⁵ Race, class, gender, and sexual orientation all impact the nature of the discrimination experienced by 55 million Latinxs in the U.S. who currently account for at least 17 percent of the country’s population.⁶

Despite these significant population shifts, Latinxs are still substantially underrepresented in law, legal education, and leadership circles. This lack of representation is significant because how and whether this community engages in our democracy will contribute to the definition of justice in the United States. Today, Latinxs lag behind in significant areas such as education and economic attainment. Latinxs who make \$15 an hour or less find it difficult to navigate a legal system with limited free legal resources and attorney rates that are at best ten times more than their working wage. Only 5 percent of lawyers in this country are Latinxs.⁷ Taken together, these obstacles often translate into a lack of access to legal remedies and justice.

² Sonia Sotomayor, *Sonia Sotomayor Reflects on Her Success: First Puerto Rican Woman to be a Federal Judge*, THE HISPANIC OUTLOOK IN HIGHER EDUCATION (2002).

³ SANDRA L. COLBY & JENNIFER M. ORTMAN, PROJECTIONS OF THE SIZE AND COMPOSITION OF THE U.S. POPULATION: 2014 TO 2060 9 (Table 2) (2015), <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p25-1143.pdf>, archived at <https://perma.cc/BAW5-ERG4>.

⁴ *Id.*

⁵ *Id.*

⁶ UNITED STATES CENSUS BUREAU, ACS DEMOGRAPHIC AND HOUSING ESTIMATES 2011–2015 AMERICAN COMMUNITY SURVEY 5-YEAR ESTIMATES, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_15_5YR_DP05&src=PT, archived at <https://perma.cc/CB5N-NL5A>.

⁷ See AMERICAN BAR ASSOCIATION, ABA NATIONAL LAWYER POPULATION SURVEY, 10-YEAR TREND IN LAWYER DEMOGRAPHICS - YEAR 2017, <https://www.americanbar.org/content/>

To address the underrepresentation of Latinxs in the legal profession and in discussions surrounding access to law and justice, the American Bar Foundation launched the “The Future of Latinos in the United States: Law, Opportunity, and Mobility” project (the “ABF Future of Latinos Project”).⁸ The ABF Future of Latinxs Project is a nation-wide, interdisciplinary research initiative that is devoted to producing innovative scholarship on the Latinx population in the United States and locating the sites of intervention that promise to be most impactful in promoting opportunity through law and policy. This broader project focuses on research, teaching, and dissemination of research and teaching materials to enhance communication, cooperation, and collaboration as scholars, activists, and policymakers to support the incorporation of the growing Latinx community. The specific areas of law and public policy that the ABF Future of Latinos Project centers its research on is immigration, political participation, education, and economic opportunity. The ABF is committed to generate findings that can be utilized by organizations and individuals who work to advance justice for the Latinx community.

The Network for Justice: *Creating Legal and Legislative Support for Latino Communities* is one arm of this ABF Future of Latinos Project. The Network for Justice is the law and policy implementation arm of the ABF Future of Latinos Project. It seeks to transform Latinx civil rights through sustained networking and collaboration among existing community organizations, the practicing bar, scholars, and law schools. The goal of the Network for Justice is to build upon the existing infrastructure offered by social services providers that serve Latinxs and connect them with lawyers, scholars, and law schools that can work as partners to advance goals that support the integration of Latinxs as formidable players in the U.S. legal system. The Network for Justice is more than an advocacy organization - it is a community development project that seeks to facilitate resources to local organi-

dam/aba/administrative/market_research/national-lawyer-population-10-year-demographics-revised, archived at <https://perma.cc/A9LM-H8SF>. For a discussion about Latino lawyers in the U.S., see Raul A. Reyes, “Where Are All the Latino Lawyers?: Hispanics Scarce in the Legal Profession,” NBC News, (Oct. 13, 2017, 8:51 AM), <https://www.nbcnews.com/news/latino/where-are-all-latino-lawyers-hispanics-scarce-legal-profession-n809141>, archived at <https://perma.cc/JF4A-WZEC>.

⁸ As the nation’s leading research institute for the empirical study of law, the American Bar Foundation (ABF) has operated as an independent, nonprofit organization for sixty years and has advanced the understanding and improvement of law through research projects of unmatched scale and quality on the most pressing issues facing the legal system in the United States and the world. The ABF is committed to generating findings that can be utilized by organizations and individuals who work to advance justice for all communities. For a description of the Future of Latinos Project see Pilar Margarita Hernández Escontrías, Rachel F. Moran, and Robert Nelson, *The Future of Latinos in the United States: Law, Mobility, and Opportunity (A Project of the American Bar Foundation)*, THE PROFESSIONAL LAWYER, Vol. 24, No. 2, https://www.americanbar.org/publications/professional_lawyer/2016/volume-24-number-2/the_future_latinos_the_united_states_law_mobility_and_opportunity_project_the_american_bar_foundation.html, archived at <https://perma.cc/49EM-K3PM> (last visited Jan. 2018).

zations to effect change that positively impacts civil, economic, legal, and human rights of Latinxs living in the United States.

This article explores the importance of developing a Latinx-focused Network for Justice that advances law and policy to reflect the changing demographic profile of the United States. Although organizations have assisted Latinxs in legal matters for decades, there is no one organization or centralized body that serves to link these civil rights advocates to one another. The goal of the Network for Justice is to facilitate and support local and statewide efforts to connect community advocates to formal channels of creating law and policy. The present article provides a law and policy profile of Latinxs, which lays the foundation for building a national network that connects existing advocacy institutions and community organizations, with law schools, academic institutions, lawyers, and policy makers. It focuses on working with existing institutions and resources and does not readily endorse the formation of a new entity, only a coordinating body. The building blocks for a Network for Justice that support law and policy to advance Latinx interests are already in place but need to be connected to more effectively advance common interests.

We begin with a discussion of Latinxs in the United States. In Part I.A., we discuss the increased demographic representation of Latinxs to situate the conversation of a national network that requires recognition of regional differences and needs. Part I.B., offers a historical snapshot of Latinxs in the United States to provide greater context to the factors that influence the current condition of Latinxs. This brief overview helps inform Part II, which highlights the principal areas of law and policy that warrant the creation of a Network for Justice to assist Latinxs in affirming their civil and legal rights. Part III explains the purpose and vision for a Network for Justice and discusses why it matters to the future of our country's legal system.

As we launch this Network for Justice, we recognize the importance of establishing resources and tools for a larger community that is not limited to scholars and policy makers. We further acknowledge that law has few effective models for community involvement and call for greater understanding of these models by the legal profession before undertaking this work. A Network for Justice can only be successful if it is truly responsive to community needs and priorities. Therefore, we conclude that while lawyers and academics are critical, engagement of community leaders is necessary to effectively address the legal needs of Latinxs in the United States. A second article will address academic theories and best practices to garner regional engagement in the network. The Network for Justice will exist to reinforce that Latinxs are not only integral to the fabric of our country, they also represent the future of the nation.

II. LATINXS IN THE UNITED STATES

To understand its purpose and the need for the Network for Justice, it is important to provide a current demographic snapshot and a history of the Latinx population in the United States. This part aims to demonstrate that concentrations of Latinxs in important regions of our country make this population's success necessary to the future of those regions and the nation. Further, their increasing dispersion in new areas of the country means that they must have access to resources that permit Latinxs to claim their rights and advance their mobility. The history of Latinxs in the United States demonstrates that their presence is not temporary and that no wall will stop the changing character of our country. The Network for Justice aims to address the structural deficiencies currently in place to properly address the legal needs and civil rights of Latinxs who are a crucial segment of the American population and the future of United States.

A. Demographic Profile

According to the 2016 American Community Survey (ACS) data, an estimated 57,398,719 Latinxs currently reside in the United States.⁹ This is more than 17 percent of our nation's population and U.S. Census projections estimate almost one-third of the nation will be Latinx by 2060.¹⁰ Of this total, over 36 million are of Mexican descent, over 5 million are of Puerto Rican decent, and over 2 million are of Cuban descent.¹¹ All other Latinxs, from both Latin American countries and Spanish origin, constitute 12 percent of the total United States Latinx population.¹² The 2010 U.S. Census revealed that the median age for Latinxs is 27 while the median age for the general population was 37 years.¹³

⁹ UNITED STATES CENSUS BUREAU, AMERICAN COMMUNITY SURVEY 1-YEAR ESTIMATES: HISPANIC OR LATINO ORIGIN BY SPECIFIC ORIGIN (2016), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_15_1YR_B03001&prodType=table, archived at <https://perma.cc/85SY-XPVV> (last visited Oct. 30, 2017).

¹⁰ *Id.*

¹¹ *Id.* (figure arrived by adding the population number of those groups already referenced and subtracting that figure from the total number of Hispanic or Latino figure on the chart and then calculating the percentage). Of the estimated 43.2 million persons classified as "foreign born" in the United States in 2016, 41.4 percent (or 17,863,142) were from Latin America. See Gustavo Lopez and Jynnah Radford, *Facts on U.S. Immigrants, 2015: Statistical Portrait of the foreign-born population in the United States*, Excel Sheet Summary and Table 2, (May 3, 2017), <http://www.pewhispanic.org/2017/05/03/facts-on-u-s-immigrants-current-data/>, archived at <https://perma.cc/Y9N9-NZLN>.

¹² *Id.* The fourth largest group are individuals of Salvadorans origin at 2.195 million. The fifth largest group are Dominican origin individuals with 1.914 million, followed by those of Guatemalan origin at 1.416 million. Latinxs of Columbian descent are next at 1.104 million. Every other Latinx origin populations constitute less than 1 million in the United States. See also ACS 2016, *supra* note 10.

¹³ Seth Motel & Eileen Patten, *The 10 Largest Hispanic Origin Groups: Characteristics, Rankings, Top Counties*, PEW RESEARCH CENTER, 7 (July 12, 2012), <http://www.pewhispanic.org/files/2012/06/The-10-Largest-Hispanic-Origin-Groups.pdf>, archived at <https://per>

Nationwide, Latinxs have been one of the fastest-growing demographic segments of the population. According to the PEW Hispanic Center, Latinx growth accounted for a 54 percent increase in the total national population increase from 2000 to 2014.¹⁴ In the 1990s, the Latinx community experienced an annual growth rate of 5.8 percent.¹⁵ Between 2000 and 2007, that rate dropped to 4.4 percent and most recently was reported at 2.4 percent between 2010 and 2014.¹⁶ However, immigration began to slow in the mid-2000s,¹⁷ and fertility rates began to drop with the onset of the Great Recession.¹⁸ As a result, previous U.S. Census projections that Latinxs would constitute a third of the entire United States population by 2050 were recently pushed back to 2060.¹⁹ Over 50 percent of Latinxs in the United States reside in 15 metropolitan areas, with over 6 million Latinxs living in the area of Los Angeles and Orange counties.²⁰

Some of the largest states in the country have Latinx populations that approach or exceed one-third of its total residents. For example, New Mexico's Latinx population is 48 percent, California's and Texas' are both 39 percent, Arizona's population is 31 percent, and Nevada's is 28 percent.²¹ In fact, California and Texas have the largest Latinx populations in the country, at 15 million and 10.4 million, respectively.²² Florida has the third largest Latinx population at 4.8 million, followed by New York at 3.7 million, Illi-

ma.cc/H9ZX-YGUR. Cubans are amongst the oldest population of Latinxs with a median age of 40 years. The youngest are Mexicans with an age of 25. *Id.*

¹⁴ Jens Manuel Krogstad, *Key Facts About How the U.S. Hispanic Population is Changing*, PEW RESEARCH CENTER, (Sept. 8, 2016), <http://www.pewresearch.org/fact-tank/2016/09/08/key-facts-about-how-the-u-s-hispanic-population-is-changing/>, archived at <https://perma.cc/8BAB-LPUF> [hereinafter Krogstad, *Key Facts*].

¹⁵ Renee Stepler & Mark Hugo Lopez, *U.S. Latino Population Growth and Dispersion Has Slowed Since Onset of the Great Recession 5*, PEW RESEARCH CENTER: HISPANIC TRENDS (Sept. 8 2016), <http://www.pewhispanic.org/2016/09/08/latino-population-growth-and-dispersion-has-slowed-since-the-onset-of-the-great-recession/>, archived at <https://perma.cc/L2BW-59TR>.

¹⁶ The U.S. Latinx population grew by 2.8% annually between 2007 and 2014, while the Asian population grew by 3.4% during this same time period. *Id.* (explaining that the Hispanic population, once the nation's fastest growing, slipped behind the Asian population in its growth rate).

¹⁷ Immigration from Mexico has slowed. See Ana Gonzalez-Barrera, *More Mexicans Leaving than Coming to the U.S. (2015)*, PEW RESEARCH CENTER: HISPANIC TRENDS, (NOV. 19, 2015), <http://www.pewhispanic.org/2015/11/19/more-mexicans-leaving-than-coming-to-the-us/>, archived at <https://perma.cc/SZJ3-KUQP>.

¹⁸ *Id.* Fertility rates declined from 95 births per every 1,000 Latinas, ages 15 to 44, in 2000 to 72.1 births per 1,000 Latinas, ages 15 to 44, in 2014. See also BRADY E. HAMILTON ET AL., CENTERS FOR DISEASE CONTROL AND PREVENTION, NATIONAL VITAL STATISTICS REPORTS, BIRTHS: FINAL DATA FOR 2014 Table A (2015), https://www.cdc.gov/nchs/data/nvsr/nvsr64/nvsr64_12.pdf, archived at <https://perma.cc/6YXQ-SB95>.

¹⁹ Stepler & Lopez, *supra* note 15.

²⁰ Krogstad, *Key Facts*, *supra* note 14. See also Stepler & Lopez, *supra* note 15, at 34 (noting that behind the Los Angeles metropolitan area, 4.8 million Latinxs reside in the New York- Jersey City-Pennsylvania region, 2.6 million in the greater Miami-Fort-Lauderdale region, 2.3 million in the Houston- region, 2.2. million in the Riverside-San Bernardino-Ontario region in California, and 2.1 million in the greater Chicago area).

²¹ Stepler & Lopez, *supra* note 15, at 31.

²² *Id.*

nois at 2.2 million, and Arizona at 2.1 million Latinxs.²³ States such as New Jersey, Colorado and New Mexico have Latinx populations that range between 1 and 2 million. These states have long histories of Latinx population presence.²⁴ In some states, Latinx communities existed long before those territories became part of the United States.²⁵

In recent years, economic opportunities have lead Latinxs to areas that historically have not had sizeable Latinx populations. Manufacturing and agricultural jobs led many Latinxs to North Carolina in the 1990s and continued into Georgia in the 2000s.²⁶ Georgia is now one of the top ten states with the largest Latinx population.²⁷ Similarly, South Dakota's population was among the top five states nationwide that experienced the largest percentage of growth in its Latinx population, with a 46 percent increase from 2000-2005.²⁸ Between 2000 and 2007, eight of the ten fastest growing Latinx counties were in the Southern states.²⁹ From 2007 to 2014, counties in the South accounted for the largest share of the national Latinx population increase.³⁰ Significant Latinx population growth is also evident in other parts of the country. Counties in North Dakota, which is one of the states with the lowest number of Latinxs, have seen their Latinx populations double in the last few years.³¹ Across the nation, the median growth rate of Latinxs was approximately 27 percent in from 2007 to 2014.³²

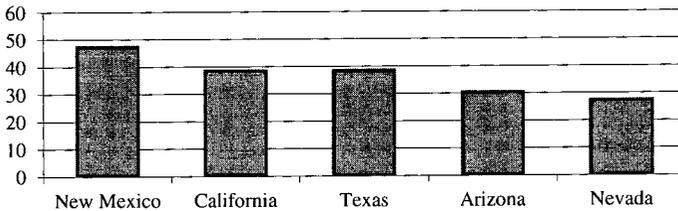


FIGURE 1: STATES WITH THE HIGHEST LATINX PERCENTAGES³³

²³ *Id.* See *infra* Figure 1.

²⁴ See *infra* Section I.B.

²⁵ GEORGE LOCKHART RIVES, *THE UNITED STATES AND MEXICO, 1821-1848: A HISTORY OF THE RELATIONS BETWEEN THE TWO COUNTRIES FROM THE INDEPENDENCE OF MEXICO TO THE CLOSE OF THE WAR WITH THE UNITED STATES* 627 (1913).

²⁶ Stepler & Lopez, *supra* note 15, at 6.

²⁷ *Id.* at 31.

²⁸ By 2010, some cities in South Dakota underwent dramatic demographic shifts with up to 200 percent increases in the Latinx population. See Mary Garrigan, *State's Hispanic population growing quickly*, *RAPID CITY JOURNAL*, (May 24, 2011), http://rapidcityjournal.com/news/state-s-hispanic-population-growing-quickly/article_f197299c-85c6-11e0-bf0c-001cc4c002e0.html, archived at <https://perma.cc/Y7WG-JENP>. In one city, Hill City, this trend is attributable to the burgeoning logging industry, which draws primarily Latinxs of Mexican descent. *Id.*

²⁹ Stepler & Lopez, *supra* note 15, at 8.

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 9.

³³ Renee Stepler & Mark Hugo Lopez, *Ranking the Latino population in the United States*, PEW RESEARCH CENTER, (Sept. 8, 2016), <http://www.pewhispanic.org/2016/09/08/4-ranking-the-latino-population-in-the-states/>, archived at <https://perma.cc/NA3E-C5CF>.

The future of the prosperity of the United States is linked to the economic, social, and educational prosperity of its population. However, Latinxs currently lag behind in these areas. In regard to economic attainment, Latinxs hold only 2.2 percent of the U.S. wealth.³⁴ Nationwide, Latinxs have experienced high levels of inequality, losing an astounding 66 percent of their net worth between 2005 and 2009.³⁵ Since the Great Recession, and unlike white households, the net worth of Latinx households has continued to spiral downward.³⁶ Latinxs' median household income is approximately \$51,400; however, this number is substantially lower at \$38,000 for Latinx of Mexican origin, who comprise the majority of Latinxs in the United States.³⁷ The Bureau of Labor Statistics reported that in the third quarter of 2017, the median income for Latinxs who worked full-time was \$655 per week, compared to \$696 for blacks, \$887 for whites and \$1,010 for Asians.³⁸ Furthermore, Latinxs, are often the victims of employment discrimination and wage theft at higher rates than white laborers.³⁹

The Latinx community constitutes a significant percentage of this country's construction, agricultural, and hospitality industries.⁴⁰ Latinxs are least represented in the employment market for the public administration, financial, and information industries.⁴¹ Other occupations with high percentages

³⁴ Roberto A. Ferdman, *The Great American Wealth Gap*, WASH. POST, (July 1, 2014), https://www.washingtonpost.com/news/wonk/wp/2014/07/01/hispanics-make-up-more-than-16-of-the-u-s-population-but-own-less-than-2-3-of-its-wealth/?utm_term=.085ed9f3898e, archived at <https://perma.cc/A2YA-EVMV>.

³⁵ Rakesh Kochinar et al., *Wealth Gaps Rise to record Highs Between Whites, Blacks, Hispanics*, PEW RESEARCH CENTER, (July 26, 2011), <http://www.pewsocialtrends.org/2011/07/26/wealth-gaps-rise-to-record-highs-between-whites-blacks-hispanics/>, archived at <https://perma.cc/R9ML-V9VP>.

³⁶ Rakesh Kochinar & Richard Fry, *Wealth Inequality Has Widened Along Racial, Ethnic Lines Since End of Great Recession*, PEW RESEARCH CENTER, (Dec. 12, 2014), <http://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession/>, archived at <https://perma.cc/8WHY-EKC3>. See also Mark Hugo Lopez et al., *Latinos Increasingly Confident in Personal Finances, See Better Economic Times Ahead*, PEW RESEARCH CENTER (June 8, 2016), <http://www.pewhispanic.org/2016/06/08/latinos-increasingly-confident-in-personal-finances-see-better-economic-times-ahead/>, archived at <https://perma.cc/WQZ4-BGA9>.

³⁷ Ferdman, *supra* at note 34.

³⁸ U.S. BUREAU OF LABOR STATISTICS, USUAL WEEKLY EARNINGS OF WAGE AND SALARY WORKERS THIRD QUARTER 2017 Table 2 (2017) <https://www.bls.gov/news.release/pdf/wky-eng.pdf>, archived at <https://perma.cc/Y7X7-LLF5>.

³⁹ See Annette Bernhardt et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America 5*, (2009), <http://www.nelp.org/content/uploads/2015/03/BrokenLawsReport2009.pdf>, archived at <https://perma.cc/W8AW-Z22D> (stating that foreign-born Latinxs are the group who suffer from the highest rates of wage theft and minimum wage violations).

⁴⁰ U.S. BUREAU OF LABOR STATISTICS, THE ECONOMICS DAILY: HISPANICS AND LATINOS IN INDUSTRIES AND OCCUPATIONS (2015), <https://www.bls.gov/opub/ed/2015/hispanics-and-latinos-in-industries-and-occupations.htm>, archived at <http://perma.cc/BX32-CS4Y> ("Among major industries, 27.3 percent of workers in construction were of Hispanic or Latin[x] ethnicity in 2014. Other industries with high concentrations of Hispanics and Latin[x]s include agriculture, forestry, fishing, and hunting (23.1 percent) and leisure and hospitality (22.3 percent)").

⁴¹ "Hispanics had the lowest share of employment in public administration (11.4 percent), financial activities (11.3 percent), and information (10.5 percent)." *Id.*

of Latinxs are building and grounds cleaning and maintenance occupations.⁴² Latinxs are less likely to have occupations in the life, physical, and social sciences, or in computer and mathematical computations.⁴³ In 2014, Latinx held 11.6 percent of the community and social science jobs, 9.5 percent of the education, training, and library jobs, and 7.9 of jobs in the legal field.⁴⁴ Latinxs also have low representation in the management, and business fields, comprising 9.1 percent, and 8.4 percent of each, respectively.⁴⁵ However, Latinxs are most under-represented in the health industry, as well as in the science, technology, engineering, and math (STEM) fields.⁴⁶ Thus, career-readiness, particularly in growing areas of economic growth such as health and STEM, is also an area where investment in education of Latinxs is crucial.⁴⁷

In the U.S., the percentage of Latinx children ages 5 to 17 increased from 16 to 25 percent between 1990 and 2016.⁴⁸ These children, along with African Americans, are most likely to live in poverty compared to other populations.⁴⁹ Latinx students comprise almost 60 percent of the K-12 public school student population but perform behind their counterparts.⁵⁰ Overall, Latinx children have lower mean reading and math scores than other groups.⁵¹ Some attribute this deficiency to their lower enrollment rates in early childhood education programs.⁵² Only 26 percent of Latinxs ages 25 and older have a high school diploma, compared to 28 percent of the na-

⁴² *Id.* “Other occupations with high shares of Hispanics or Latinxs were building and grounds cleaning and maintenance occupations (36.7 percent) and construction and extraction occupations (32.3 percent).”

⁴³ *Id.* “Hispanics or Latinos were least likely to work in life, physical, and social science occupations (7.5 percent) and in computer and mathematical occupations (6.6 percent).”

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ See also Mark Krupnick, *After decades of pushing bachelor's degrees, U.S. needs more tradespeople*, PBS THE HECHINGER REPORT, (Aug. 29, 2017 1:40 PM EDT). <http://www.pbs.org/newshour/updates/decades-pushing-bachelors-degrees-u-s-needs-tradespeople/>, archived at <https://perma.cc/SM62-Y73L>.

⁴⁸ *Status and Trends in the Education of Racial and Ethnic Groups 2017*, UNITED STATES DEPARTMENT OF EDUCATION, 8 (July 2017), <https://nces.ed.gov/pubs2017/2017051.pdf>, archived at <https://perma.cc/QM2Z-DY66>.

⁴⁹ Deborah A. Santiago et al., *The Condition of Latinos in Education*, EXCELENCIA IN EDUCATION 4 (Jan. 2015), https://www.nccpsafety.org/assets/files/library/The_Condition_of_Latinos_in_Education.pdf, archived at <https://perma.cc/WQ4Y-AK68>.

⁵⁰ Adriana D. Kohler & Melissa Lazarín, *Hispanic Education in the United States*, NATIONAL COUNCIL OF LA RAZA (2007), http://publications.unidosus.org/bitstream/handle/123456789/1393/hispaniceducation_statbrief.pdf, archived at <https://perma.cc/67B2-JDC6>.

⁵¹ Thomas D. Snyder & Sally A. Dillow, *Digest of Education Statistics 2013*, U.S DEPARTMENT OF EDUCATION, (May 2015), <https://nces.ed.gov/pubs2015/2015011.pdf>, archived at <https://perma.cc/X6ST-WMVU>.

⁵² In 2011, 56 percent of Hispanic children under the age of five were enrolled in nursery school or kindergarten, compared to White (67 percent), African American (65 percent), and Asian (64 percent) children who were enrolled. See *Digest of Education Statistics 2012*, NATIONAL CENTER FOR EDUCATION STATISTICS, Table 5, (Dec. 31, 2013) <https://nces.ed.gov/pubs2014/2014015.pdf>, archived at <https://perma.cc/68VB-4C9R>.

tional population.⁵³ Approximately 13 percent of Latinxs ages 25 and older have a college degree, compared to 28 percent of the total U.S. population for the same age group.⁵⁴ Latinxs are less likely to enroll in a four-year selective college full-time.⁵⁵ Nearly half of Latinxs in college attend public two-year schools compared with 30 percent of whites, 32 percent of Asians, and 36 percent of blacks.⁵⁶ A 2014 national poll revealed that 66 percent of Latinxs who opted into a job or the military directly after high school identified family economic sustainability as the reason for not enrolling in college.⁵⁷

Although media images portray Latinxs comprised of mostly immigrants, 63 percent of the Latinx population was born in the United States.⁵⁸ Of the one-third who are immigrants, approximately 43 percent are United States citizens.⁵⁹ Immigrants of Mexican decent are the largest sector of the United States immigrant population.⁶⁰ Despite continued immigration flow from Latin America, approximately 88 percent of Latinxs, ages 5 to 17, say they only speak English at home or speak English very well.⁶¹ The level of English proficiency among the Latinx population is tied to the specific age groups. For the age group between 18 and 33, 76 percent also reported that they only speak English at home or speak English very well.⁶² Latinxs age 33 and younger, are more likely to speak only English in their home or to

⁵³ *The 10 Largest Hispanic Origin Groups: Characteristics, Rankings, Top Counties*, PEW RESEARCH CENTER, (July 12, 2012), <http://www.pewhispanic.org/files/2012/06/The-10-Largest-Hispanic-Origin-Groups.pdf>, archived at <https://perma.cc/H9ZX-YGUR>.

⁵⁴ *Id.* Of Latinxs, Colombians and Peruvians have the highest percentages of college degrees, at 32 and 30 percent, respectively. However, the lowest rates of college completion are Salvadorans (7 percent), Guatemalans (8 percent) and Mexicans (9 percent). *Id.*

⁵⁵ Jens Manual Krogstad, *5 Facts about Latino Education*, PEW RESEARCH CENTER, (July 28, 2016), <http://www.pewresearch.org/fact-tank/2016/07/28/5-facts-about-latinos-and-education/>, archived at <https://perma.cc/FJ7D-YFJ9>.

⁵⁶ *Id.*

⁵⁷ *Id.* See also Ronald Brownstein, *Are College Degrees Inherited?*, THE ATLANTIC, (Apr. 11, 2014) <https://www.theatlantic.com/education/archive/2014/04/are-college-degrees-inherited/360532/>, archived at <https://perma.cc/VCE6-LNH9> (citing a comparison of 39% of whites who responded similarly).

⁵⁸ Gustavo Lopez & Jynnah Radford, *Facts on U.S. Immigrants, 2015: Statistical Portrait of the Foreign-Born population in the United States*, PEW RESEARCH CENTER, (May 3, 2017), <http://www.pewhispanic.org/2017/05/03/facts-on-u-s-immigrants-current-data/>, archived at <https://perma.cc/Y9N9-NZN5>.

⁵⁹ Gustavo Lopez & Kristen Bialik, *Key findings about U.S. Immigrants*, PEW RESEARCH CENTER, (May 3, 2017), <http://www.pewresearch.org/fact-tank/2017/05/03/key-findings-about-u-s-immigrants/>, archived at <https://perma.cc/W2TB-DG6P>.

⁶⁰ *Id.* Legal permanent residents of Mexican origin are the least likely to undergo the U.S. naturalization process as a result of cost and language. See also Ana Gonzalez-Barrera, *Mexican Lawful Immigrants Among Least Likely to Become U.S. Citizens*, PEW RESEARCH CENTER, (June 29, 2017), <http://www.pewhispanic.org/2017/06/29/mexican-lawful-immigrants-among-least-likely-to-become-u-s-citizens/>, archived at <https://perma.cc/V7TE-SC4D>.

⁶¹ Jens M. Krogstad, *Rise in English Proficiency among U.S. Hispanics is Driven by the Young*, PEW RESEARCH CENTER, (Apr. 20, 2016), <http://www.pewresearch.org/fact-tank/2016/04/20/rise-in-english-proficiency-among-u-s-hispanics-is-driven-by-the-young/>, archived at <https://perma.cc/9R26-HE7X>.

⁶² *Id.*

speak English well.⁶³ Only 43 percent of Latinxs ages 69 and older said they were proficient in English.⁶⁴ Spanish is the most common non-English language spoken by Latinxs and in the United States.⁶⁵ Approximately 73 percent of all Latinxs speak Spanish in their home.⁶⁶ About 95 percent of Latinxs indicate that it is important that future generations continue to speak the Spanish language, however, 71 percent also assert that proficiency in Spanish is not required to be considered Latinx.⁶⁷

Large percentages of Latinxs - whether immigrant or native-born - continue to face obstacles in regard to fair wages, adequate housing, educational opportunities, and economic mobility. Given the significant portion of the country's population that Latinxs currently and will continue to constitute, it is important to understand the historical factors that most impact future prospects for this community.

B. Historical Context

The history of Latinxs in the United States is long and complex. This section draws from a number of books that focus on the history of Latinxs in the territory we now know as the United States. Our brief synopsis of early history is included here to provide context to the underlying tensions and background that underly the need for the Network for Justice. It also begins to surface the complexities that exist for a population that must grapple with citizenship status, immigration policy, and racialization. A more recent history is presented within the context of issues such as immigration and voting rights, discussed in Part II below.

There are Latinxs who trace their roots in what we now know as the United States to 1598 when the Spanish colonized the territory that is now New Mexico.⁶⁸ The first Spanish-governed territory in the Americas was called New Spain and included present day Mexico, Central America, the Philippines, Guam, Mariana and Caroline Islands, Florida, and most of what now constitutes the Southwestern and Central territory of the United States.⁶⁹

With the colonization of the Americas in the 15th and 16th centuries came the racialization of the different social actors across new landscapes. While race became an important legal category in the Spanish colonial

⁶³ *Id.* English proficiency is less prevalent among Latinxs ages 34 to 49. In that age group only 55 percent said they only spoke English in their home or spoke English very well. Only 43 percent of Latinxs ages 69 and older said they were proficient in English.

⁶⁴ *Id.*

⁶⁵ Ana Gonzalez-Barrera & Mark H. Lopez, *Spanish is the Most Spoken non-English Language in U.S. Homes, Even Among non-Hispanics*, PEW RESEARCH CENTER, (Aug. 13, 2013), <http://www.pewresearch.org/fact-tank/2013/08/13/spanish-is-the-most-spoken-non-english-language-in-u-s-homes-even-among-non-hispanics/>, archived at <https://perma.cc/26AU-2YGP>.

⁶⁶ Krogstad, *supra* note 61.

⁶⁷ *Id.*

⁶⁸ See ELINORE M. BARRETT, *THE SPANISH COLONIAL SETTLEMENT LANDSCAPES OF NEW MEXICO 1598-1680* 13 (2012).

⁶⁹ See generally JOHN F. CHUCHIAK, *THE INQUISITION IN NEW SPAIN, 1536-1820: A DOCUMENTARY HISTORY* 22 (2012).

Americas beginning in the late 15th century,⁷⁰ Latinxs of all racial backgrounds (indigenous, black, and white) in the U.S. became implicated in this process and *collectively racialized* with U.S. settler colonialism.⁷¹ As white European interests and peoples moved westward and southward well into the 19th century, they displaced indigenous peoples, enslaved people of African descent, and exploited immigrant labor to build the infrastructure of expansion and imperialism.

In this context, race became one tool to legally deny and dispossess people of rights. This race-making process was further complicated in the United States by what Laura Gómez terms “double colonization,” which was the process by which native inhabitants of the Southwest were first colonized by the Spanish and then again by the Americans through the process of westward expansion.⁷² This double colonization resulted in the further racialization of Latinx in the United States.⁷³

⁷⁰ Pilar M. Hernández Escontrías, *Excavating Undocumented lives on the Borderland: Colonial Marketscapes, Private Property, and the Materiality of Raced Citizenship in 17th century Moquegua, Perú* (2016) (unpublished Ph.D. dissertation, Northwestern University) (on file with author).

⁷¹ See generally EDWARD M. TELLES & VILMA ORTIZ, *GENERATIONS OF EXCLUSION: MEXICAN-AMERICANS, ASSIMILATION, AND RACE* 12 (2008) (explaining the way in which Latinx, specifically Mexicans, have been racialized). We do not identify Latinxs as a racial category, as Latinxs can be of African descent, of indigenous descent, and of European/white descent. As other scholars have noted, anti-black and anti-indigenous racism within the Latinx community is prevalent. See also Tanya Katerí Hernández, *Hate Speech and the Language of Racism in Latin America: A Lens for Reconsidering Global Hate Speech Restrictions and Legislation Models*, PENN LAW: LEGAL SCHOLARSHIP REPOSITORY 805–841 (2014). We therefore do not position Latinxs a race. We do, however, acknowledge that Latinxs have been implicated in the race-making process that was central to U.S. imperialism and that, at various junctures in history, have been *collectively racialized* as “Other”. See Pilar Margarita Hernandez Escontrías, *Shifting Latinx Demographics and the Infrastructure of Support for the Latinx Community of California*, Report prepared for the Network for Justice: Creating Legal and Legislative Support for U.S. Latino Communities Summit, (Nov. 2016), https://flpabf2.files.wordpress.com/2016/12/final_shifting-latinx-demographics-and-the-infrastructure-of-support-for-the-latinx-community-of-california.pdf, archived at <https://perma.cc/2G3U-2M4D>.

⁷² LAURA E. GÓMEZ, *MANIFEST DESTINIES: THE MAKING OF THE MEXICAN AMERICAN RACE* 47, 82 (2008).

⁷³ Hernández Escontrías, *supra* note 70. Given the settler colonial history of the West and the Southwest, as well as Mexico’s 1824 independence from Spain and subsequent holding of land masses extending throughout California, Utah, New Mexico, Arizona, Nevada, Wyoming, and Colorado, it is not surprising that the vast majority of surnames in many of the early state censuses are comprised overwhelmingly of individuals of presumably Spanish descent. While “color” was used as a determinant of identity, only “White (W),” “Black,” “Yellow,” (Asian), “Mulatto,” and “Coppers” (indigenous) were terms that census enumerators utilized. Such identifiers as “Brown” and “Mexican” were not used; however, “Place of Birth” and “Last Residence” may have been proxies for these identities. In various instances, names themselves were often racialized through the conversion of racial tropes into names. For example, in the Santa Clara County, California census, numerous individuals are referred to as “John Chinaman” and “Sam Singsong” (for more information see <http://www.scchgs.org/census52/1852intro.pdf>, archived at <https://perma.cc/Y9JC-PJDY>).

Spain controlled most of this western territory until Mexico achieved its independence from Spain in 1821.⁷⁴ While the U.S. recognized Mexico as an independent nation, the countries maintained with an ongoing dispute about who had the right to part of Texas under the Louisiana Purchase of 1803.⁷⁵ The dispute was settled by a U.S. and Mexican Treaty of Limits that attempted to establish the U.S.-Mexico border boundary.⁷⁶ The Treaty of Limits went into effect in 1832 but it was amended in 1835 to establish the boundary through an agreed up on land survey process.⁷⁷

By 1835, the number of Anglos far exceeded Mexicans living in the area we now know as Texas.⁷⁸ As a result of its sizeable population in Texas and its interest in Westward expansion, the United States had a great interest in recognizing the Republic of Texas' declaration of independence from Mexico in 1836.⁷⁹ The United States disregarded Mexico's refusal to acknowledge the Texas secession and in 1838, the U.S. signed a new Treaty of Limits with the Republic of Texas, confirming the same boundary between the U.S. and Texas.⁸⁰ Mexico regarded this action as a violation of its Treaty of Limits and was further antagonized when in 1845 the U.S. annexed Texas.⁸¹ The U.S. annexation of Texas ultimately led to the Mexican-American War in 1846,⁸² which ended in 1848 with the signing of the Treaty of Guadalupe

⁷⁴ Spain was an ally to American colonists when they declared war against Great Britain in 1775. See THOMAS E. CHAVEZ, *SPAIN AND THE INDEPENDENCE OF THE UNITED STATES: AN INTRINSIC GIFT* 39–40 (2004). Spain and France provided military supplies to the colonist through New Spain. *Id.* at 64. Spain helped finance the war through its gold and silver possessions in present-day Cuba. *Id.* at 34. Spain's interest in helping the colonists gain their independence was motivated by their interest in pushing back Great Britain's empire. *Id.* at 13–38.

⁷⁵ See Arnold Whitridge, *The Louisiana Purchase, 1803: America Moves West*, 3 HIST. TODAY 476–483 (1953).

⁷⁶ Spain sold Florida to the United States while retaining Texas. See *The Texas-Louisiana Neutral Ground*, 24 TEX. GULF HIST. BIOGR. REC. 30–46 (1988). Still, the United States continued to dispute Texas when New Spain became Mexican land. See *The Texas-Louisiana Neutral Ground*, 24 TEX. GULF HIST. BIOGR. REC. 30–46 (1988). To settle the dispute, the United States and Mexico signed the Treaty of Limits in 1828, to define the US-Mexico boundary established by Spain in 1819. Francisco Fagoaga, *Document Regarding the Treaty of Limits*, THE PORTAL TO TEXAS HISTORY, <https://texashistory.unt.edu/ark:/67531/metaph31220/>, archived at <https://perma.cc/CY8T-7REF> (last visited Oct 3, 2017).

⁷⁷ *Id.* See also *Article Third of the Treaty of Limits*, <https://www.loc.gov/law/help/us-treaties/bevans/b-mx-ust000009-0760.pdf>, archived at <https://perma.cc/PUJ5-8BBV>.

⁷⁸ See generally MARTHA MENCHACHA, *RECOVERING HISTORY, CONSTRUCTING RACE: THE INDIAN, BLACK AND WHITE ROOTS OF MEXICAN AMERICANS* 201 (2010) (showing that the Anglo-American population numbered over 30,000.)

⁷⁹ See generally STEPHEN L. HARDIN, *TEXIAN ILLIAD: A MILITARY HISTORY OF THE TEXAS REVOLUTION, 1835–1836* (2010). (The group that advocated for Texas to be its own country referred to themselves as Texans. They pointed to President Antonio Lopez de Santa Anna's politics and his dissolution of the 1824 Constitution, lack of access to courts, militarization of the region, and defense of the territory as reasons for to become its own country). See also STEVEN E. WOODWARD, *MANIFEST DESTINIES* 107–188, VINTAGE BOOKS 2010.

⁸⁰ See Bunyan H. Andrew, *Some Queries concerning the Texas-Louisiana Sabine Boundary*, 53 SOUTHWEST. HIST. Q. 1–18 (1949).

⁸¹ See STANLEY SEGEL, *A POLITICAL HISTORY OF THE TEXAS REPUBLIC, 1836–1845* (2010).

⁸² See Gene M. Brick, *Mexican Opinion, American Racism, and the War of 1846*, 1 W. HIST. Q. 161–174 (1970).

Hidalgo.⁸³ The Treaty of Guadalupe Hidalgo promised U.S. citizenships to Mexican citizens living in the Southwestern United States U.S. citizenship.⁸⁴ In that treaty, Mexico recognized Texas' independence and seceded not only Texas but all of Alta California and the lands that are now the Southwestern United States in exchange for \$15 million.⁸⁵ In addition, the U.S. agreed to assume a \$3.25 million debt that the Mexican government owed U.S. citizens.⁸⁶ The Treaty of Guadalupe Hidalgo in 1848 established the Rio Grande as the U.S.–Mexico border.⁸⁷

However, the U.S.–Mexico border continued as a subject of dispute between the countries. There were almost 30,000 square miles between Alta California and Texas that Mexico continued to control.⁸⁸ The U.S. ambassador to Mexico in the mid-19th century, James Gadsden, signed a treaty with Mexican President Antonio Lopez de Santa Anna on December 1853 to purchase that land for \$10 million.⁸⁹ That treaty was ratified in 1854 and the territory became known as the southern parts of Arizona and New Mexico.⁹⁰ Mexico needed the money to recover from the war effort and the U.S. needed the land to complete a transcontinental railroad.⁹¹ The treaty, referred to as the Gadsden Purchase, permitted the U.S. to have contiguous land and settle any remaining border issues with Mexico.⁹² The relationship

⁸³ See Tom Gray, *The Treaty of Guadalupe Hidalgo*, NATIONAL ARCHIVES (2016), <https://www.archives.gov/education/lessons/guadalupe-hidalgo>, archived at <https://perma.cc/H5TZ-BGJA>. See also The Treaty of Guadalupe Hidalgo <https://www.ourdocuments.gov/doc.php?flash=true&doc=26&page=transcript>, archived at <https://perma.cc/8S7A-RMAD>.

⁸⁴ See RICHARD GRISWOLD DEL CASTILLO, *THE TREATY OF GUADALUPE HIDALGO: A LEGACY OF CONFLICT* 62–66 (Univ. of Okla. Press 1990) (There were approximately between 80,000–100,000 individuals of Mexican descent living in this territory. Article IX of the Treaty gave Mexican citizens one year to elect to have their Mexican citizenship. If this was not done, then the presumption was an election of U.S. citizenship which Congress promised to grant at a future time). See also ARTURO F. ROSALES, *Repatriation of Mexicans from the U.S.*, in *THE PRAEGER HANDBOOK OF LATINO EDUCATION IN THE U.S.* 399, 400–403 (Lourdes Diaz Soto, 2007). See also Juan F. Perea, *A Brief History of Race and the U.S.–Mexican Border: Tracing the Trajectories of Conquest*, 51 *UCLA L. REV.* 283, 296 (2003) (Mexicans were not given citizenship immediately, rather were promised it as soon as possible). See also MATT S. MEIER & FELICIANO RIBERA, *MEXICAN AMERICANS/AMERICAN MEXICANS: FROM CONQUISTADORS TO CHICANOS* 66 (1993).

⁸⁵ The Treaty of Guadalupe Hidalgo, NATIONAL ARCHIVES (2016), <https://www.archives.gov/education/lessons/guadalupe-hidalgo>, archived at <https://perma.cc/H5TZ-BGJA> (last visited Oct 7, 2017).

⁸⁶ See LEWIS E. KAPLAN, *THE MAKING OF THE AMERICAN DREAM, VOL. II: AN UNCONVENTIONAL HISTORY* 151 (2009).

⁸⁷ MEIER, *supra* note 84. See also Sonia Hernández, *The Legacy of the Treaty of Guadalupe Hidalgo on Tejanos' Land*, 35 *J. POPULAR CULTURE* 101 (2001) (discussing the costs of the Mexican American War to Mexico and the impact of the treaty on Mexicans who remained in their land under U.S. control).

⁸⁸ See CHRIS J. MAGOC, *IMPERIALISM AND EXPANSIONISM IN AMERICAN HISTORY: A SOCIAL, POLITICAL, AND CULTURAL ENCYCLOPEDIA AND DOCUMENT COLLECTION* 120–133 (2015).

⁸⁹ See RICHARD GRISWOLD DEL CASTILLO, *THE TREATY OF GUADALUPE HIDALGO: A LEGACY OF CONFLICT* 59 (1992). See also Gadsden Purchase Treaty, http://avalon.law.yale.edu/19th_century/mx1853.asp, archived at <https://perma.cc/N8AK-AZ8M>.

⁹⁰ *Id.* at 60.

⁹¹ *Id.*

⁹² *Id.*

with Mexico and disputes related to the U.S.-Mexico border continue to present day. In addition, the economies of the two countries are intrinsically tied, particularly through trade and remittances.⁹³ According to the Office of the United States Trade Representative, in 2016 U.S. goods and services with Mexico totaled an estimated \$579.7 billion in 2016. Specifically, U.S. exports totaled \$262 billion and imports totaled \$317.6 billion.⁹⁴ In addition, the social networks between Mexicans and those living in the United States are so strong that \$2.5 billion in cash transfers were made in March 2017 alone.⁹⁵ In 2016, remittances to Mexico totaled 40 percent of all money sent to foreign countries by individuals—more than any other country.⁹⁶

Similar to the history of Latinxs of Mexican heritage, the relationship of other Latinxs is also tied to the U.S. relationship with Spain. From 1492 until about 1821, the Spanish Empire included most of the Caribbean Islands and South America.⁹⁷ Between 1492 and 1832, there were 1.86 million Spanish in the Americas.⁹⁸ From 1771-1899, the majority of the Spanish territories gained independence.⁹⁹ The last two Spanish colonies in the Americas were Cuba and Puerto Rico.¹⁰⁰ Spain controlled these islands until 1898 when the Treaty of Paris ended the Spanish-American War.¹⁰¹ The agreement gave the U.S. temporary control over Cuba and ceded ownership of Puerto Rico.¹⁰²

As an imperial holding of the United States since 1898, the Supreme Court ruled in *Downes v. Bidwell* that Puerto Rico “is a territory appurtenant

⁹³ Remittances refer to the money transferred from individuals in the U.S. to individuals in foreign nations. See generally Ranko Shiraki Oliver, *In the Twelve Years of NAFTA, the Treaty Gave to Me. . . What, Exactly?: An Assessment of Economic, Social, and Political Developments in Mexico Since 1994 and Their Impact on Mexican Immigration into the United States*, 10 HARV. LATINO L. REV. 53 (2007) (explaining the impact and importance of NAFTA between the respective countries).

⁹⁴ See *U.S.-Mexico Trade Facts*, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, <https://ustr.gov/countries-regions/americas/mexico>, archived at <https://perma.cc/9LAJ-Q2W5> (last visited Oct 2, 2017).

⁹⁵ The largest transfer of remittances was in October 2008 when there were \$2.8 billion in cash transferred to Mexico. Rafael Bernal, *Remittances to Mexico jump to near-record levels*, THE HILL, (May 02, 2017 1:32 PM EST), <http://thehill.com/latino/331579-remittances-to-mexico-at-near-record-levels>, archived at <https://perma.cc/CZH5-L2R9>.

⁹⁶ See Nurith Aizenman, *Mexicans in the U.S. Are Sending Home More Money Than Ever*, NATIONAL PUBLIC RADIO (Feb. 10, 2017, 8:14 AM), <http://www.npr.org/sections/goatsand-soda/2017/02/10/514172676/mexicans-in-the-u-s-are-sending-home-more-money-than-ever>, archived at <https://perma.cc/LR5G-WC5C>.

⁹⁷ See generally John Huxtable Elliott, *Empires of the Atlantic World: Britain and Spain in America 1492–1830* (2007) (showing the history of the Spanish empire in which Spain owned the Caribbean Islands and South America).

⁹⁸ See Rosario Márquez Macías, *La emigración española a América, 1765–1824*, 64 (1995).

⁹⁹ See generally Marisabel Brás, *The Changing of the Guard Puerto Rico in 1898*, Library of Congress, <https://www.loc.gov/tr/hispanic/1898/bras.html>, archived at <https://perma.cc/K35H-5WDN> (showing that Spain’s political reach started to decay).

¹⁰⁰ See Pedro A. Malavet, *Puerto Rico: Cultural Nation, American Colony*, 6 MICH. J. RACE & L 1, (2000).

¹⁰¹ *Id.*

¹⁰² See Andrew Kent, *Boumediene, Munaf, and the Supreme Court’s Misreading of the Insular Cases*, 97 IOWA L. REV. 101, 117 (2011).

and belonging to the United States, but not a part of the United States within the revenue clauses of the Constitution.”¹⁰³ This opinion found that “[t]he Constitution was created by the people of the *United States*, as a union of *States*, to be governed solely by representatives of the *States*” (emphasis in original).¹⁰⁴ Establishing the doctrine of territorial incorporation, Puerto Ricans were later conferred “statutory citizenship” under the 14th Amendment whereby “persons of Puerto Rican birth are neither permitted to apply for naturalization in order to upgrade their citizenship nor can they be freed from the constitutional infirmity attendant to their citizenship by establishing their domicile in one of the states”.¹⁰⁵ This form of citizenship renders Puerto Ricans unable to enjoy the full benefits of U.S. citizenship, such as voting in U.S. presidential elections or maintaining representation in the U.S. Congress.¹⁰⁶

The island has voted several times on a referendum on the political status of Puerto Rico.¹⁰⁷ Most recently in 2017, 97 percent of Puerto Ricans voted for statehood in an election in which 23 percent of the voters participated in the process.¹⁰⁸ Opposition leaders who call for Puerto Rican independence from the United States boycotted the election believing that it was fixed.¹⁰⁹ The movement for decolonization and independent nationhood has been gaining strength in the last two decades.¹¹⁰

The divide between Puerto Rican and American priorities and differences was made apparent later in 2017, when Puerto Rico was hit with its worst hurricane in 90 years. Hurricane Maria left the island’s residents without electricity and basic necessities for months.¹¹¹ In addition to killing at

¹⁰³ *Downes v. Bidwell*, 21 S. Ct. 770, 787 (1901).

¹⁰⁴ *Id.* at 250–51.

¹⁰⁵ See Lisa Marie Perez, *Citizenship Denied: The Insular Cases and the Fourteenth Amendment*, 94 VA. L. REV. 1028, 1076 (2008).

¹⁰⁶ See EDNA ACOSTA-BELEN AND CARLOS E. SANTIAGO, PUERTO RICANS IN THE UNITED STATES: A CONTEMPORARY PORTRAIT 3–5 (2006).

¹⁰⁷ See generally Manuel Alvarez-Rivera, *Elections in Puerto Rico, Elecciones Puerto Rico* (June 15, 2017), http://www.eleccionespuertorico.org/home_en.html, archived at <https://perma.cc/U8EU-6HYX> (showing the different years and results in which Puerto Rico has voted on its status).

¹⁰⁸ See Nick Brown & Tracy Rucinski, *Puerto Rico Governor Vows Statehood Push After Referendum Win*, REUTERS, (June 12, 2017, 10:22 AM), <https://www.reuters.com/article/us-puertorico-debt-vote/puerto-rico-governor-vows-statehood-push-after-referendum-win-idUSKBN1931NG>, archived at <https://perma.cc/XKJ4-XUQM>.

¹⁰⁹ See Agence France-Presse, *Puerto Ricans go to the polls to vote on statehood*, PUBLIC RADIO INTERNATIONAL, (June 11, 2017, 12:00 PM), <https://www.pri.org/stories/2017-06-11/puerto-ricans-go-polls-vote-statehood>, archived at <https://perma.cc/33ER-VHPC>.

¹¹⁰ See Rubén Berríos Martínez, *Puerto Rico’s Decolonization*, 76 FOREIGN AFF. 100, 100–114 (1997).

¹¹¹ See Caitlin Dickerson & Luis Ferré-Sadurní, *‘Like Going Back in Time’: Puerto Ricans Put Survival Skills to Use*, N.Y. TIMES, (Oct. 24, 2017), <https://www.nytimes.com/2017/10/24/us/hurricane-maria-puerto-rico-coping.html>, archived at <https://perma.cc/4VF4-KEK5>; ASSOCIATED PRESS, *Hurricane Maria Death Toll Rises to 49 in Puerto Rico*, (Oct. 20, 2017 11:52 AM), <https://www.usnews.com/news/us/articles/2017-10-20/hurricane-maria-death-toll-rises-to-49-in-puerto-rico>, archived at <https://perma.cc/MU9N-KK7G>.

least 900 people,¹¹² the damage left behind by Hurricane Maria was estimated at between 45 to 95 billion dollars.¹¹³ Amidst criticism that the United States responded with a lack of urgency, President Donald Trump said the citizens “. . . wanted everything done for them,” and that the United States’ response was much better than what had happened during a “real catastrophe” like Hurricane Katrina in 2005.¹¹⁴

Unlike Puerto Rico, which is formally a commonwealth of the United States, Cuba has not maintained any economic or diplomatic ties with the United States for two generations.¹¹⁵ After Spain gave up its rights to Cuba in 1898, Cuba became an independent state.¹¹⁶ While independent, the Platt Amendment gave the U.S. the right to intervene in Cuban affairs.¹¹⁷ As a result of that amendment, the U.S. occupied Cuba between 1906 and 1909, and returned in 1912.¹¹⁸ By 1934, the U.S. relinquished its right to intervene in Cuba’s domestic affairs. In the early 1950s, Fidel Castro began to attempt an overthrow of the Fulgencio Batista regime but the U.S. intervened and provided support to Batista until 1958.¹¹⁹ The following year, Castro overthrew Batista and Castro appointed himself prime minister.¹²⁰

By 1960, the Castro regime nationalized all U.S. businesses in Cuba and the U.S. ended diplomatic relationships by imposing a trade embargo on the island.¹²¹ Shortly thereafter, the U.S. broke diplomatic ties with Cuba and closed its embassy in Havana.¹²² A number of anti-Castro Cuban exiles fled to the U.S. and organized an U.S.-government supported invasion of

¹¹² While there are reports of over 900 cremations since Hurricane Maria, the official death toll was still at 51. See Pam Wright, *Questions Swirl Over Hurricane Maria Death Toll After Puerto Rico Confirms More Than 900 Post-Storm Cremations*, WEATHER CHANNEL (Oct. 30, 2017, 11:15 AM), <https://weather.com/news/news/2017-10-30-puerto-rico-hurricane-death-toll-cremations>, archive at <https://perma.cc/N74R-E23F>; see also Joshua Hoyos and Dean Schabner, *900-plus cremations since Maria, but hurricane death toll still 51*, ABC NEWS (Oct. 28, 2017, 9:42 PM), <http://abcnews.go.com/US/900-cremations-maria-hurricane-death-toll-51/story?id=50787771>, archived at <https://perma.cc/T24C-V7FK>.

¹¹³ See Roberta Rampton & Gabriel Stargardter, *Trump praises responses to Puerto Rico, says crisis straining budget*, REUTERS (Oct. 3, 2017, 1:18 AM), <https://www.reuters.com/article/us-usa-puertorico/trump-praises-response-to-puerto-rico-says-crisis-straining-budget-idUSKNC1C80DO>, archived at <https://perma.cc/4A4Q-XPUM>.

¹¹⁴ *Id.*

¹¹⁵ Malavet, *supra* note 100 (explaining that Cuba was given autonomy earlier than Puerto Rico’s commonwealth status).

¹¹⁶ See SPENCER TUCKER, *THE ENCYCLOPEDIA OF THE SPANISH-AMERICAN AND PHILIPPINE-AMERICAN WARS: A POLITICAL, SOCIAL, AND MILITARY HISTORY* 469 (2009).

¹¹⁷ See Ernesto Hernandez-Lopez, *Boumediene v. Bush and Guantanamo, Cuba: Does the “Empire Strike Back”?* 62 SMU L. REV. 117. See also 31 Stat. 895, 898 (1902).

¹¹⁸ *Id.* at 162.

¹¹⁹ See Lucien J. Dhooge, *Fiddling with Fidel: An Analysis of the Cuban Liberty Democratic Solidarity Act of 1996*, 14 ARIZ. J. INT’L & COMP. L. 575. See also ALEKSANDR FURSENKO & TIMOTHY NAFTALI, “ONE HELL OF A GAMBLE”: KHRUSHCHEV, CASTRO, AND KENNEDY, 1958–1964, 7 (1998).

¹²⁰ Dhooge, *supra* note 119.

¹²¹ See Albert R. Coli, *Harming Human Rights In the Name of Promoting Them, The Case of the Cuban Embargo*, 12 UCLA J. INT’L L. & FOR. AFF. 199 (2007).

¹²² See MARIA CRISTINA GARCIA, *HAVANA USA: CUBAN EXILES AND CUBAN AMERICANS IN SOUTH FLORIDA, 1959–1994* (1996).

Cuba in 1961, known as the Bay of Pigs.¹²³ Although the invasion was not executed, the Castro regime responded by claiming Cuba as a communist state and seeking protection from the former Soviet Union.¹²⁴ For fear of a U.S. invasion, Castro permitted the Soviet Union to deploy nuclear missiles in Cuba in 1962.¹²⁵ Ultimately, the super powers reached a diplomatic agreement to avoid a nuclear disaster.¹²⁶ Cuba lost protection of the Soviet Union when that nation dissolved in 1991.¹²⁷

Between 1963 and 2014, the U.S. relationship with Cuba has been largely defined by imposition of hefty trade embargos and travel restrictions by the U.S. focused on debilitating the Cuban economy.¹²⁸ Most recently, the countries also battled over respective citizens accused of espionage.¹²⁹ However, in December 2006, Congress sent its largest delegation to Havana, Cuba since the 1959 revolution in an effort to develop better relationships.¹³⁰ Cuban acting leader, Raul Castro refused to meet with the delegation but offered to engage in conversation after the 2008 U.S. Presidential election several months later.¹³¹ It was not until December 2014, that the U.S. and Cuba agreed to resume diplomatic relations.¹³² Those relations are currently being threatened after more than twenty U.S. diplomats suffered hearing loss, speech problems, concussions, and other health problems as a result of alleged targeted sonic attacks in Cuba in 2017.¹³³ As a result of these allegations, the Trump administration has accused the Cuban government for the actions and expelled Cuban diplomats from the U.S.¹³⁴ He has threatened to roll back the advancements that have been achieved to normalize relationships between the countries.¹³⁵ While the U.S. relationship with Cuba is primarily a story of foreign relations and economic imperialism, the history of the U.S. relationship is important because the Cuban exile community in the

¹²³ *Id.*

¹²⁴ See *The Cuban Adjustment Act of 1966: Mirando Por Los Ojos De Don Quijote o Sancho Panza*, 114 HARV. L. REV. 902 (2011).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Dhooge, *supra* note 119.

¹²⁸ See RICHARD E. WELSH, RESPONSE TO REVOLUTION THE UNITED STATES AND THE CUBAN REVOLUTION 1959–1961, 97–103(1985). See also Charles Rengel, *Policy Essay: Free Trade with Cuba Now*, 52 HARV. J. ON LEGIS. 327 (2015).

¹²⁹ See Kevin J. Fandl, *Adios Embargo: The Case for Executive Termination of the U.S. Embargo on Cuba*, 54 AM. BUS. L.J. 293 (2017).

¹³⁰ *Id.* at 337.

¹³¹ *Id.*

¹³² *Id.*

¹³³ See Associated Press, *Mystery of sonic weapon attacks at US embassy in Cuba deepens*, THE GUARDIAN, (Sept. 14, 2017), <http://www.theguardian.com/world/2017/sep/14/mystery-of-sonic-weapon-attacks-at-us-embassy-in-cuba-deepens>, archived at <https://perma.cc/UNB3-KHJ>.

¹³⁴ See Julie Hirschfeld Davis, *Trump Blames Cuba For Attacks That Sickened U.S. Diplomats*, N.Y. TIMES, (Oct. 16, 2017), <https://www.nytimes.com/2017/10/16/us/politics/trump-cuba-diplomats-attacks.html>, archived at <https://perma.cc/GXL4-3RQP>.

¹³⁵ See Simeon Kriesberg, *US Sanctions Against Cuba: Outlook Under President Trump*, (Dec. 19, 2016), <https://www.mayerbrown.com/files/Publication/73fd5061-6163-4454-8725-3c4c084edf95/Presentation/PublicationAttachment/42b42846-6302-44a2-a345-9089f6cd303b/161219-UPDATE-GGT.pdf>, archived at <https://perma.cc/PU26-B32F>.

U.S. is a powerful economic and political force within the U.S. Latinx community.¹³⁶

While Cubans and Cuban-Americans comprise a small segment of the U.S. Latinx population, it is an economically and politically powerful group of Latinxs. The PEW Research Center's National Survey of Latinos in 2013 found that 57 percent of Cuban-heritage Americans are foreign-born compared to 35 percent of other Latinxs.¹³⁷ While this group of Latinxs is largely immigrant, almost half have resided in the U.S. for over 20 years and 59 percent are U.S. citizens.¹³⁸ The American Community Survey shows that 40 percent of Cubans and Cuban Americans speak English well, compared to 32 percent of all Latinxs.¹³⁹ Still, 79 percent of Cubans and Cuban Americans speak Spanish at home – a rate that is higher than all other Latinx groups.¹⁴⁰ The Cuban and Cuban-American community in the U.S. is older than other Latinxs and the U.S. population overall.¹⁴¹ Cubans and Cuban-Americans in the U.S. are primarily focused in the southern U.S., with the majority living in Florida.¹⁴² This Latinx sub-group has the highest level of educational attainment, income, and home ownership than other Latinx groups.¹⁴³ Despite this higher socio-economic status amongst Latinxs, the Cuban-heritage community in the U.S. fares worse than the general U.S. population with regard to those same measures.¹⁴⁴ While fewer Cubans live in poverty compared to other Latinxs, there are still more Cubans and Cuban-Americans living in poverty compared to the overall U.S. population.¹⁴⁵

¹³⁶ See generally Jens Manuel Krogstad, *Surge in Cuban immigration to U.S. continued through 2016* Pew Research Center, PEW RESEARCH CENTER, (Jan. 13, 2017), <http://www.pewresearch.org/fact-tank/2017/01/13/cuban-immigration-to-u-s-surges-as-relations-warm/>, archived at <https://perma.cc/KL6U-F2EE> (showing the high Cuban immigrant population that continues to come to America). See also Maria Murriel, *Here's Why US-Cuban Relations are so Important to all of us*, PUBLIC RADIO INTERNATIONAL, (Mar. 17, 2016), <https://www.pri.org/stories/2016-03-17/heres-why-us-cuban-relations-are-so-important-all-us>, archived at <https://perma.cc/UA4P-NZT8>.

¹³⁷ See Gustavo López, *Hispanics of Cuban Origin in the United States, 2013* Pew Research Center's Hispanic Trends Project, PEW RESEARCH CENTER, (Sept. 15, 2015), <http://www.pewhispanic.org/2015/09/15/hispanics-of-cuban-origin-in-the-united-states-2013/>, archived at <https://perma.cc/86XQ-9TL8>.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.* Approximately 73 percent of other Latinos report speaking Spanish at home.

¹⁴¹ *Id.* The median age for Cubans is 40, while the median age for other Latinxs is 28, and the median age for the overall U.S. population is 37. *Id.*

¹⁴² *Id.*

¹⁴³ One quarter of Cubans and Cuban-Americans 25 years and older have obtained a bachelor's degree. In comparison, only 14 percent of all Latinxs. Like other populations, those who are U.S. born are more likely to have educational degrees. This Cuban sub-group home-ownership rate is ten percentage points higher than other Latinxs. The personal median annual income for Cubans was \$25,000 while the personal median income for other Latinxs was \$21,900 in 2012. *Id.*

¹⁴⁴ Thirty percent of the overall U.S. population has at least a bachelor's degree. Sixty-four percent of the U.S. population are homeowners. The U.S. personal median income in 2012 was \$30,000. *Id.*

¹⁴⁵ The Census Bureau's American Community Survey found that in 2013, 20 percent of Cubans lived poverty, compared to 25 percent of all Latinxs and 16 percent of the overall population. *Id.*

Latinxs are, and have been, an integral part of the American narrative, despite the fact that they have often occupied a liminal space within the U.S. legal and racial hierarchy. At various moments in U.S. history, members of the Latinx community aligned themselves with whiteness and/or were conferred white racial identity.¹⁴⁶ An example of this white racialization of Latinxs during World War II is found in the 1943 Texas state legislature resolution entitled “Caucasian Race - Equal Privileges.”¹⁴⁷ As a “good neighbor policy,” this resolution established that Texas’ “neighbors to the South are cooperating and aiding us in every way possible,”¹⁴⁸ as “all nations of the North American and South American continents are banded together in an effort to stamp out Nazism and preserve democracy. . .” Thus, in the spirit of “hemispherical solidarity,” “all persons of the Caucasian Race within the jurisdiction of this State are entitled to the full and equal accommodations, advantages, facilities, and privileges of all public places of business or amusement. . .”¹⁴⁹ This resolution thus formally acknowledged people of North and South American descent as legally white.¹⁵⁰

The history of the development of the countries in the Americas is a history of Latinxs in the United States.¹⁵¹ As such they are entitled to the same legal rights and responsibilities as all Americans. Despite the tremendous growth of the Latinx population across generations and geographies,

¹⁴⁶ GÓMEZ, *supra* note 72.

¹⁴⁷ See RICHARD GRISWOLD DEL CASTILLO, *WORLD WAR II AND MEXICAN AMERICAN CIVIL RIGHTS* 147 (2010).

¹⁴⁸ Thomas A. Guglielmo, *Fighting for Caucasian Rights: Mexicans, Mexican Americans, and the Transnational Struggle for Civil Rights in World War II Texas*, *J. OF AM. HISTORY* 1212 (Mar. 2006).

¹⁴⁹ See MATTHEW GRITTER, *MEXICAN INCLUSION: THE ORIGINS OF ANTI-DISCRIMINATION POLICY IN TEXAS AND THE SOUTHWEST* 25–27 (2012).

¹⁵⁰ See MICHAEL NORICKS, *LATINO AND HISPANIC HISTORY: THE STORY OF THE USA’S MAJORITY MINORITY* 184 (2014). Despite their participation in these decidedly nation-making processes, Latinxs did not receive the full benefits of political or social citizenship upon their return from their military service abroad. Servicemen and women who attempted to apply for benefits under the Serviceman’s Readjustment Act were often denied or found that they could not claim their benefits due to redlining, housing discrimination, and educational barriers. Author Hernández Escontrías’ maternal grandfather Manuel Arellano Hernandez (born in Yuma, Arizona in on April 15, 1918) enlisted in the U.S. military on March 5, 1941. His enlistment card lists his race as “Others, citizen.” After serving for 5 years in the South Pacific, Hernandez found that the only benefit of the GI Bill that he was able claim was to attend barber school. Hernandez and his wife Margarita Valdez Hernandez settled in Boyle Heights, California. Hernández Escontrías’ paternal grandfather Silverio Escontrias (born in El Paso, Texas on May 30, 1913) enlisted in the U.S. military on December 11, 1943. Upon his release, Escontrias was able to benefit from the GI Bill and purchased a home in Pico Rivera, California. At the time, Pico Rivera was a predominantly white neighborhood. The seller of the home, however, told Escontrias and his wife Dolores Alvidrez Escontrias to never share with anyone that they were “Mexicans,” as redlining was common throughout Los Angeles in post-war years. For this reason, Mexican-American veteran Dr. Hector P. García founded the American G.I. Forum in Corpus Christi, Texas in 1948 and is a Congressionally chartered Latinx veterans organization.

¹⁵¹ This article is not able cover the history of all Latin American countries that contribute to the Latinx presence in the United States. However, it is important to note that U.S. economic interests in Latin America and conflicts in those regions are an important element of U.S. Latinx history.

the heterogeneity of Latinxs in the U.S. also presents challenges to the traditional notions of civil rights organizing and mobilization tactics, and makes the development of a network for Latinxs a formidable goal. As Moran has noted, “if the Latino population prompts fresh perspectives on paradigms of opportunity, it may enable the United States to extricate itself from increasingly contested, traditional approaches to civil rights and immigration. Latinxs may show that they do not fit models built on the past precisely because this burgeoning population represents the future.”¹⁵² A successful network would therefore need to take into account historical contingencies that are deeply entangled with racial hierarchies, privileged immigration policies, and the uneven conferral of citizenship to Latinx immigrants. Latinx histories offer both challenges and opportunities for the enactment of a successful network.

III. LAW AND POLICY IMPACTING LATINX CIVIL & LEGAL RIGHTS

In light of the historical trajectories described above, it is perhaps unsurprising that Latinxs remain underserved across many sectors of law and policy. The history of Latinxs in the United States suggests there are dynamics of inequity and exclusion that persist. In August 2013, the ABA Special Committee on Hispanic Legal Rights and Responsibilities (“Hispanic Commission”) released a report meant to provide a snapshot of where Latinxs stand on a variety of important policy issues. This report is entitled *Latinos in the United States: Overcoming Legal Obstacles, Engaging in Civic Life* (“ABA Hispanic Commission Report”).¹⁵³ The ABA Hispanic Commission Report identified the legal issues that create obstacles for Latinxs’ full participation in civic life. To properly document the legal issues, the Hispanic Commission met with lawyers, government officials, nonprofit organizations, and Latinx law students to hold special stakeholder meetings throughout the country.¹⁵⁴ The fact-gathering process also included regional public hearings in Austin, Chicago, Los Angeles, Miami, New York City, and San Francisco.¹⁵⁵

After deciphering the information gathered, the Hispanic Commission identified six areas of law that created barriers for Latinxs. Those areas included employment, housing, education, health access, criminal justice, and voting rights.¹⁵⁶ In addition to those substantive areas of law, the report

¹⁵² Rachel F. Moran, *Neither Black nor White*, 2 HARV. LATINO L. REV. 61, 99 (1997). See also Rachel F. Moran, *Unrepresented*, 55 REPRESENTATIONS 139 (1996) (arguing that Latinxs’ immigration status has crippled their claims to civil rights protections).

¹⁵³ *Latinos in the United States: Overcoming Legal Obstacles, Engaging in Civic Life*, AMERICAN BAR ASSOCIATION, (2013), https://www.americanbar.org/content/dam/aba/images/commission_on_hispanic_legal_rights_responsibilities/hispanicreportnew.pdf, archived at <https://perma.cc/3HVU-278M>.

¹⁵⁴ For a description of the Hispanic Commission’s Fact-Gathering efforts, see *id.* at 23–45.

¹⁵⁵ *Id.* at 41–43.

¹⁵⁶ *Id.*

identified media images of Latinxs and diversity within the legal profession as structural issues that required their attention.¹⁵⁷ Here, we revisit the six substantive areas of law here by updating or supplementing the ABA Hispanic Commission's report in each of the policy areas. In addition, we add a discussion of immigration to our analysis, given the increasingly important role immigration law and policy plays in the pursuit of Latinx civil rights. This overview of law and policy demonstrates that there are significant barriers and challenges that makes the case for why a Network for Justice not only needed but imperative to build.

A. *Employment*

A report by the American Bar Association identified employment and income status, workplace discrimination, wage theft, and hazardous working environments as the legal issues where Latinxs have experienced difficulties.¹⁵⁸ In 2013, the Economic Policy Institute reported that 10.8 percent Latinxs and 13 percent of Blacks were underemployed, while only 6.8 percent of whites were underemployed.¹⁵⁹ The 2016 unemployment rate for Latinxs was 5.8 percent, compared to 3.6 percent for Asians and 4.3 percent for Whites. While Latinxs fared worse than most groups, Blacks had higher unemployment at 8.4 percent.¹⁶⁰ However, the unemployment rate accounts only for jobless workers who report they are actively seeking work. As a result, economists have also begun to look at underemployment as a better indicator of economic stability.¹⁶¹

Nationwide, Latinxs have experienced high levels of inequality, losing an astounding 66 percent of their wealth during the Great Recession of 2009.¹⁶² Approximately 21 percent of Latinxs live in poverty.¹⁶³ The Latinx median family income in 2015 was \$45,148, compared to \$77,166 for

¹⁵⁷ *Id.* at 64–70

¹⁵⁸ ABA Hispanic Commission Report, *supra* note 153.

¹⁵⁹ See Heidi Shierholz, *Roughly One in Five Hispanic and Black Workers Are "Underemployed,"* ECONOMIC POLICY INSTITUTE, (Aug. 22, 2013) <http://www.epi.org/publication/roughly-hispanic-black-workers-underemployed/>, archived at <http://perma.cc/9RS8-HNWM>.

¹⁶⁰ See U.S. BUREAU OF LABOR STATISTICS, UNEMPLOYMENT RATE AND EMPLOYMENT-POPULATION RATIO VARY BY RACE AND ETHNICITY: THE ECONOMICS DAILY (2017) <https://www.bls.gov/opub/ted/2017/unemployment-rate-and-employment-population-ratio-vary-by-race-and-ethnicity.htm>, archived at <https://perma.cc/LR6V-XXF8>.

¹⁶¹ The underemployment rate accounts for unemployment but also individuals who involuntarily have only part-time work and those who are available to work and have looked for work in the last 12 months but have given up an active employment search.

¹⁶² See Rakesh Kochhar et al., *Wealth Gaps Rise to Record Highs Between Whites, Blacks, Hispanics* Pew Research Center's Social & Demographic Trends Project (2011), PEW RESEARCH CENTER, (July 26, 2011) <http://www.pewsocialtrends.org/2011/07/26/wealth-gaps-rise-to-record-highs-between-whites-blacks-hispanics/>, archived at <https://perma.cc/R9ML-V9VP>.

¹⁶³ See *Poverty Rate by Race/Ethnicity 2016*, THE HENRY J. KAISER FAMILY FOUNDATION, <http://www.kff.org/other/state-indicator/poverty-rate-by-raceethnicity/>, archived at <https://perma.cc/FM6C-62VU> (last visited Sep 8, 2017).

Asians, \$62,950 for Whites, and \$43,300 for Blacks.¹⁶⁴ This figure and the recent drop in unemployment represents an improvement for Latinxs after many years of no economic progress.¹⁶⁵ However, the median net worth for Latinx households in 2013 was \$13,700 and was more than ten times less than that of Whites.¹⁶⁶ Latinxs also report that their employers engage in wage theft by not paying them overtime or minimum wage and violating other laws.¹⁶⁷ The UCLA Labor Center reports that Los Angeles, a city with 9 percent of the nation's Latinx population, is the wage theft capital of the U.S.¹⁶⁸ They estimate that each week low-wage workers lose approximately \$26.2 million.¹⁶⁹ According to a study by the University of California, Los Angeles (UCLA) Institute for Research on Labor and Employment and the Center on Urban Economic Development, foreign-born Latinxs are the group who suffer from the highest rates of wage theft and minimum wage violations.¹⁷⁰

Perhaps the most notoriously exploited sector of Latinx workers is the farmworker community. The last National Agricultural Workers Survey, which interviewed a sample of approximately 1500 agricultural workers, found that most U.S. agricultural workers are foreign-born Latinxs between 25 and 44 years of age.¹⁷¹ While in past decades these workers were migrant, recent data show that only one in six are migrants, but 69 percent of farmworkers still report Mexico as their origin country.¹⁷²

The growing percentage of non-migrant Latinx farmworkers also means that more are proficient in the English language. In fact, 32 percent reported

¹⁶⁴ See Jens Manuel Krogstad & Antonio Flores, *LATINOS MADE ECONOMIC STRIDES IN 2015 AFTER YEARS OF FEW GAINS*, PEW RESEARCH CENTER, (Nov. 21, 2016) <http://www.pewresearch.org/fact-tank/2016/11/21/latinos-made-economic-strides-in-2015-after-years-of-no-gains/>, archived at <https://perma.cc/J46W-62D8>.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ See Paco Fabian, *In This Economy, Latinos are Most Frequent Victims of Wage Theft*, THE HILL, <http://thehill.com/blogs/pundits-blog/finance/303029-in-this-economy-latinos-are-most-frequent-victims-of-wage-theft>, archived at <https://perma.cc/R8CB-EMS5> (last visited Sep. 10, 2017).

¹⁶⁸ See *What is Wage Theft?*, UCLA LABOR CENTER (2015), <https://www.labor.ucla.edu/wage-theft/>, archived at <https://perma.cc/ALM5-F9EN> (last visited Sep. 8, 2017). See Anna Brown & Mark Hugo Lopez, *Mapping the Latino Population, By State, County and City* *Pew Research Center's Hispanic Trends Project (2013)*, PEW RESEARCH CENTER, (Aug. 29, 2013), <http://www.pewhispanic.org/2013/08/29/mapping-the-latino-population-by-state-county-and-city/>, archived at <https://perma.cc/5EFX-7HWQ>.

¹⁶⁹ *Id.*

¹⁷⁰ Bernhardt, *supra* note 39.

¹⁷¹ Shierholz, *supra* note 159; see also *Demographic Characteristics: Agricultural Workers Tables Age Group*, NATIONAL AGRICULTURAL WORKERS SURVEY, <https://naws.jbsinternational.com/table/2/2>, archived at <https://perma.cc/25GJ-FY3H> (last visited Sep. 10, 2017).

¹⁷² See *Demographic Characteristics: Agricultural Workers Tables Sex*, NATIONAL AGRICULTURAL WORKERS SURVEY, <https://naws.jbsinternational.com/table/2>, archived at <https://perma.cc/6HTJ-M2MF> (last visited Sep. 10, 2017); *Demographic Characteristics: Agricultural Workers Tables Country of Birth and Ethnicity*, NATIONAL AGRICULTURAL WORKERS SURVEY, <https://naws.jbsinternational.com/table/2/10>, archived at <https://perma.cc/U6YP-KP8R> (last visited Sep. 10, 2017).

speaking English well, and another 11 percent reported knowing English “somewhat.”¹⁷³ Approximately 31 percent of farmworkers are U.S. citizens and 22 percent are authorized to work in the U.S., while about 47 percent do not have documented status in the United States.¹⁷⁴ The average hourly rate for farmworkers has only increased by \$3.50 in a fifteen-year period and the overall total family income has risen by 22 percent.¹⁷⁵

Latinxs also raised discrimination as a major employment obstacles.¹⁷⁶ While there are no clear data documenting actual incidents, a survey conducted by the PEW Research Center on race in 2007 revealed that 58 percent of Latinxs believe that discrimination is a problem in the workplace.¹⁷⁷ A 2016 report by PEW states that 52 percent of Latinxs have been discriminated or treated unfairly as a result of their Latinx identity.¹⁷⁸ Some of these claims may be explained by the fact that many Latinxs work in the service and agricultural industries where a number of hazardous work conditions exist. According to a study by the University of California, Berkeley from 2003 to 2006, the fatality rate for Latinxs was 25 percent than for any other worker population, with a particularly high concentration among foreign-born Latinxs.¹⁷⁹ In 2009, the main fatality causes for Latinxs was transportation incidents (27 percent), contact with equipment (21 percent), falls (20 percent), and assaults and violent acts (17 percent). Furthermore, in 2009 fatal injuries among Latinx construction workers were more likely to be caused by a fall than for their white counterparts.¹⁸⁰

Additionally, sexual discrimination in the workplace is also a problem, especially for Latinas. A 2009 report by the Southern Poverty Law Center stated that 77 percent of the Latinas they surveyed stated that sexual harassment is an issue in the workplace.¹⁸¹ Prior studies revealed that Latina

¹⁷³ See *Demographic Characteristics: Agricultural Workers Table How Well do you Speak English?*, NATIONAL AGRICULTURAL WORKERS SURVEY, <https://naws.jbsinternational.com/table/2/8>, archived at <https://perma.cc/9TCM-5XVU> (last visited Sep. 10, 2017).

¹⁷⁴ See *Demographic Characteristics: Agricultural Workers Tables Current Status*, NATIONAL AGRICULTURAL WORKERS SURVEY, <https://naws.jbsinternational.com/table/2/12>, archived at <http://perma.cc/6HTJ-M2MF> (last visited Sep. 10, 2017).

¹⁷⁵ *Demographic Characteristics: Earnings, Incomes, and Public Assistance Total Family Income Below Poverty Line*, NATIONAL AGRICULTURAL WORKERS SURVEY, <https://naws.jbsinternational.com/table/4/5>, archived at <https://perma.cc/F3K5-E9VM> (last visited Sep. 10, 2017).

¹⁷⁶ See Jens Manuel Krogstad & Gustavo López, *Roughly Half of Hispanics Have Experienced Discrimination*, PEW RESEARCH CENTER, <http://www.pewresearch.org/fact-tank/2016/06/29/roughly-half-of-hispanics-have-experienced-discrimination/>, archived at <https://perma.cc/TZJ4-GJBB> (last visited Sep. 9, 2017).

¹⁷⁷ See *Perceptions of Discrimination* Pew Research Center’s Hispanic Trends Project (2007), PEW RESEARCH CENTER, <http://www.pewhispanic.org/2007/12/13/iv-perceptions-of-discrimination/>, archived at <https://perma.cc/Z27W-HP7P> (last visited Sep. 8, 2017).

¹⁷⁸ *Id.*

¹⁷⁹ See *Occupational Health and Safety Among Latinos in the United States*, LABOR OCCUPATIONAL HEALTH PROGRAM (2011), http://lohp.org/docs/pubs/Occupational_Fact_Sheet_HIA.pdf, archived at <https://perma.cc/U5KA-Q9MT> (last visited Sep. 19, 2017).

¹⁸⁰ *Id.*

¹⁸¹ See *Under Siege: Life for Low-Income Latinos in the South*, SOUTHERN POVERTY LAW CENTER, (March 31, 2009), <https://www.splcenter.org/20090401/under-siege-life-low-income-latinos-south>, archived at <https://perma.cc/ZCT9-RTPZ>.

farmworkers and domestic workers are particularly susceptible to workplace harassment as a result of their gender.¹⁸² Consequently, the U.S. Office of Victims of Crime developed a fact sheet to help Latinas and their advocates help them understand workers' rights.¹⁸³

Underemployment, low wages, and discrimination all contribute to the need for entrepreneurship in the Latinx community. Necessity creates entrepreneurs who start business as a way to generate income due to lack of employment and underemployment. In addition to these "Need Entrepreneurs" there are also "Opportunity Entrepreneurs". Opportunity Entrepreneurs recognize a business opportunity in an untapped market that is in need of development. The Stanford Latino Entrepreneurship Initiative reported in 2016 that Latinx-owned business outnumbered other businesses in terms of their number in the previous fifteen years.¹⁸⁴ A recent study by *The Atlantic* showed that Latinx entrepreneurs are starting companies fifty times faster than other groups given the growth of the U.S. consumer market.¹⁸⁵ In 2012, Latinx owned business already produced \$661 billion in revenues, but they are smaller and take longer to grow than the average U.S. business.¹⁸⁶

Despite the vitality of entrepreneurship in the Latinx community, Latinx-owned businesses struggle to access capital. Only 6 percent of these businesses received commercial bank loans and a higher percentage of them funded their start up through personal savings (70 percent used savings compared to 62 percent of non-Latinxs; 11 percent of non-Latinx business got commercial bank loans).¹⁸⁷ Less than one percent of start-ups with venture-capital investments are Latinx-owned.¹⁸⁸ Non-citizen Latinxs who are legally authorized to reside in the U.S. have a more difficult time obtaining loans. If Latinx businesses received support in parity with other groups, this sector could add another \$70 billion to the nation's economy.¹⁸⁹ Such support would result in greater services or more tax savings for all.¹⁹⁰

¹⁸² See *Existe Ayuda Help Exists Fact Sheet*, OFFICE OF JUSTICE PROGRAMS, https://www.ovc.gov/pubs/existeayuda/tools/pdf/factsheet_eng.pdf, archived at <https://perma.cc/5WWL-KRL2> (last visited Sep. 9, 2017).

¹⁸³ *Id.*

¹⁸⁴ See *State of Latino Entrepreneurship 2016*, STANFORD GRADUATE SCHOOL OF BUSINESS, https://www.gsb.stanford.edu/sites/gsb/files/publication-pdf/report-slei-state-latino-entrepreneurship-2016_0.pdf, archived at <https://perma.cc/L2GK-VGR3> (last visited Sep. 9, 2017).

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ See *Latino Entrepreneurs May Be the U.S. Economy's Best Bet*, THE ATLANTIC, <http://www.theatlantic.com/sponsored/jpmc-2016/with-a-little-help-latino-owned-businesses-may-be-the-us-economys-best-bet/1052/>, archived at <https://perma.cc/4K55-HAV3> (last visited Sep 9, 2017).

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

B. Housing

The legacy of the Treaty of Guadalupe Hidalgo and recent eminent domain battles between Latinx communities and federal and state government, reveal a displacement of Latinx property owners and renters from their homes.¹⁹¹ Housing patterns and trends vary in each city, but studies have shown that Latinxs are exposed to discriminatory practices in housing regardless of income status. These practices include predatory lending, unequal housing opportunities, poor housing conditions, and dislocation as a result of gentrification. For more than four decades, the Department of Housing and Urban Development (HUD) has collected data on discrimination in housing.¹⁹² In its 2012 report on discrimination, HUD reported that Latinxs who sought were on the market seeking rental units were notified about 12.5 percent less regarding available rental units and shown 7.5 percent less rental units than whites who also sought rental properties.¹⁹³ While HUD reports no differential between white and Latinx buyers, the Equal Rights Center reported in 2013 that in certain U.S. cities and regions, housing agents were not as receptive to Latinxs as they were to whites when prospective renters were trying to set up an appointment.¹⁹⁴ They also found that real estate sales agents gave whites but not Latinxs recommendations for lenders or other helpful financing information.¹⁹⁵

Even when Latinxs find a willing seller and lender, the terms of the sale are not always favorable.¹⁹⁶ In 2011, Bank of America agreed to a \$335

¹⁹¹ For a discussion of Latinx displacement of their properties in the Southwest, see Christine A. Klein, *Treaties of Conquest: Property Rights, Indian Treaties, and the Treaty of Guadalupe Hidalgo*, 26 N.M. L. REV. 201 (1996) (takes a comparative look into the stark differences between property rights retained by Native Americans and property rights that were to be protected for Mexican nationals); Kim David Chanbonpin, *How the Border Crossed Us: Filling the Gap between Plume v. Seward and the Dispossession of Mexican Landowners in California after 1848*, 52 CLEV. ST. L. REV. 297 (2004) (discussing land registration and adjudication of Mexican land grants in California); Christopher David Ruiz Cameron, *One Hundred Fifty Years of Solitude: Reflections on the End of the History Academy's Dominance of Scholarship on the Treaty of Guadalupe Hidalgo*, 5 SW. J. L. & TRADE AM. 83 (1998) (discussing how the Treaty of Guadalupe Hidalgo is a legal document that protects the civil and property rights of Mexicans in the United States); Jorge A. Vargas, *The Other Side of the Treaty of Guadalupe Hidalgo: A Synopsis of the Case Involving 433 Land Claims by Texas Families against the Government of Mexico*, 5 TEX. HISP. J.L. & POL'Y 41 (2001) (discusses the Treaty of Guadalupe Hidalgo involving land claim cases by Texas families against the government of Mexico).

¹⁹² U.S. DEP'T OF HOUS. & URBAN DEV., HOUSING DISCRIMINATION AGAINST RACIAL AND ETHNIC MINORITIES, (2012), https://www.huduser.gov/portal/Publications/pdf/HUD-514_HDS2012_execsumm.pdf, archived at <https://perma.cc/RW5G-QNZV>.

¹⁹³ *Id.* at 5.

¹⁹⁴ Grant Beck, *ERC and NLR Investigation Uncovers Housing Discrimination Against Latinos in Three Major Metropolitan Areas*, EQUAL RIGHTS CENTER (July 22, 2013), <https://equalrightscenter.org/press-releases/erc-and-nclr-investigation-uncovers-housing-discrimination-against-latinos-in-three-major-metropolitan-areas/>, archived at <https://perma.cc/ZP4E-L3M5>.

¹⁹⁵ *Id.*

¹⁹⁶ See e.g., *The Nation's Housing Finance System Remains Closed to African-American & Latino Consumers Despite Strong Economic Recovery in 2015*, CENTER FOR RESPONSIBLE

million settlement with the U.S. Department of Justice as a consequence of the predatory mortgage lending practices of their predecessor, Countrywide Mortgage.¹⁹⁷ The lawsuit that led to this settlement found that Countrywide had charged black and Latinx borrowers who qualified for their loans more than they charged white borrowers.¹⁹⁸ Evidence pointed to the fact that Countrywide led black and Latinxs to sub-prime products that posed more risk or charged them higher rates even when they qualified for better products.¹⁹⁹ As a result, these populations paid tens of thousands of dollars more than their white counterparts.²⁰⁰ In addition, Latinx were often offered low-interest loans that later ballooned and made their mortgage payments unaffordable.²⁰¹ In their investigation of 2.5 million loans, the U.S. government found that the largest segment of these predatory lending practices occurred in California and that two-third of victims were Latinxs.²⁰² The U.S. Bureau of Labor Statistics cited Latinxs as the largest group that lost their homes between 2007 and 2010.²⁰³ As a result of losing their homes, many Latinx families lost two-thirds of their household wealth during the Great Recession.²⁰⁴

As we know, the quality of schools is tied to housing segregation and supplemental revenue generated from property taxes; Latinxs are not faring well.²⁰⁵ In 2015, the New York University Furman Center reported that Latinxs are inheriting similar segregation experienced by African Americans and diminished social and economic opportunities.²⁰⁶ The study looked at segregation levels across metropolitan areas and the socioeconomic out-

LENDING (Sept. 29, 2016), <http://www.responsiblelending.org/research-publication/nations-housing-finance-system-remains-closed-african-american-latino-and-low>, archived at <https://perma.cc/K4V7-ZASQ> (Demonstrates that minority groups continue to be underserved by the financial market for safe mortgage loans). See also Nicole Lutes Fuentes, *Defrauding the American Dream: Predatory Lending in Latino Communities and Reform of California's Lending Law*, 97 CAL. L. REV. 1279 (2009) (discussing predatory lending cases that involve Latino victims of predatory lenders in California).

¹⁹⁷ Linette Lopez, *BofA/Countrywide to Pay \$335 Million For Predatory Lending Practices Against African American And Latino Borrowers*, BUSINESS INSIDER (Dec. 21, 2011, 3:50 PM), <http://www.businessinsider.com/bank-of-america-settlement-with-department-of-justice-335-million-2011-12>, archived at <https://perma.cc/N6NJ-J9MN>.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ Fuentes *supra* note 196, at 1307.

²⁰² Lopez, *supra* note 197.

²⁰³ Alison Aughinbaugh, *Patterns of Homeownership, delinquency, and foreclosure amongst youngest baby boomers*, BUREAU OF LABOR STATISTICS, 2 (Feb. 2013), <https://www.bls.gov/opub/btn/volume-2/patterns-of-homeownership.htm>, archived at <https://perma.cc/SS2Q-SSTA>.

²⁰⁴ Lopez, *supra* note 197.

²⁰⁵ See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 US 1 (1973) (one of the first cases brought to the Supreme Court by Latinx parents seeking to dismantle public education's finance system in Texas that results in inequitable treatment of Latinx youth seeking a quality education).

²⁰⁶ Justin Steil et al., *Desvinculado y Desigual: Is Segregation Harmful to Latinos?*, 660 THE ANNALS OF THE AM. ACAD. OF POLITICAL AND SOC. SCI. 1, 4 (July 2015), http://furmancenter.org/files/NYUFurmanCenter_DesvinculadoDesigual_072015.pdf, archived at <https://perma.cc/6FEF-27LG>.

comes for the two groups.²⁰⁷ Where segregation was higher, native-born Latinxs, as well as African Americans, were less likely to graduate from high school or college than whites.²⁰⁸ They were also more likely to be unemployed and not in school resulting in lower wages relative to Whites.²⁰⁹ These findings point to segregation as a crucial factor in the reduction of access to public services and human capital, in the form of social and economic networks that can promote Latinx advancement.²¹⁰

Segregation, however, is not just limited to the poor. Another study released the same year by the Stanford University Graduate School of Education reports that Latinx and black families need much higher incomes than white families to live in affluent communities.²¹¹ It costs Latinxs who live in segregated families more to move into these neighborhoods, and therefore, limits their mobility.²¹² Latinxs therefore live in less affluent neighborhoods that have weaker schools, higher crime, and additional social problems.²¹³ The study found that Latinx families live in neighborhoods that are primarily non-White, regardless of their income level.²¹⁴

According to U.S. Census data, 48 percent of Latinxs live in Latinx-majority neighborhoods.²¹⁵ Segregated and less affluent communities also suffer from poor housing conditions, including environmental pollutants, and increasingly, the threat of displacement through gentrification.²¹⁶ Latinx tend to live in neighborhoods that have greater numbers of abandoned properties, brownfields, industrial sites, and older homes that possess health dangers such as lead paint or asbestos.²¹⁷ However, where environmental

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ Edmund L. Andrews, *Stanford study finds blacks and Hispanics typically need higher incomes than whites to live in affluent neighborhoods*, STANFORD NEWS (June 25, 2015), <http://news.stanford.edu/2015/06/25/segregation-neighborhood-income-062515/>, archived at <https://perma.cc/X526-RBF7>.

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ John Iceland et al., *The residential segregation of detailed Hispanic and Asian groups in the United States: 1980-2010*, 31 DEMOGRAPHIC RESEARCH 593 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4472438/>, archived at <https://perma.cc/T7MM-E4GA>.

²¹⁶ Renee Skelton & Vernice Miller, *The Environmental Justice Movement*, NATURAL RESOURCES DEFENSE COUNCIL (Mar. 17, 2016), <https://www.nrdc.org/stories/environmental-justice-movement>, archived at <https://perma.cc/J4AA-4EDZ>. For more on historical accounts of eminent domain use to displace Latinos, see MIKE DAVIS, CITY OF QUARTZ: EXCAVATING THE FUTURE IN LOS ANGELES, (1st ed.1990) (discussing displacement of Mexican and Mexican-American communities at Chavez Ravine to build Dodgers Stadium); see also Eric Nicholson, *There Goes the Neighborhood: The Ups and Downs of Gentrification in Dallas*, THE DALLAS OBSERVER, (Oct. 28, 2015 4:00 AM), <http://www.dallasobserver.com/news/there-goes-the-neighborhood-the-ups-and-downs-of-gentrification-in-dallas-7723959>, archived at <https://perma.cc/7QA5-6S3D>.

²¹⁷ See David E. Jacobs, *Environmental Health Disparities in Housing*, 101 AM. J. PUBLIC HEALTH S115-S122 (2001), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3222490/>, archived at <https://perma.cc/MTM2-AQC3>; see also Jonathan D. Essoka, *The Gentrifying Effects of Brownfields Redevelopment*, 34 THE WESTERN J. OF BLACK STUDIES 299, (2010).

threats are contained or ameliorated, Latinx families may face the threat of displacement by wealthier and white entrants into their neighborhoods.²¹⁸

C. Education

Latinxs, along with black Americans, have historically faced severe access to education gaps in the United States. The *Plessy v. Ferguson* U.S. Supreme Court decision in 1896 that established separate educational institutions defined by race impacted Latinxs in the United States in similar ways to those of black Americans. Before the *Brown v. Board of Education* decision in 1954,²¹⁹ parents in two different school districts in California successfully sued to desegregate schools that segregated Spanish-speaking Mexican-American students in schools that were regarded as inferior to the white schools.²²⁰ Although the California Education Code did not permit segregation of Mexican and Mexican American children, the majority of California school districts were segregated.²²¹ A survey conducted of California schools districts in 1931 revealed segregation in 80 percent of the school districts.²²² Some of the districts provided rationale that ranged from intellectual inferiority to training these children for appropriate jobs to language deficiencies for the segregation.²²³

The *Alvarez v. Lemon Grove School District* (1931) was the first successful case that stopped the building of a separate segregated school case for children of Mexican decent.²²⁴ While the Alvarez family prevented another segregated school from being built, it did not resolve the problem in

²¹⁸ See Daniel Cubias, *Do Latino Neighborhoods Have More to Fear from Gentrification?*, HUFFINGTON POST (July 2, 2017), http://www.huffingtonpost.com/daniel-cubias/do-Latinx-neighborhoods-h_b_7715802.html, archived at <https://perma.cc/W7UT-6ZZQ> (noting that there is some evidence that Latinx neighborhoods are viewed as more desirable to gentrify than African American neighborhoods). For more about gentrification, see David B. Shepherd, Note, *Gentrification: Yes. . My Community Is Improving, but for Who?*, 22 CARDOZO J. L. & GENDER 557 (2016) (discusses the origin of gentrification, its effect on low-income families, and its impact on select communities in New York City); see also Jackelyn Hwang & Robert J. Sampson, *Divergent Pathways of Gentrification: Racial Inequality and the Social Order of Renewal in Chicago Neighborhoods*, 79 AM. SOC. REV. 726 (2014) (arguing that racial hierarchy governs residential selection and gentrification of neighborhoods).

²¹⁹ *Brown v. Bd. of Education*, 347 U.S. 483 (1954).

²²⁰ After the Mexican territory in Southwest became part of the United States, it was common to segregate Mexican and Mexican American children in schools. See Kristi Bowman, *Different Shade of Brown: Latinos and School Desegregation*, 88 JUDICATURE 85 (2004). See also JAMES A. FERG-CADIMA, BLACK, WHITE, AND BROWN: LATINO SCHOOL DESEGREGATION EFFORTS IN THE PRE- AND POST-BROWN V. BOARD OF EDUCATION ERA, (2004).

²²¹ Approximately 80 percent of school districts were segregated. The rest were contained segregated classrooms within the schools. See Kristi Bowman, *The New Face of School Desegregation*, 50 DUKE L. J. 1751 (2001).

²²² *Id.*

²²³ Ian F. Haney López, *Race, Ethnicity, Erasure: The Salience of Race to LatCrit Theory*, 10 LA RAZA L.J. 57, 110 (1998). See also E. Michael Madrid, *The Unheralded History of the Lemon Grove Desegregation Case*, 15 MULTICULTURAL EDUCATION 15, 19 (2008).

²²⁴ Robert R. Alvarez, Jr., *The Lemon Grove Incident: The Nation's First Successful Desegregation Court Case*, 32 THE J. OF SAN DIEGO HISTORY 2 (1986). For more on the Lemon Grove Case, see Bowman, *supra* note 220, at 1770–1772.

California. More than a decade later, in *Mendez v. Westminster*,²²⁵ the U.S. Court of Appeals for the Ninth Circuit held that forced segregation of Mexican American students was unconstitutional and unlawful. While plaintiffs in these cases argued that Mexican and Mexican American students should be classified as white and therefore not exempted from segregation, the idea of social equity in education was building support within the judiciary. Ultimately, the Brown decision to end desegregation became the legal rule of the land in 1954.

Despite these advances, Latinxs continue to be heavily affected by de facto segregation in our neighborhoods and schools. According to the UCLA Civil Rights Project, desegregation practices resulted in increased segregation for black and Latinx students until the present.²²⁶ New York and Illinois maintain the most segregated public schools in the country.²²⁷ In 2013-2014, California had only 15.4 percent of Latinxs exposed to white students in school contexts.²²⁸ This is especially striking when we consider that Latinx students on average comprised 77.6 percent of high school graduates in California the same year.²²⁹

Today, Latinxs have the lowest educational attainment level of any group in the United States, with only about half of Latinx students earning their high school diploma on time.²³⁰ A National Center for Education Statistics' (NCES) study points to the growing size of the Latinx population in the United States and the high percentage of English language learners to explain the achievement gap between Latinxs and white students.²³¹ However, research suggests that recent immigrant students tend to outperform subsequent generations academically, despite language differences.²³² Professor Patricia Gándara notes that narrowing the educational gap between Latinx and white students is possible by, among other things, providing early education, providing social and medical services, and desegregating the public school system.²³³ Less than half of Latinx children are enrolled in an

²²⁵ *Mendez v. Westminster*, 64 F.Supp. 544 (S.D. Cal. 1946), *aff'd*, 161 F.2d 774 (9th Cir. 1947) (en banc).

²²⁶ Gary Orfield et al, *Brown at 62: School Segregation by Race, Poverty and State*, THE CIVIL RIGHTS PROJECT, (May 16, 2016), <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/brown-at-62-school-segregation-by-race-poverty-and-state/Brown-at-62-final-corrected-2.pdf>, archived at <https://perma.cc/CG26-Q6XS>.

²²⁷ *Id.* at 8.

²²⁸ *Id.* at 6 (see Table 2: *Most segregated states for Latino students*).

²²⁹ Press Release, California Department of Education, State Schools Chief Tom Torlakson Reports New Record High School Graduation Rate and Sixth Consecutive Year of an Increase, 16-38, (May 17, 2016), <https://www.cde.ca.gov/nr/ne/yr16/yr16rel38.asp>, archived at <https://perma.cc/P8PX-AGGV>.

²³⁰ U.S. DEP'T OF EDUC., WINNING THE FUTURE: IMPROVING EDUCATION FOR THE LATINO COMMUNITY 2, (2011).

²³¹ F. CADELLE HEMPHILL ET AL., ACHIEVEMENT GAPS: HOW HISPANIC AND WHITE STUDENTS IN PUBLIC SCHOOLS PERFORM IN MATHEMATICS AND READING ON THE NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS, U.S. DEP'T. OF EDUC. 1 (2011). See also Patricia Gándara, *The Potential and Promise of Latino Students*, AMERICAN EDUCATOR, Spring 2017, at 8.

²³² Hemphill at 1.

²³³ *Id.* at 9. Gándara, *supra* note 231, at 5.

early education program.²³⁴ The lower enrollment in such programs means students start their K-12 education at a disadvantage by not having had the same educational benefits of their peers who are enrolled in those early education programs.²³⁵ In California, the state considered to have the largest Latino population and political power, the majority of Latinx student lack proficiency in Math and English Language.²³⁶ Again, immigration status does not seem to account for such results. English Language Learners only account for one-third of California Latinx students, and 95 percent of Latinx children in California are native-born.²³⁷

Nationally, Latinx students have made positive strides in their academic achievements since 2000.²³⁸ Latinx high school graduates, ages 18 to 24, increased from 32 percent in 1999 to 47 percent in 2016.²³⁹ The dropout rate for Latinxs, ages 18 to 24, dropped 24 percentage points since 1999.²⁴⁰ This decline also translates into increased college enrollment for Latinxs. There was also a record number of 3.6 million Latinxs enrolled in public and private colleges in 2016.²⁴¹ This represents a 180 percent increase in enrollment since 1999. Still, Latinxs fall behind when compared to other groups. Only 15 percent of Latinxs, ages 25 and 29, have a bachelor's degree compared to whites, blacks and Asians who all have higher percentages of college completion.²⁴² Approximately 35 percent of Latinxs ages 18 to 24 were enrolled in college in 2014.²⁴³ In contrast, 22 percent of blacks, 41 percent of whites, and 63 percent of Asians had college degrees.²⁴⁴

When Latinxs pursue higher education, they are more likely to attend vocational training programs than four-year colleges.²⁴⁵ Of these, approximately half attend a public two-year public or community college.²⁴⁶ The

²³⁴ See Hemphill, *supra* note 231, at 1.

²³⁵ Gándara, *supra* note 231, at 5.

²³⁶ THE EDUCATION TRUST-WEST, *THE MAJORITY REPORT: SUPPORTING THE EDUCATIONAL SUCCESS OF LATINOS IN CALIFORNIA* (2017), https://29v0kg31gs803wndhe1sj1hd-wpengine.netdna-ssl.com/wp-content/uploads/sites/3/2015/11/ETW_MajorityReport.FINAL-11.8.17.pdf, archived at <https://perma.cc/V7N6-BNSF>.

²³⁷ Matt Stevens, *The Latino Education Crisis*, N.Y. TIMES, (Nov. 8, 2017), <https://www.nytimes.com/2017/11/08/us/california-today-the-latino-education-crisis.html>, archived at <https://perma.cc/3GT7-7C6G>.

²³⁸ *Id.* See also Hemphill, *supra* note 231, at 11.

²³⁹ Stevens, *supra* note 237.

²⁴⁰ John Gramlich, *Hispanic dropout rate hits new low, college enrollment at new high*, PEW RESEARCH CENTER (Sept. 29, 2017), <http://www.pewresearch.org/fact-tank/2017/09/29/hispanic-dropout-rate-hits-new-low-college-enrollment-at-new-high/>, archived at <https://perma.cc/25ZL-JE58>.

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ Jens Manuel Krogstad, *5 facts about Latinos and education*, PEW RESEARCH CENTER (July 28, 2016), <http://www.pewresearch.org/fact-tank/2016/07/28/5-facts-about-latinos-and-education/>, archived at <https://perma.cc/Z7ED-4X4W>.

²⁴⁴ *Id.*

²⁴⁵ U.S. DEP'T OF EDUC., NATIONAL CENTER FOR EDUCATION STATISTICS, *STATUS AND TRENDS IN THE EDUCATION OF RACIAL AND ETHNIC GROUPS 2016*, 101 (2016) <https://nces.ed.gov/pubs2016/2016007.pdf>, archived at <https://perma.cc/W84L-SCD6>.

²⁴⁶ *Id.* Compare to only 30 percent of whites, 32 percent of Asians and 36 percent of Blacks.

Hispanic Association of Colleges and Universities lists 254 total Hispanic-serving institutions (HSIs) across 19 states.²⁴⁷ Approximately 153, or 60 percent, of these institutions are either community colleges, schools vocational schools, or online universities.²⁴⁸ However, studies illustrate that only 11.7 percent of Latinxs receive an associate's degree after six years.²⁴⁹ Moreover, only 20 percent of all Latinxs receive an associate degree or higher.²⁵⁰ In comparison, 36 percent of adults of all races nationwide receive their associate degree or higher.²⁵¹ The numbers decrease substantially when we include graduate education. The National Center for Education Statistics reports that Latinxs received 7 percent of all master's degrees in 2012 while they received less than one percent of doctoral degrees in 2013.²⁵² A significant portion of Latinxs who have secured higher education have benefitted from affirmative action policies.²⁵³

Many Latinxs that pursue a university education face insurmountable odds. A report released in March 2017 by the Wisconsin HOPE Lab conducted a survey and study of 33,000 community college students at 70 colleges across 24 states.²⁵⁴ Almost a quarter of Latinx community college students were housing insecure, according to the data, and 22 percent of community college students were homeless.²⁵⁵ While the report did not distinguish between racial or ethnic groups, the survey revealed that two in three students are food insecure.²⁵⁶ These data suggest that Latinxs fare far worse than other minority communities when it comes to housing and food

²⁴⁷ HISPANIC ASSOCIATION OF COLLEGES AND UNIVERSITIES, HACU Member Hispanic-Serving Institutions https://www.hacu.net/assnfe/CompanyDirectory.asp?STYLE=2&COMPANY_TYPE=1%2C5, archived at <https://perma.cc/6NPC-96GU> (last visited October 31, 2017). The website includes Puerto Rico, but we did not include it in our analysis.

²⁴⁸ *Id.*

²⁴⁹ Alexandria Walter Radford et al., *Persistence and Attainment of 2003-04 Beginning Postsecondary Students: After 6 years*, UNITED STATES DEPARTMENT OF EDUCATION (December 2010), <https://nces.ed.gov/pubs2011/2011151.pdf>, archived at <https://perma.cc/5TLG-MNY7>.

²⁵⁰ Deborah A. Santiago & Emily Calderon Galdeano, *Latino College Completion: United States*, EXCELENCIA IN EDUCATION, (Apr. 2014), <http://www.edexcelencia.org/research/college-completion/united-states>, archived at <https://perma.cc/LBB5-3KQB>.

²⁵¹ *Id.*

²⁵² See TRENDS IN THE EDUCATION OF RACIAL AND ETHNIC GROUPS 2016, *supra* note 245, at 113, Table 22.1.

²⁵³ For a discussion of Latinos and affirmative action, see generally Margaret Montoya, *A Brief History of Chicana/o School Segregation: One Rationale for Affirmative Action*, 12 BERKELEY LA RAZA L.J. 159 (2001). For a discussion of other factors influencing Latinxs and graduate education, see generally ROBERT A. IBARRA, *BEYOND AFFIRMATIVE ACTION: REFRAMING THE CONTEXT OF HIGHER EDUCATION* (1st ed. 2001).

²⁵⁴ See Sara Goldrick-Rab et al., *Hungry and Homeless in College: Results from a National Study of Basic needs Insecurity in Higher Education*, WISCONSIN HOPE LAB, (March 2017), <http://wihopelab.com/publications/hungry-and-homeless-in-college-report.pdf>, archived at <https://perma.cc/28EZ-MT6X>.

²⁵⁵ The study shows that 24% of Latinx respondents were housing insecure. *Id.* Homelessness is defined as a person without a place to live. These individuals may reside in shelters, abandoned buildings, or cars. Housing insecurity represents broader challenges that include difficulty paying rent or utilities or moving frequently as a result of financial stability. *Id.* at 3.

²⁵⁶ *Id.* at 1.

insecurity while pursuing their education in community college. Perhaps because of these disheartening statistics, 83 percent of Latinxs polled by PEW Hispanic Center listed education as one of the main issues of importance to them as they cast their ballot in 2016 elections.²⁵⁷

Immigration status has been an important factor that impacts Latinx students' educational attainment. In 1982, the U.S. Supreme Court decision in *Plyler v. Doe* established immigrant children's rights to a free public education.²⁵⁸ However, it did not address the right to public education after high school, which created uncertainty for undocumented students in the years following the *Plyler* decision.²⁵⁹ A couple of years later, a California state district court held that undocumented immigrants could establish residency and therefore be eligible to access in-state tuition if they could show they lived in California for a year and a day prior to submitting their application.²⁶⁰ This order opened the opportunity for undocumented immigrants access to in-state tuition.²⁶¹ However, this decision was limited in 1990 in *Regents of the University of California v. Bradford* which prohibited the University of California Los Angeles (UCLA) from administering the same policy because undocumented persons did not have the legal capacity to establish domicile.²⁶² This decision made undocumented immigrants ineligible for in-state tuition.²⁶³ This split in county court opinions created different policies on undocumented student tuition within the same state university system.²⁶⁴

The fact that these decisions were in California were significant. The 1990 Census revealed that the Latinx population in the United States constituted 9 percent.²⁶⁵ The same survey determined that Latinxs comprised 26

²⁵⁷ The exit poll conducted of Latinx registered voters on June 15-26, 2016 found that 78 percent identified education as an important issue in determining who to cast a vote for in the 2016 U.S. Presidential election. See *Hispanic Voters and the 2016 Election*, PEW RESEARCH CENTER, 6 (July 7, 2016) <http://www.people-press.org/2016/07/07/6-hispanic-voters-and-the-2016-election/>, archived at <https://perma.cc/EV24-YC6G>.

²⁵⁸ Michael A. Olivas, *Storytelling Out of School: Undocumented College Residency, Race, and Reaction*, 22 HASTINGS CONST. L.Q. 1019, 1040 (1994).

²⁵⁹ Hugo Ibarra & Ross Sherman, *Higher Education Opportunities for Undocumented Students in the United States: What are the Policy Implications for Educators and Legislators*, J. EDUC. POLICY (2012).

²⁶⁰ See *Leticia A. V. Regents of the Univ. of Cal.*, No. 588982-4 (Superior Court, County of Alameda, May 7, 1985) (holding that the California Education Code that required state residency for in-state tuition was unconstitutional and that undocumented students could establish state residence for tuition purposes for both the University of California and California State University systems; see also Laura S. Yates, Note, *Plyler v. Doe and the Rights of Undocumented Immigrants to Higher Education: Should Undocumented Students be Eligible for In-State College Tuition Rates?*, 82 WASH. U. L. Q. 585, 593 (2004).

²⁶¹ *Id.*

²⁶² *Regents of University of California v. Superior Court (Bradford)* (1990) 225 Cal.App.3d 972 (1990) (arguing that the Leticia A. case was in direct violation with federal responsibility to make laws regulating immigration); see also Olivas, *supra* note 258, at 1054.

²⁶³ *Id.*

²⁶⁴ Yates, *supra* note 260, at 594.

²⁶⁵ Ethnic and Hispanic Statistics Branch, We the American. . .Hispanics, U.S. DEP'T. OF COMMERCE, 2 (Sept. 1993), <https://www.census.gov/prod/cen1990/wepeople/we-2r.pdf>, archived at <https://perma.cc/BA2S-A777>.

percent of the California population.²⁶⁶ In 1994, anti-immigrant forces in California obtained a sufficient number of signatures to present a state measure to California voters to deny undocumented immigrants in California the right to any public benefit including public education.²⁶⁷ This state measure, known as Proposition 187, penalized the use of false documents to establish citizenship or legal residency and required government officials to report undocumented individuals.²⁶⁸ Proposition 187 passed by a 59 percent majority.²⁶⁹ A federal court issued a temporary injunction against all provisions except those that prevented the use of false documentation to access higher education.²⁷⁰ The same court found Proposition 187 unconstitutional in 1997 based on the federal government's jurisdiction over immigration matters.²⁷¹

The unconstitutionality of Proposition 187 was based on the fact that the federal government passed two pieces of legislation that impacted benefits and education for all immigrants. The Personal Responsibility and Work Opportunity Reconciliation Act (PWORA) of 1996 had the same impact of Proposition 187 on public benefits but on a national scale.²⁷² PWORA made immigrants to the U.S. ineligible for federal public benefits for five years after arrival.²⁷³ In addition, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIR) of 1996 scrapped in-state tuition for undocumented students who are not eligible for student loans or grants.²⁷⁴ IIRIR and subsequent state residency requirements made higher education almost unattainable for undocumented students.²⁷⁵ Students had to prove an "intent" to stay in the state, which proves extremely difficult in an immigration context, especially if the student is undocumented.²⁷⁶ Other states passed legislation that banned undocumented students from receiving in-state residency tuition altogether.²⁷⁷

²⁶⁶ *Id.* at 3.

²⁶⁷ Janice Alfred, Note, *Denial of the American Dream: The Plight of Undocumented High School Students Within the U.S. Educational System*, 19 N.Y.L. SCH. J. HUM. RTS. 615, 625 (2003).

²⁶⁸ See Ruben J. Garcia, *Critical Race Theory and Proposition 187: The Racial Politics of Immigration Law*, 17 CHICANO-LATINO L. REV. 118, 149–50 (1995).

²⁶⁹ *Id.*

²⁷⁰ Paul Feldman and James Rainey, *Parts of Prop. 187 Blocked by Judge*, L.A. TIMES, (Nov. 17, 1994), http://articles.latimes.com/1994-11-17/news/mn-63837_1_illegal-immigrants, archived at <https://perma.cc/QXP3-MHUZ>.

²⁷¹ Kevin R. Johnson, *Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender, and Class*, 17 IMMIGR. & NAT'LITY L. REV. 457, 508 (1996).

²⁷² Yates, *supra* note 260, at 596.

²⁷³ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105.

²⁷⁴ Yates, *supra* note 260, at 596.

²⁷⁵ Michael A. Olivas, *IIRIRA, The Dream Act, and Undocumented College Student Residency*, 25 IMMIGR. & NAT'LITY L. REV. 323, 352 (2004).

²⁷⁶ *Id.*

²⁷⁷ *Id.* at 456. Many commentators believe that the current backlash against immigrants is a reflection of the national demographic change similar to one California experienced in the early 1990s. See also Clyde Haberman, *Trump's Argument Against Immigrants: We've Heard It Before*, N.Y. TIMES, (Oct. 9, 2017), <https://www.nytimes.com/2017/10/09/us/retro-anti-immigration.html>, archived at <https://perma.cc/CX5U-HVWR>.

Regardless of the federal restrictions, states with large immigrant populations still opted to provide social services and education to immigrant children. For example, Texas bases its criteria for in-state tuition based on the attendance and graduation from a Texas high school.²⁷⁸ California added a new section to its education code, creating an exemption for eligible non-resident students who receive a high school diploma in California, or its equivalent to pay resident tuition.²⁷⁹ In 2014, another legislative effort expanded the scope of those eligible.²⁸⁰ Similar legislation is now found in 18 states.²⁸¹ However, the fight for access to higher education for the undocumented population persists into the present day in the form of DACA.²⁸² Latinx children also continue to be at the center of debates about bilingual education and structured English immersion policies in public schools.²⁸³

D. Health Care

While Latinxs have a long life expectancy relative to other populations,²⁸⁴ they nonetheless have very high rates of high blood pressure, high cholesterol levels, diabetes, obesity, depression/anxiety, and heart disease.²⁸⁵ According to the Hispanic Community Health Study/Study of Latinxs (HCHS/SOL), the largest Latinx study on health conducted by the National Institute of Health,²⁸⁶ 48.7 percent of Latinas ages 45-64 suffer from obesity.²⁸⁷ Almost one out of every two participants in the oldest control group (65-74) had diabetes.²⁸⁸ Approximately 45.8 percent of Latinx men in this age group have diabetes while 46.6 percent of Latinx women in the same age group have the disease.²⁸⁹ Approximately 72.4 percent of Latinx elderly

²⁷⁸ Residency Rules, Tex. Admin. Code Ann. § 21.24 (2008).

²⁷⁹ CA Ed. Code 68130.5.

²⁸⁰ For more on current eligibility of undocumented immigrant students in California, see The California Wellness Foundation, *Got Papers? Got Dreams?* http://ab540.com/What_Is_AB540_.html, archived at <https://perma.cc/B7PJ-S6FS> (last updated 2017).

²⁸¹ Those states include Illinois, Texas, New Mexico, and New York – all states with large Latinx population. *Id.*

²⁸² Gándara, *supra* note 231, at 8. For more on DACA see *infra*, Part III.G.

²⁸³ For a discussion of Latinxs in the bilingual education and structured immersion initiative debates see Rachel F. Moran, *Bilingual Education as Status Conflict*, 75 CAL. L. REV. 321 (1987); and Rachel F. Moran, *Equal Liberties and English Language Learners: The Special Case for Structured Immersion Initiatives*, 54 HOWARD L. J. 397 (2011).

²⁸⁴ See CDC: *U.S. Hispanics Live Longer than Whites and Blacks*, NEWS ON HEART (2016), <https://news.heart.org/cdc-u-s-hispanics-live-longer-than-whites-and-blacks>, archived at <https://perma.cc/VF9Z-UZ73> (last visited Sept. 17, 2017).

²⁸⁵ See generally SOL Study of Latinos: *Hispanic Community Health Study*, NATIONAL HEART, LUNG, AND BLOOD INSTITUTE, (Sept. 2013), <https://sites.csc.unc.edu/hchs/sites/default/files/NHLBI-HCHSSOL-English-508.pdf>, archived at <https://perma.cc/MMB9-9TWD> (reporting on data acquired from field studies conducted in San Diego, Miami, Chicago, and New York City).

²⁸⁶ *Id.*

²⁸⁷ *Id.* at 34.

²⁸⁸ *Id.* at 33.

²⁸⁹ *Id.* at 33.

men and 77.4 percent of Latinx women have undergone treatment for hypertension.²⁹⁰

These data are likely exacerbated by the fact that Latinxs remain largely underserved when it comes to access to health care. Between 2013 and 2016, the Latinx percentage of total uninsured adults ages 19-64 rose from 29 to 40 percent.²⁹¹ Overall, 21.9 percent of Latinxs under the age of 65 have no health insurance coverage.²⁹² However, due to the advent of Obamacare, the uninsured rate for working Latinx adults fell from 43.2 percent in 2010 to just 24.8 percent in 2016.²⁹³ Further, the rates of uninsured Latinx are high in suburban contexts.²⁹⁴ In the HCHS/SOL report referenced above, the data demonstrate that Miami has the largest number of participants ages 18-64 who are uninsured at 70.7 percent, compared to 27.7 percent of Latinxs in the Bronx.²⁹⁵

As previously mentioned, Latinxs tend to live in areas with high pollutant concentrations (i.e. lead poisoning, air pollution, contaminated water supplies). Like other communities of color, Latinxs are often the victims of environmental racism. For example, Flint, Michigan's Latinx communities, experienced high levels of lead contamination in their water.²⁹⁶ Many members of the Latinx community in Flint have largely unable to seek assistance in part due to language barriers and immigration status.²⁹⁷ Additionally, fracking efforts in San Antonio, Texas, have led to surface and groundwater contamination linked to cancer, hormone impacts and reproductive problems.²⁹⁸ Another example of environmental racism is Barrio Logan, a low income predominately Latinx neighborhood near the famous Chicano park in San Diego, California.²⁹⁹ Many residents claim the higher than nor-

²⁹⁰ *Id.* at 28.

²⁹¹ *New Commonwealth Fund Report: Latinos and People with Low Incomes Are Most Likely to Be Uninsured, Despite Significant Gains Under Affordable Care Act*, COMMONWEALTH FUND, <http://www.commonwealthfund.org/publications/press-releases/2016/aug/remaining-uninsured>, archived at <https://perma.cc/Y6QY-R6VB> (Aug. 18, 2016).

²⁹² *Summary Health Statistics: National Health Interview Survey 2015*, CENTERS FOR DISEASE CONTROL AND PREVENTION, (2015), https://ftp.cdc.gov/pub/Health_Statistics/NCHS/NHIS/SHS/2015_SHS_Table_P-11.pdf, archived at <https://perma.cc/J9X2-WCVQ>.

²⁹³ See Michelle M. Doty & Sara R. Collins, *Millions More Latino Adults Are Insured Under the Affordable Care Act*, COMMONWEALTH FUND, (Jan. 19, 2017), <http://www.commonwealthfund.org/publications/blog/2017/jan/more-latino-adults-insured>, archived at <https://perma.cc/9RKW-44YX>.

²⁹⁴ *Id.*

²⁹⁵ *Id.* at 54.

²⁹⁶ Niraj Warikoo, *Flint Immigrants Struggle to get Help, Info on Water*, DETROIT FREE PRESS, (Feb. 4, 2016 12:02 AM), <http://www.freep.com/story/news/local/michigan/flint-water-crisis/2016/02/04/flint-immigrants-struggle-get-help-info-water/79530754/>, archived at <https://perma.cc/M27A-JYSY>.

²⁹⁷ *Id.*

²⁹⁸ See Brian Bienkowski, *Poor, Minorities Carry The Burden of Frack Waste in South Texas*, ENVIRONMENTAL HEALTH NEWS, <http://www.environmentalhealthnews.org/ehs/news/2016/feb/fracking-waste-eagle-ford-texas-hispanic-environmental-justice> (last visited Sep. 17, 2017).

²⁹⁹ See Dave Good, *Hard to Breathe in Barrio Logan*, SAN DIEGO READER, (June 26, 2013), <https://www.sandiegoreader.com/news/2013/jun/26/cover-hard-breathe-barrio-logan/#>, archived at <https://perma.cc/FE89-83XF>.

mal asthma rates are due to the high number of maritime factories bordering the neighborhood.³⁰⁰ Although the Environmental Health Coalition has worked to reduce toxic pollution in the community, in 2013 Barrio Logan was ranked as the highest-at-risk community in San Diego County as well as in the top 5 percent for the state of California.³⁰¹ Other California communities that have high populations of Latinxs are also burdened by environmental justice problems.³⁰²

Additionally, access to bilingual and culturally-sensitive healthcare providers is another obstacle for Latinxs to receiving quality assistance when it comes to health-related concerns.³⁰³ For this reason, some health initiatives draw from local resources and train community members through participation models to speak to neighbors about how health access services. These community members are referred to as *promotores*. The American Public Health Association's Community Health Worker defines a *promotora/promotor* as:

a frontline public health worker who is a trusted member of and/or has an unusually close understanding of the community served. This trusting relationship enables the worker to serve as a liaison/link/intermediary between health/social services and the community to facilitate access to services and improve the quality and cultural competence of service delivery. A community health worker also builds individual and community capacity by increasing health knowledge and self-sufficiency through a range of activities such as outreach, community education, informal counseling, social support and advocacy.³⁰⁴

³⁰⁰ See *Environmental Racism in San Diego*, LATINO USA (2014), <http://latinousa.org/2014/04/25/environmental-racism>, archived at <https://perma.cc/28DL-9KRE> (last visited Sep. 17, 2017).

³⁰¹ See *Barrio Logan: Officially A Toxic Hot Spot*, ENVIRONMENTAL HEALTH COALITION, (July 19 2013), <http://www.environmentalhealth.org/index.php/en/media-center/blog-for-environmental-justice/1274-toxic-free-neighborhoods/348-barrio-logan-officially-a-toxic-hot-spot>, archived at <https://perma.cc/8KED-KMLE>.

³⁰² See Tony Barboza, *EPA 'environmental justice' map highlights California's pollution ills*, LOS ANGELES TIMES, (June 10, 2015, 12:21 PM), <http://beta.latimes.com/local/lanow/la-me-ln-environmental-justice-map-20150609-story.html>, archived at <https://perma.cc/6BRV-H8XT> (discussing how the EPA interactive map helps identify Southeast Los Angeles County, San Joaquin Valley, and the Inland Empire as some of the most toxic communities in the country); see also Martha Matsuoka, *LA's History Lesson on Environmental Justice and Waste*, HUFFINGTON POST, (Nov. 8, 2012 10:48 AM), https://www.huffingtonpost.com/martha-matsuoka/los-angeles-recycling_b_2092706.html, archived at <https://perma.cc/QLY3-DF3P>; and Cleora Ohar, *A Case of Environmental Justice in Los Angeles*, SALVE REGINA UNIVERSITY, *Spring 5-4, 2016*, http://digitalcommons.salve.edu/cgi/viewcontent.cgi?article=1007&context=env434_justice, archived at <https://perma.cc/8JQX-HAVH>.

³⁰³ See Alice Hm Chen, Mara K. Youdelman & Jamie Brooks, *The Legal Framework for Language Access in Healthcare Settings: Title VI and Beyond*, 22 J. GEN. INTERN. MED. 362-367 (2007).

³⁰⁴ See *Community Health Workers*, AMERICAN PUBLIC HEALTH ASSOCIATION, <https://www.apha.org/apha-communities/member-sections/community-health-workers>, archived at <https://perma.cc/5HBV-D2R6> (last visited Nov. 17, 2017).

Organizations across the nation use this *promotora/promotor* model to assist Latinxs in accessing health knowledge.³⁰⁵ These promotoras can help get word out to undocumented immigrants who are less inclined to seek medical assistance as a result of their legal status. There are a number of studies that show that Latinx who deal with uncertain immigration status may be more susceptible to health problems as a result of the stress and fear of seeking medical attention.³⁰⁶ Recently, medical providers have reported an increase in physical ailments, such as a blurred vision, dizziness, insomnia, headaches, high blood pressure, and shortness of breath, associated with stress.³⁰⁷ There are immigrant families that also avoid medical treatment for fear of deportation.³⁰⁸ Since so many Latinx families have mixed immigration status, the lack of access to health care for undocumented also impacts U.S. citizen Latinxs.³⁰⁹

The 2010 passage of the Affordable Care Act (ACA) under the Obama Administration arguably benefited Latinxs more than any other ethnic or racial group. A collaborative study between the Center for Health Policy at the University of New Mexico and Latino Decisions found that one-quarter of the uninsured individuals who were eligible to enroll in the ACA during the first enrollment period were Latinx. Further, by 2015, the Latinx uninsured population dropped from 28 percent in 2013 (just prior to the first enrollment period) to 17 percent.³¹⁰ Despite the benefits that the ACA promised for Latinx, the UNM and Latino Decisions study shows that 38 percent of Latinx believe that the costs for the ACA would only get worse over time, suggesting that the cost of healthcare remains a major impediment to access to healthcare for Latinx in the United States.³¹¹

³⁰⁵ See *The Network, Vision y Compromiso*, <http://www.visionycompromiso.org/wordpress/th-network/>, archived at <https://perma.cc/KG8V-AU6X> (last visited Sep. 17, 2017).

³⁰⁶ RB Toomey, et al, *Impact of Arizona's SB 1070 immigration law on Utilization of Health Care and Public Assistance Among Mexican-Origin Adolescent Mothers and their Mother Figures*, 104 Suppl. 1 AM. J. PUBLIC HEALTH 28–34 (Feb. 2014).

³⁰⁷ Jan Hoffman, *Sick and Afraid, Some Immigrants Forgo Medical Care*, N.Y. TIMES (June 26, 2017), https://www.nytimes.com/2017/06/26/health/undocumented-immigrants-health-care.html?_r=0, archived at <https://perma.cc/F8PR-22BD>.

³⁰⁸ See Edward D. Vargas and Vickie D. Ybarra, *Immigration Enforcement and Mixed-status Families: The Effects of Risk of Deportation on Medicaid Use*, 57 CHILD YOUTH SERV REV. 83–9 (July 13, 2016), http://edwardvargas.com/wp-content/uploads/2015/09/Vargas-nYbarra_JOIH_2016.pdf; archived at <https://perma.cc/EJ4C-2RQ4>.

³⁰⁹ Seline Szkupinski Quiroga, et al, *In the Belly of the Beast: Effects of Anti-Immigration Policy on Latino Community Members*, 58 AM. BEHAVIORAL SCIENTIST 1723–1742 (2014) (describing how U.S.- and foreign-born Latinos experience the effects of local immigration laws and anti-immigrant sentiment).

³¹⁰ See Gabriel R. Sanchez, Francisco I. Pedraza, and Edward D. Vargas, *The Impact of the Affordable Care Act on Latino Access to Health Insurance*, 17 CENTER FOR HEALTH POLICY RESEARCH BRIEF. 1–5 (2015).

³¹¹ While numerous studies consider how the passage of The Affordable Care Act affects Latinxs overall, few studies discuss the special plight of Latinx elderly, who comprise the fastest-growing segment of the aging population in the United States. A 2005 *Annual Review of Public Health* article considers how acculturation contributes to Latinx health outcomes. As it relates to elder health, the authors find that older Latinx consume fewer saturated fats and simple sugars as well as more complex carbohydrates than do non-Latino whites. See Marielena Lara, Cristina Gamboa, M. Iya Kahramanian, Leo S. Morales & David E. Hayes

E. Criminal Justice

Media portrayals of Latinxs as criminals are, and have historically been commonplace in U.S. cultural productions.³¹² A recent report of violent crime committed against white victims from 2012-2015, showed that 57 percent of the crimes were committed by white offenders, and only 11 percent were committed by Latinx offenders.³¹³ During the same time period, Latinxs experienced a higher rate of violent victim crime in metropolitan areas that had new Latinx communities.³¹⁴ Approximately 40 percent of violent crime against a Latinx victim was committed by a Latinx offender.³¹⁵ Within the Latinx community, domestic violence is the largest proportion of interracial crime.³¹⁶

When the ABA Hispanic Commission Report was released in 2013, Latinxs constituted roughly 20 percent of inmates in prisons.³¹⁷ In May 2017 the Federal Bureau of Prisons reported that Latinxs account for 33.6 percent of inmates.³¹⁸ When we look at how these data break down, 78.5 percent of inmates are U.S. citizens and 16.5 percent of the remaining citizens of Latin American countries (Mexico, Dominican Republic, Cuba and Colombia primarily).³¹⁹ This increase can, in part, be attributed to two interrelated issues: immigration enforcement and drug enforcement. As Michelle Alexander notes in her canonical *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, whites are more likely than Latinxs and blacks to carry drugs in their vehicles. However, they are “far less likely to be viewed as suspicious, resulting in relatively few stops, searches, and arrests. . . .”³²⁰ Ra-

Bautista, *Acculturation and Latino Health in the United States: A Review of the Literature and its Sociopolitical Context*, 26 ANNU. REV. PUBLIC HEALTH, 367–397 (2005).

³¹² For a discussion of media images of Latinxs, see ABA Hispanic Commission Report, *supra* note 153, at 64–67; see also Ruben J. Garcia, *Critical Race Theory and Proposition 187: The Racial Politics of Immigration Law*, 17 CHICANO-LATINO L. REV. 118, 135–136 (1995).

³¹³ *Special Report: Race and Hispanic Origin of Victims and Offenders, 2012-2015*, U.S. DEPARTMENT OF JUSTICE, (Oct. 2017), https://www.bjs.gov/content/pub/pdf/rhovo1215_sum.pdf, archived at <https://perma.cc/6KBJ-TBKN>.

³¹⁴ In these areas, the violent victimization was reported as 26 per 1,000, compared to 16-20 per 1,000 in areas that were not new Latinx metropolitan areas. See Min Xie, Ph.D., University of Maryland at College Park, and Michael Planty, Ph.D., *Violent Victimization in New and Established Hispanic Areas, 2007–2010*, BUREAU OF JUSTICE STATISTICS, (Aug. 2014), <https://www.bjs.gov/content/pub/pdf/vvneha0710.pdf>, archived at <https://perma.cc/2S42-DEJC>.

³¹⁵ *Special Report: Race and Hispanic Origin of Victims and Offenders, 2012-2015*, U.S. DEPARTMENT OF JUSTICE, (Oct. 2017), https://www.bjs.gov/content/pub/pdf/rhovo1215_sum.pdf, archived at <https://perma.cc/969L-JX39>, (Table 1 Percent of violent victimizations, by race/Hispanic origin of victim and offender, 2012–2015).

³¹⁶ *Id.*

³¹⁷ ABA Hispanic Commission Report, *see supra* note 153, at 60–62.

³¹⁸ *Inmate Statistics, Inmate Ethnicity*, FEDERAL BUREAU OF PRISONS, https://www.bop.gov/about/statistics/statistics_inmate_ethnicity.jsp, archived at <https://perma.cc/62L7-844N> (last visited Nov. 17, 2017).

³¹⁹ *Id.*

³²⁰ MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 134 (2010).

cial profiling, or the practice using race or ethnicity as grounds for police stops, is found to be most common with blacks and Latinxs.³²¹

Federal policies initiated in the 1990s have brought many Latinxs into the criminal justice system as a result of their immigration status.³²² Policies such as these have made improper voting and other lower penalty crimes punishable by imprisonment and deportation. In February 2017, the nation was introduced to Rosa Maria Ortega, a legal permanent resident who voted in two GOP primary elections and found guilty of illegal voting by a Tarrant County jury in Texas. She was sentenced to eight years and \$10,000. In her testimony, Ortega explained that she did not understand that she did not have the right to vote. She was brought from Mexico as a child and her legal resident status permitted her to work, own property, serve in the military and pay taxes in the United States. Mrs. Ortega, a mother of three who has a sixth grade education testified: “All my life I was taught I was a U.S. citizen.”³²³ Mrs. Ortega was able to post a bond that would allow her to stay out of jail while her appeal is pending.³²⁴ However, her mistake in voting is a felony and a felony makes a legal permanent resident eligible for deportation.³²⁵ The U.S. Immigration and Customs Enforcement opted to wait until her appeal is resolved before they initiate detention proceedings.³²⁶

In the age of renewed xenophobia and racial fear, immigration enforcement has become intimately linked with policing in the United States. It is perhaps unsurprising then, that immigrants are criminalized by virtue of their presence in the U.S. and are unfairly profiled based on perceived otherness, a process that legal scholars refer to as “crimmigration.”³²⁷ The Department of Homeland Security reported that approximately 97 percent of immigrants

³²¹ For a discussion of racial profiling in the black and Latinx communities, see Kevin R. Johnson, *The Case for African American and Latina/o Cooperation in Challenging Racial Profiling in Law Enforcement*, 55 *FLA. L. REV.* 341 (2003) and Victor Romero, *Racial Profiling: Driving While Mexican and Affirmative Action*, 6 *MICH. J. RACE & L.* 195 (2000-2001). See also ABA Hispanic Commission Report, see *supra* note 153, at 60–62.

³²² See Richard Delgado, Juan F. Perea & Jean Stefancic, *Latinos and the Law: Cases and Materials* (West Academic Pub. Co., 1st ed. 2008) (discussing the Illegal Immigration Reform & Immigrant Responsibility Act of 1996).

³²³ See Michael Wines, *Illegal Voting Gets Texas Woman 8 Years in Prison, and Certain Deportation*, *N.Y. TIMES*, (Feb. 10, 2017), <https://www.nytimes.com/2017/02/10/us/illegal-voting-gets-texas-woman-8-years-in-prison-and-certain-deportation.html>, archived at <https://perma.cc/3Z5T-8FUD>.

³²⁴ James Ragland, *Rosa Maria Ortega is Free on Bond, and, for now, the System's Done the Right Thing*, *THE DALLAS MORNING NEWS*, (Mar. 3, 2017), <https://www.dallasnews.com/opinion/commentary/2017/03/03/rosa-maria-ortega-free-bond-now-systems-done-right-thing>, archived at <https://perma.cc/NK9D-6HBY>.

³²⁵ *Id.*

³²⁶ *Id.*

³²⁷ Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 *AM. U. L. REV.* 367, 376 (2006) (coining the term “crimmigration” not only to describe what prior scholars had called, “the criminalization of immigration law,” but also to describe the merger between the two institutions “in both substance and procedure [that] has created parallel systems in which immigration law and the criminal justice system are merely nominally separate”). See also Yolanda Vazquez, *Constructing Crimmigration: Latino Subordination in a “Post-Racial” World*, 76 *OHIO ST. L.J.* 599, 604 (2015).

who were detained and removed by ICE in fiscal year 2016 were Latinx.³²⁸ Approximately 58 percent of all ICE removals, had a previous criminal conviction.³²⁹ The other 42 percent of those removed who had no criminal conviction, 95 percent were detained at the border or at a port of entry.³³⁰ While the percentage of those removed with criminal convictions is high, it is important to consider that research demonstrates that immigrants commit crimes at lower rates than U.S. citizens.³³¹ In fact, increased immigration rates are considered a factor that has contributed to lowering the crime rate in recent years.³³² Researchers attribute the lower crime rates in immigrant communities to strong family ties that increase public safety and the fear of jeopardizing their immigration status.³³³ Despite these findings, in 2017 Congress amended the Immigration and Nationality Act to support stricter sanctions against immigrants who re-enter the country without authorization.³³⁴

The decisions that courts make are crucial to affirm or repudiate the civil rights of Latinxs. As a consequence, we cannot underestimate the role jury selection and composition plays in the criminal justice system. Defendants who request jury trials in the United States are entitled to a jury of their “peers.” With the systemic exclusion of people of color from serving on juries, this right has historically only been extended to white America.³³⁵ Many historians of the legal justice system have written on how jury trials in the Southern United States often exonerated white defendants while they indicted black defendants, damning them to serve extraordinarily long sentences or imposing the death penalty.³³⁶

Legislation and several court opinions established the illegality of discriminating against potential jury pools. Section 4 of Civil Rights Act of 1875 read “that no citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State, on account of race,

³²⁸ Only 7,836 of the 240,255 immigrants removed were not from Latin American countries. See Fiscal Year 2016 ICE Enforcement and Removal Operations Report (2016), U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, <https://www.ice.gov/sites/default/files/documents/Report/2016/removal-stats-2016.pdf>, archived at <https://perma.cc/J8C9-8DPW>.

³²⁹ *Id.* at 2.

³³⁰ *Id.*

³³¹ See *Immigration and Public Safety*, The Sentencing Project, 6–7, <http://www.sentencingproject.org/wp-content/uploads/2017/03/Immigration-and-Public-Safety.pdf>, archived at <https://perma.cc/8KCL-6GAU>.

³³² *Id.* at 8–9.

³³³ See Graham Ousey & Charis E. Kubrin, *Exploring the Connection between Immigration and Violent Crime Rates in U.S. Cities, 1980–2000*, 56 SOCIAL PROBLEMS 447–473 (2009); and Charis E. Kubrin & Hiromi Ishizawa, *Why Some Immigrant Neighborhoods are Safer than Others: Divergent Findings from Los Angeles and Chicago*, 641 THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 148–173 (2012).

³³⁴ H.R. 3004. See <https://www.congress.gov/bill/115th-congress/house-bill/3004>, archived at <https://perma.cc/9BZM-4XTR> (last visited Sept. 8, 2017).

³³⁵ ALEXANDER, *supra* note 320.

³³⁶ *Id.*

color, or previous condition of servitude.”³³⁷ Still, Latinxs had to fight to be included on juries. The 1954 Supreme Court case *Hernandez v. Texas*, revealed that in the twenty years prior, no Mexican Americans had been called to serve on a jury.³³⁸ In *Hernandez v. Texas*, the Supreme Court ruled that everyone had a “right to be indicted and tried by juries from which all members of his class are not systematically excluded —juries selected from among all qualified persons regardless of national origin or descent.”³³⁹ In that case, the Supreme Court stated that plaintiff Pete Hernandez had a Constitutional right to a jury that included Latinxs.³⁴⁰ Despite the ruling in *Hernandez*, it was not until the 1970s that Latinxs actually began serving on juries. The 1986 *Batson v. Kentucky* later ruling established that jurors could not be dismissed on the basis of race.³⁴¹ Despite this ruling, attorneys across the United States practiced their right of peremptory challenge, in which they dismissed potential jurors without providing the court with a reason.

Our history reveals that racism has pervaded the U.S. jury selection system. As The Equal Justice Initiative found in their 2010 Report “Illegal Racial Discrimination in Jury Selection: A Continuing Legacy,” “a startlingly common reason given by prosecutors for striking black prospective jurors is a juror’s alleged ‘low intelligence’ or ‘lack of education.’”³⁴² For Latinxs, Spanish-language fluency has often been cited as a legitimate reason to exclude Latinxs from serving on juries. In the 1991 case *Hernandez v. New York*, the U.S. Supreme Court acknowledged the “harsh paradox that one may become proficient enough in English to participate in trial, only to encounter disqualification because he knows a second language as well.”³⁴³ However, the Court held that the prosecutor “offered a race-neutral basis for his peremptory strikes. The issue here is the facial validity of the prosecutor’s explanation, which must be based on something other than race.”³⁴⁴ Because the peremptory strike was made on the basis of language access, the prosecutor’s actions were deemed appropriate.³⁴⁵

Regardless of the English language fluency of Latinxs, ensuring due process for this population is also an important consideration. The U.S. Supreme Court case *Miranda v. Arizona*, that law enforcement officers recite specific warning before interrogation to all of those who they detain to prevent self-incrimination – a right afforded by the Fifth Amendment of the

³³⁷ Civil Rights Act of 1875, 18 Stat. 335, §4 (1875).

³³⁸ Caitlin Cruz, *The Forgotten History of How Latinos Earned the Right to Vote*, SPLINTER (Oct. 10, 2016), <http://splinternews.com/the-forgotten-history-of-how-Latinxs-earned-the-right-t-1793862634>, archived at <https://perma.cc/Y8QQ-XYVN>.

³³⁹ *Hernandez v. Texas*, 347 U.S. 475, 482, 74 S. Ct. 667, 673 (1954).

³⁴⁰ *Id.*

³⁴¹ *Batson v. Kentucky*, 476 U.S. 79, 90 L. Ed. 2d 69, 106 S. Ct. 1712 (1986).

³⁴² Equal Justice Initiative, *Illegal Racial Discrimination in Jury Selection: A Continuing Legacy* 17 (Aug. 2010), <https://eji.org/sites/default/files/illegal-racial-discrimination-in-jury-selection.pdf>, archived at <https://perma.cc/3BZH-5JDN>.

³⁴³ *Hernandez v. New York*, 500 U.S. 352, 371 (1991).

³⁴⁴ *Id.* at 353.

³⁴⁵ *Id.* at 362–365.

U.S. Constitution.³⁴⁶ The case namesake, Ernesto Miranda, was U.S. citizen arrested for kidnapping, rape, and armed robbery.³⁴⁷ The officers who interrogated him did not advise Mr. Miranda of his rights and after a two-hour investigation, he signed a confession that included an admission that he knew his rights.³⁴⁸ For the segment of Latinxs that either predominantly speak Spanish or who are not native-language speakers, language is also an obstacle for obtaining procedural justice in criminal legal system. In the fifty years since the seminal *Miranda* case, “law enforcement has made no effort to develop a culturally and substantively accurate translation of the *Miranda* warning.³⁴⁹ In 2016, the ABA Hispanic Commission worked to pass Resolution 110 which “urges federal, state, territorial, and local law-enforcement authorities to provide a culturally, substantively, and accurate translation of the *Miranda* warning in Spanish.”³⁵⁰

F. Voting Rights

The Voting Rights Act of 1965 and its subsequent amendments have greatly benefited Latinxs and facilitated Latinx civil engagement. The Act was passed to enforce rights afforded by the Fourteenth and Fifteenth Amendments to the U.S. Constitution. Section 2 of the Act closely follows the Fifteenth Amendment to prohibit procedures and practices that discriminate against racial minorities or language minorities that are protected under Section 4 of the Voting Rights Act. While Section 2 is used to challenge vote dilution through practices such as at-large elections, Section 4 set forth a formula to identify those areas where discrimination in voting is greater and where remedial action is appropriate.

Section 4 also sets forth prohibitions against procedures such as literacy tests, moral character tests, and other tests as pre-requisite to voting.³⁵¹ For example, Section 4(e) permits individuals who have completed sixth grade in a U.S. public school but speak a language other than English.³⁵² This legislation accounts for U.S. citizens who live in Puerto Rico who do not have a full voting representative in Congress and cannot vote in Presidential elections.³⁵³ Section 4(f) delineates a process to identify language minorities that are eligible to obtain voter information and ballots in languages other than English.³⁵⁴ Section 5 requires covered jurisdictions with history of dis-

³⁴⁶ *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

³⁴⁷ Yale Kamisar, *Miranda Thirty-Five Years Later: A Close Look at the Majority and Dissenting Opinions in Dickerson*, 33 ARIZ. ST. L.J. 387 (2001).

³⁴⁸ *Id.*

³⁴⁹ Richard Pena, *ABA Hispanic Commission: A Voice for the Underrepresented*, (July 14, 2017), <http://www.lawpracticetoday.org/article/aba-hispanic-commission/>, archived at <https://perma.cc/4WTT-7VEW>.

³⁵⁰ *Id.*

³⁵¹ Public Law, 89–100.

³⁵² *Id.*

³⁵³ *Id.*

³⁵⁴ *Id.*

crimination or which had significant language minority populations to undergo federal oversight when they attempted to change voting practices and procedures.³⁵⁵ In some jurisdictions, federal examiners and observers may even be appointed. The formula outlined in Section 4(b) sets forth the factors to determine which jurisdictions are subject to federal pre-clearance under Section 5.³⁵⁶

In 2013, a divided U.S. Supreme Court held that the coverage formula in Section 4(b) of the Voting Rights Act was unconstitutional in *Shelby Co. v. Holder*.³⁵⁷ The *Shelby County* opinion did not rule Section 5 unconstitutional but reasoned that the federal constraints on the covered jurisdictions were not responsive to existing conditions.³⁵⁸ It also stated that the formula for determining if a state's voting procedures required federal review was outdated and did not reflect the advances made in voting rights in the last fifty years.³⁵⁹ The decision meant that Shelby County, Alabama, and other jurisdictions identified under Section 4(b)'s coverage formula are not required to obtain federal pre-clearance unless there exists a separate order under section 3(c) of the Voting Rights Act. Section 3(c) requires that plaintiffs show that a jurisdiction intentionally discriminated against a class of voters to bring that jurisdiction back for a federal pre-clearance. Section 3 of the Voting Rights Act has not been commonly used.³⁶⁰ At the time of the *Shelby County* decision, nine states were subject to federal preclearance.³⁶¹ Since the federal enforcement of state policy and practices is no longer in effect, those states have proceeded to implement policies that many consider are violating the voting rights of Latinxs, Blacks, and other language minority populations.

For example, the Arizona Attorney General Tom Horne issued an opinion in 2013 that Arizona residents who registered to vote using federal government forms must also prove their citizenship or their registration would be invalidated and they would not be allowed to vote in state or local elections. The same opinion also prohibits voters from signing petitions to get candidates and initiatives on the ballots. This opinion was issued to replace Proposition 200, a state ballot initiative passed by Arizona voters in 2004 that required "satisfactory evidence of United States citizenship," 'twas

³⁵⁵ *Id.*

³⁵⁶ *Id.*

³⁵⁷ *Shelby Cty. v. Holder*, 133 S. Ct. 2612, 2631 (2013).

³⁵⁸ *See id.*

³⁵⁹ *Id.* at 2618.

³⁶⁰ Abby Rapoport, *Get to Know Section 3 of the Voting Rights Act*, THE AM. PROSPECT, (Aug. 19, 2013), <http://prospect.org/article/get-know-section-3-voting-rights-act>, archived at <https://perma.cc/V5XC-2HUX> (stating that "Section 3 has only been invoked 18 times in the last four decades" in counties or school districts and only "Arkansas and New Mexico, have ever been 'bailed in.'" Currently, only 3 primarily rural counties "in the whole country are required to seek preclearance under Section 3").

³⁶¹ *See Jurisdiction Previously Covered by Section 5*, U.S. DEP'T OF JUST., <https://www.justice.gov/crt/jurisdictions-previously-covered-section-5>, archived at <https://perma.cc/PY34-KFWM> (last updated Aug. 6, 2015).

struck down by the Ninth Circuit.³⁶² In *Gonzalez v. Arizona*, the Ninth Circuit did not hold Proposition 200 unconstitutional.³⁶³ Instead, the court decided it was acceptable to have the state require voters to show their identification when voting on election day but ruled against the proof of citizenship requirement.³⁶⁴ The 11-judge en-banc panel of judges pointed to the National Voter Registration Act of 1993 as the superseding federal law that prevented states from implementing burdens that required more than state oaths that voters must take to prove citizenship.³⁶⁵

As in Arizona, voters in nine other states must show photo identification to vote. Another thirty-three states have some form of voter identification rules.³⁶⁶ In April 2017, a federal district court judge ruled that a Texas voter identification law passed by the legislature in 2011 was motivated by an intent to discriminate against Latinx and Black voters.³⁶⁷ The Fifth Circuit found, in July 2016, the same voter identification law had a discriminatory effect on Black and Latinx voters who lacked government-issued photo identifications.³⁶⁸ Trump administration abandoned case on behalf of the Department of Justice, but advocates stayed on.

While the scholarship shows almost no impact of voter identification laws on voter fraud, it does show that ethnic and racial minorities are less likely to have photo identification.³⁶⁹ Recent analysis of the Cooperative

³⁶² Ariz. Rev. Stat. § 16–166(F) (2017). See *id.* § 16–579(A).

³⁶³ *Gonzalez v. Arizona*, 624 F.3d 1162 (9th Cir. 2010).

³⁶⁴ *Id.*

³⁶⁵ 52 U.S.C. §§ 20501–20511 (2017) (also known as the Motor Voter Law). *Arizona v. Inter Tribal Council of Ariz., Inc.*, 133 S. Ct. 2247, 2261 (2013); see Mark Peters, *Kansas, Arizona Require Proof of Citizenship for Voting*, WALL ST. J. (Aug. 3, 2014, 7:42 PM), <https://www.wsj.com/articles/kansas-arizona-require-proof-of-citizenship-for-voting-1407109373>, archived at <https://perma.cc/4Q7V-Z9LZ>.

³⁶⁶ *Kansas, Arizona Require Proof of Citizenship for Voting*, WALL ST. J., (Aug. 3, 2014 7:42 PM) https://ballotpedia.org/Voter_identification_laws_by_state, archived at <https://perma.cc/4Q7V-Z9LZ>. Texas passed a voter identification bill in 2011 that was codified as Tex. Elec. Code Ann. 63.001 (West 2017). The law was challenged and rejected by a federal court based on discriminatory against Latinxs and African Americans that violated Section 2 of the Voting Rights Act, in addition to the 14th and 15th Amendments to the U.S. Constitution. See *Veasey v. Perry*, 71 F. Supp. 3d 627 (S.D. Tex. 2014). That decision was appealed to the 5th Circuit which affirmed the discriminatory effect claim but sent back to the lower court decision to reconsider the discriminatory purpose claim. See *Veasey v. Abbott*, 830 F. 3d 216, 241 (5th Cir. 2016) (en banc). On August 23, 2017, the lower court granted a declaratory and injunctive relief for Section 2 violations to plaintiffs. Texas attorney General Ken Paxton promised to appeal the ruling. See Matt Largey, *Federal Judge Tosses Out Texas Voter ID Law*, NPR (Aug. 23 2017, 8:43 PM), <http://www.npr.org/sections/thetwo-way/2017/08/23/545664409/-federal-judge-permanently-blocks-texas-voter-id-law>, archived at <https://perma.cc/9PFM-WYBL>.

³⁶⁷ Manny Fernandez, *Federal Judge Says Texas Voter ID Law Intentionally Discriminates*, N.Y. TIMES (Apr. 10, 2017), <https://www.nytimes.com/2017/04/10/us/federal-judge-strikes-down-texas-voter-id-law.html>, archived at <https://perma.cc/9Y3K-BKX5>.

³⁶⁸ *Id.*

³⁶⁹ See Zoltan L. Hajnal et al., *Do Voter Identification Laws Suppress Minority Voting? Yes. We Did the Research.*, THE WASH. POST (Feb. 15, 2017), https://www.washingtonpost.com/news/monkey-cage/wp/2017/02/15/do-voter-identification-laws-suppress-minority-voting-yes-we-did-the-research/?utm_term=.fe32053cd6b6, archived at <https://perma.cc/W4L2-TRZE>.

Congressional Election Study shows that Latinx voter turnout is approximately 7.1 percent lower in general elections and 5.3 percent lower in primaries with strict identification laws. Voter identification laws also impact African Americans, Asian Americans, and multi-racial Americans but have no impact on White voter turnout.³⁷⁰ Voter identification laws seem to be proxies for voter suppression. For this reason, The American Civil Liberties Union, the National Association for the Advancement of Colored People, and other civil rights organizations have already sued the recently created Presidential Advisory Commission on Election Integrity (Election Commission) and requested that states submit individual voter data as a way to prevent voter fraud.³⁷¹ These lawsuits claim that the Election Commission has assembled a biased group of individuals who seek to suppress Latinx and Black voters by alleging voter fraud and violate the privacy of millions of American voters.³⁷² Latinx voter suppression, however, comes in a variety of forms in addition to voter identification laws and citizenship requirements.

Voting purges disproportionately impact Blacks and Latinx who are eligible to vote.³⁷³ In 2012, Florida Governor Rick Scott ordered a purge of voter lists to identify non-citizen voters.³⁷⁴ The effort identified approximately 180,000 potential non-citizens.³⁷⁵ From that group, 2,600 were investigated.³⁷⁶ The initial round found that 600 of those were citizens and approximately 85 were removed from the rolls.³⁷⁷ Among those who struggled to get the opportunity to vote 58 percent were Latinxs.³⁷⁸ In Brooklyn, New York, more than 120,000 voters were illegally removed from the voter rolls during the presidential primary in April 2016.³⁷⁹ City officials attributed the purge to a mistake and said that there was not a specific group

³⁷⁰ *Id.*

³⁷¹ Vann R. Newkirk II, *What's the Real Goal of Trump's Voter-Fraud Commission?*, THE ATLANTIC (July 26, 2017), <https://www.theatlantic.com/politics/archive/2017/07/trump-voter-fraud-commission/534843/>, archived at <https://perma.cc/W4L2-TRZE>.

³⁷² Vann R. Newkirk II, *Trump's Voter-Fraud Commission Has its First Meeting*, THE ATLANTIC (July 19, 2017), <https://www.theatlantic.com/politics/archive/2017/07/trumps-voter-fraud-commission-runs-into-a-roadblock/534084/>, archived at <https://perma.cc/RT68-UNZB>.

³⁷³ For a history of the codification of laws that served to segregate, discriminate, and strip African Americans of their civil and human rights in the US colonial period, see A. LEON HIGGONBOTHAM, JR. IN THE MATTER OF COLOR: RACE AND THE AMERICAN LEGAL SYSTEM: THE COLONIAL PERIOD (1980). See also A. Leon Higgonbotham, Jr., *Shades of Freedom: Racial Politics and the Presumptions of American Legal Process* (1996).

³⁷⁴ Steve Bousquet & Amy Sherman, *Florida Suspends Non-Citizen Voter Purge Efforts*, MIAMI HERALD (Mar. 27, 2014 11:49 AM), <http://www.miamiherald.com/news/politics-government/article2087729.html>, archived at <https://perma.cc/946G-SLKU>.

³⁷⁵ *Id.*

³⁷⁶ *Id.*

³⁷⁷ *Id.*

³⁷⁸ *Florida's Discriminatory Voter Purge*, N.Y. TIMES (May 31, 2012), <http://www.nytimes.com/2012/06/01/opinion/floridas-discriminatory-voter-purge.html>, archived at <https://perma.cc/946G-SLKU>.

³⁷⁹ Brigid Bergin et al., *Brooklyn Voter Purge Hit Hispanics Hardest*, WNYC NEWS (June 21, 2016), <http://www.wnyc.org/story/brooklyn-voter-purge-hit-hispanics-hardest/>, archived at <https://perma.cc/XN9U-JNYS>.

targeted by the purge.³⁸⁰ However, an analysis of those purged showed that Latinx voters were impacted at a greater rate than other groups.³⁸¹ According to the analysis that compared individuals with typical Latinx last names, they were purged at a rate that was 60 percent higher than others.³⁸²

Voter suppression comes in many shapes and sizes but the most hotly contested is probably the practice of gerrymandering. Gerrymandering is the process of drawing electoral districts to benefit one party or class of individuals. The process of gerrymandering protects those incumbents who are usually drawing the electoral district boundaries. In May 2017, the U.S. Supreme Court ruled against two gerrymandered congressional districts in North Carolina because they relied too much on race as a factor to draw them.³⁸³ While racial gerrymandering is generally not held constitutionally permissible, drawing electoral district lines to account for political party is permitted. The *Cooper v. Harris* opinion reasoned that sorting individuals based on race is suspect even if race is a proxy for political party affiliation.³⁸⁴ This case may have an important impact on ongoing redistricting litigation in Texas where Republicans are accused of not creating sufficient districts that can elect Latinxs.

The history of the Latinxs' voting rights struggle is best exemplified in Texas.³⁸⁵ The state's Democratic Party banned African Americans from voting in 1923 by codifying all-white primaries.³⁸⁶ The law was not overturned until 1944 in *Smith v. Allwright*—one of 4 Texas cases challenging the all-white primaries.³⁸⁷ The Southwest Voter Registration Education Project

³⁸⁰ See *id.*

³⁸¹ *Id.*

³⁸² *Id.*; see Vivian Yee, *Routine Voter Purge is Cited in Brooklyn Election Trouble*, N.Y. TIMES (Apr. 22, 2016), <https://www.nytimes.com/2016/04/23/nyregion/routine-voter-purge-is-cited-in-brooklyn-election-trouble.html?mtrref=www.nytimes.com&gwh=93A9B67B561C32876065C58D547DAA6B&gwt=pay>, archived at <https://perma.cc/7P63-WL9W>; see also Department of State, *Interim Progress report: Ongoing Efforts by the Secretary of State to Improve the Accuracy and Integrity of the Statewide Voter File*, NMPOLITICS (Nov. 16, 2011), <http://nmpolitics.net/Documents/SOSVoterFileReport.pdf>, archived at <https://perma.cc/VG9V-VXM2>.

³⁸³ *Cooper v. Harris*, 137 S. Ct. 1445, 1468 (2017).

³⁸⁴ *Id.* at 1473; see Rick Hasen, *Breaking and Analysis: Supreme Court on 5-3 Vote Affirms NC Racial Gerrymandering Case*, ELECTION L. BLOG (May 22, 2017 7:06 AM), <http://electionlawblog.org/?p=92675>, archived at <https://perma.cc/3XML-J239>.

³⁸⁵ In 1861, Texas joined the Confederate States of America. See *Texas Ordinance of Secession*, TEX. ST. LIBR. AND ARCHIVES COMMISSION, <https://www.tsl.texas.gov/treasures/earlystate/secess-01.html>, archived at <https://perma.cc/FC6M-DXUP> (last modified Mar. 29, 2016). Although Texas saw few U.S. Civil War battles, it went through Reconstruction. See Katie Whitehurst, *Civil War and Reconstruction*, TEX. OUR TEX., <http://texasourtexas.texaspbs.org/the-eras-of-texas/civil-war-reconstruction/>, archived at <https://perma.cc/5DBF-FHJZ> (last visited Sept. 19, 2017). Many of those who supported slavery gained political dominance and created a Jim Crow system that disenfranchised African Americans in 1901 by passing a poll tax. See Terrell Jermaine Starr, *Top Black Voter Disenfranchisement Tactics*, NEWSONE (Dec. 8, 2011), <https://newsone.com/1703995/black-voter-disenfranchisement-tactics-voter-id-redistricting/>, archived at <https://perma.cc/YJ6X-H52M>.

³⁸⁶ Robert E. Cushman, *Texas White Primary Case Smith v. Allwright*, 30 CORNELL L. Q. 66, 67 (1944).

³⁸⁷ *Id.*

(SVREP), a nonprofit and non-partisan organization, was launched in San Antonio, Texas in 1974 to help ensure the voting rights of Mexican Americans.³⁸⁸ The efforts by organizations such as SVREP were instrumental in getting the 1975 Voting Rights Act passed. The new legislation required that voting materials be offered in the language of any language-minority population that was greater than 5 percent.³⁸⁹ Congressional testimony found that Latinxs experienced financial and physical retribution for civic engagement.³⁹⁰ “There has been a great failure on the part of the state of Texas to protect the voting rights of the Chicano electorate.”³⁹¹

The State of Texas has continued to show that voting rights law may not always be enough to ensure Latinxs the equal access to and impact of their vote. In 2003, the state legislature approved a redistricting plan based on new figures from the 2000 Census. The 2003 Texas redistricting plan was found constitutional but parts were found to violate the Voting Rights Act because it did not conform to the “one person, one vote” standard.³⁹² The opinion stated that the district in question was drawn to deny Latinxs the opportunity to elect a candidate.³⁹³ The next Texas redistricting plan also landed in litigation before the highest court in the country. The current redistricting plan, based on the 2010 Census, was found to also violate the Voting Rights Act and a federal district court panel issued an interim plan for the 2012 primary elections. Two registered Texan voters sued the state claiming that the interim plan did not adhere to the “one person, one vote” principle.

In *Evenwell v. Abbott*, the issue before the U.S. Supreme Court was whether determining the districts based on total population versus registered voter population violated the Equal Protection Clause of the Fourteenth Amendment.³⁹⁴ The Court unanimously held that the “one person, one vote” principle of the Equal Protection Clause permits a state to draw its legislative districts based on total population.³⁹⁵ The fight about redistricting the current districts continues in Texas in 2017.³⁹⁶ The state argued that Texas should be allowed to move forward with the interim 2013 maps because the initial 2011 maps were already declared invalid. However, voting rights advocates contend that the 2013 maps were a temporary fix that continued to contain discriminatory impact.

³⁸⁸ Southwest Voter Registration Education Project, http://svrep.org/about_svrep.php, archived at <https://perma.cc/6VVB2-J739>.

³⁸⁹ Caitlin Cruz, *The Forgotten History of How Latinos Earned the Right to Vote*, SPLINTER (Oct. 10, 2016), <http://splinternews.com/the-forgotten-history-of-how-Latinxs-earned-the-right-t-1793862634>, archived at <https://perma.cc/UXD9-6BRF>.

³⁹⁰ *Id.*

³⁹¹ *Id.*

³⁹² See *LULAC v. Perry*, 548 US 399, 447 (2006).

³⁹³ *Id.* at 441–42.

³⁹⁴ *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016).

³⁹⁵ *Id.*

³⁹⁶ See *Perez v. Abbott*, BRENNAN CTR. FOR JUST. N.Y.U. (Sept. 7, 2017), <https://www.brennancenter.org/legal-work/perez-v-perry>, archived at <https://perma.cc/M3KQ-DZJF>.

Discriminatory impact of the current redistricting plan is focused on the growing Latinx population. Texas is the state with the second largest Latinx population in the country with more than 10.4 million and comprise 39 percent of the total state population.³⁹⁷ Approximately 73 percent of the Latinxs over age 5 years speak a language other than English in their home³⁹⁸ and 87 percent of all Latinxs in Texas are of Mexican origin.³⁹⁹ The majority of U.S.-born Latinxs in Texas, as is also true nationally, account for a larger percentage than those born in a foreign country (70 percent v. 30 percent).⁴⁰⁰ The median age for all Latinxs in Texas is 28, however, it is 20 for U.S.-born Latinx Texans.⁴⁰¹ Despite their large presence, a recent study showed that more than 1.3 million Latinxs in the state do not have representatives on their city council or county commissioners courts.⁴⁰² While representation of Latinx communities by Latinx leaders has increased in South Texas counties where the Latinx population exceeds 80 percent of the population, in the state overall only 13 percent of all county commissioners are Latinx.⁴⁰³ Despite the strong presence in communities like Texas, where Latinx communities existed even before the United States acquired the lands, Latinxs are treated as not belonging to the American promise of democratic ideals.

G. Immigration

The U.S. has a long history of anti-immigrant sentiment fueled by economic troubles. Those xenophobic tendencies have led to various episodes of mass selective importations and deportations of Latinx immigrants and also U.S. citizens of Latinx decent.⁴⁰⁴ The Emergency Immigration Act of 1921 passed limitations on who could legally immigrate to the United States.⁴⁰⁵ It placed a 3 percent restriction on the number of residents coming from any one country that already had individuals from that country living in

³⁹⁷ Gustavo López & Renee Stepler, *Latinos in the 2016 Election: Texas*, PEW RESEARCH CENTER (Jan. 19, 2016), <http://www.pewhispanic.org/fact-sheet/latinos-in-the-2016-election-texas/>, archived at <https://perma.cc/NS3M-P822>.

³⁹⁸ Jens Manuel Krogstad et al., *English Proficiency on the Rise Among Latinos*, PEW RESEARCH CENTER (May 12, 2015), <http://www.pewhispanic.org/2015/05/12/english-proficiency-on-the-rise-among-latinos/>, archived at <https://perma.cc/S7V7-G7NJ>.

³⁹⁹ *Demographic Profile of Hispanics in Texas, 2014*, PEW RESEARCH CENTER, <http://www.pewhispanic.org/states/state/tx/>, archived at <https://perma.cc/SH3W-V9XG> (last visited Sept. 6, 2017).

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.*

⁴⁰² Jeremy Schwartz & Dan Hill, *Silent Majority: Texas' Booming Hispanic Population Deeply Underrepresented in Local Politics*, AUSTIN AM.-STATESMAN (Oct. 21, 2016), <http://projects.statesman.com/news/latino-representation/>, archived at <https://perma.cc/FF2X-ZC82>.

⁴⁰³ *Id.*; see also *Cameron County, Texas*, PEW RESEARCH CENTER, <http://www.pewhispanic.org/states/county/48061/>, archived at <https://perma.cc/CT26-M7YT> (last visited Sept. 6, 2017).

⁴⁰⁴ See ROSALES, *supra* at 84, 399–403 (during the depression of 1907, the Mexican government allocated funds to repatriate some Mexicans living in the United States).

⁴⁰⁵ An Act: To limit the immigration of aliens into the U.S., PUB. L. NO. 67-5 CHAPTER 8, 42 STAT. 5 (1921). The Chinese Exclusion Act of 1882 was one of the first pieces of legislation to begin to identify classes of people to be excluded from the United States. For more on

the U.S.⁴⁰⁶ The quotas were based on the 1910 Census figures that showed Northern European immigrants were more populous.⁴⁰⁷ Consequently, Northern European immigrants had fewer restrictions to immigrating to the U.S. than Eastern or Southern Europeans.⁴⁰⁸ Latinx immigrants and professionals, as well as certain Asian countries, were excluded from these quotas.⁴⁰⁹

However, the anti-immigrant furor sparked an amended 1924 Immigration Act that reduced the number of immigrants from any country to 2 percent of the country's represented population residing in the U.S. based on the 1890 Census.⁴¹⁰ This was a more restrictive immigration bill that targeted southern and eastern Europeans.⁴¹¹ While it again did not limit immigration from countries in the Western Hemisphere, the goal of the law was to preserve the ideal of American homogeneity.⁴¹² Reports of Mexican repatriation began as early as 1920.⁴¹³ By 1924, the Labor Appropriation Act of 1924 created the Border Patrol to prevent unauthorized entries along both the Mexican and Canadian borders in the U.S.⁴¹⁴ Despite the creation of a new federal agency to patrol the border, enforcement was left to local vigi-

the Chinese Exclusion Act *see* Erika Lee, *The Chinese Exclusion Example: Race, Immigration, and American Gatekeeping, 1882-1924*, 21 J. OF AM. ETHNIC HISTORY 36–62 (Spring 2002).

⁴⁰⁶ *Id.* at (2)(a), at §5.

⁴⁰⁷ *Id.* at (2)(b), at §5. *See also* *Statistical Abstract of the United States 1909* 70 Washington: Gov't Printing Office, 1910.

⁴⁰⁸ MAE M. NGAI, *IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA* 22 (2004).

⁴⁰⁹ *See id.* at 8(2)(a), at §5 (excluded from the Act were also immigrants from countries where immigration was already regulated in accordance with treaties; immigrants from the Asiatic barred zone; and immigrants who had resided continuously for at least one year immediately preceding the time of their admission to the United States in Canada, Newfoundland, Cuba, Mexico, Central or South America or adjacent islands). *See also id.* at 8(2)(d), at §6 (immigrants who were professional actors, artists, lecturers, singers, nurses, ministers of any religious denomination, professors for colleges or seminaries, any immigrant belonging to a recognized learned profession or employed as domestic servants were admissible notwithstanding the percentage limits under the Act).

⁴¹⁰ An Act: To regulate the immigration of aliens to, and the residence of aliens in, the United States, PUB. L. NO. 68-139 chapter 190, 43 STAT. 153, 159 (1924).

⁴¹¹ *See* Muneer I. Ahmad, *The Citizenship of Others*, 82 FORDHAM L. REV. 2041, 2062 (2014) (the 1924 Immigration Act barred admission of Asian immigrants to the United States). *See* Gabriel J. Chin, *Segregation's Last Stronghold: Race Discrimination and the Constitutional Law of Immigration*, 46 UCLA L. REV. 1, 14 (1998) (the Act excluded based on race and not nationality or place of birth). *See id.* §§ 4,13(a), §§ 161–62 (an exception to the bar on Asian immigration was the handful of Asian professionals and residents who could return from trips abroad).

⁴¹² The Immigration Act of 1924, PUB.L. 68-139, 43 STAT. 153. *See also* The Immigration Act of 1924 (The Johnson-Reed Act), U.S. Department St., Off. Historian, <https://history.state.gov/milestones/1921-1936/immigration-act>, archived at <https://perma.cc/GGA3-8X7H> (according to the U.S. Department of State, “the most basic purpose of the 1924 Immigration Act was to preserve the ideal of U.S. homogeneity”).

⁴¹³ Rosales, *supra* note 84, at 401. According to Rosales, the largest wave of repatriation occurred in during the 1930s due to the Great Depression.

⁴¹⁴ *Border Patrol History*, CBP, (Apr. 3, 2014), <https://www.cbp.gov/border-security/along-us-borders/history>, archived at <https://perma.cc/9CP2-DFWL>.

lantes.⁴¹⁵ As a result of lax enforcement and the fact that there were so many possible points of entry along the 1,989-mile border that went unsupervised, many Americans of Mexican descent simply migrated between the U.S. and Mexico without having to demonstrate official documentation to prove their U.S. citizenship.⁴¹⁶

While systemic counting of Latinxs in the U.S. did not begin until the 1970s, the 1930 U.S. Census counted Mexican as a race and reported that over 1.4 million Mexicans resided in the U.S.—approximately 1.2 percent of the U.S. population.⁴¹⁷ Before 1930, Mexicans were classified as white.⁴¹⁸ However, Mexican Americans objected to being counted as something other than white because that racial identity was tied to greater legal rights.⁴¹⁹ Some were concerned they would be repatriated if classified as Mexican.⁴²⁰

In addition to those U.S. citizens of Mexican descent, the Mexican Revolution and the *Cristero War* in Mexico motivated a great deal of immigration to the United States territory between 1910 and 1930.⁴²¹ After the Depression, Mexican immigration was facilitated by U.S. employers who aggressively recruited in Mexico for laborers to work in a variety of industries where employees were needed.⁴²² Reports of repatriation of Mexican citizens began during the depression of 1920-21.⁴²³ However, economic dif-

⁴¹⁵ See Peter Yoxall, Comment, *The Minutemen Project, Gone in a Minute or Here to Stay? The Origin, History and Future of Citizen Activism on the United States-Mexico Border*, 37 U. MIAMI INTER-AMERICAN L. REV. 517, 522–23 (2006) (vigilante border groups grew between 1848 and 1928, which resulted in the lynching of 597 Mexicans).

⁴¹⁶ See RICHARD GRISWOLD DEL CASTILLO, GUADALUPE HIDALGO: A LEGACY OF CONFLICT, 57–61 (1990) (by 1854, the Mexican American War and the annexation of Texas resulted in 45 percent of Mexico's territory in U.S. hands. We know those lands as Arizona, California, Nevada, New Mexico, Utah, and parts of Colorado, Texas, and Wyoming).

⁴¹⁷ See 1930 –History –U.S. Census Bureau, CENSUS, https://www.census.gov/history/www/through_the_decades/index_of_questions/1930_1.html, archived at <https://perma.cc/L3NY-ABJ2> (last visited Sept. 6, 2017); see also *Statistical Abstract of the United States 1931 Fifty-Third Number*, Washington: US Gov't Printing Office, Page 4 (1931).

⁴¹⁸ *Hispanic Chapter 1: Race and Multiracial Americans in the US Census*, PEW Research Center, (June 11, 2015), <http://www.pewsocialtrends.org/2015/06/11/chapter-1-race-and-multiracial-americans-in-the-u-s-census/>, archived at <https://perma.cc/4LCG-TDNN>. For more on the 1930 Census see Melissa Nobles, *Shades of Citizenship*, Stanford, CA: Stanford University Press (2000).

⁴¹⁹ *Id.* See also *Measuring America: The Decennial Census From 1790 to 2000*, (Apr. 2003), <https://www.census.gov/prod/2002pubs/pol02-ma.pdf>, archived at <https://perma.cc/B626-PNVA>.

⁴²⁰ Race and Multiracial Americans, *supra* note 418.

⁴²¹ See Julia G. Young, *Cristero Diaspora: Mexican Immigrants, The U.S. Catholic Church, and Mexico's Cristero War, 1926-1929*, 98 CATHOLIC HIST. REV. 271, 274 (2012) (details the migration of Mexicans due to the Cristero War). See also RODOLFO F. ACUÑA, *OCCUPIED AMERICA: A HISTORY OF CHICANOS* 8 ED. 162 (2015) (details the migration of Mexicans due to the Mexican Revolution).

⁴²² See Maria Elena Bickerton, *Prospects for a Bilateral Immigration Agreement with Mexico: Lessons from the Bracero Program*, 79 TEX. L. REV. 895, 901 (2001) (before the initiation of World War II, there was a large demand for growers and consequently so did the need for Mexican workers. The United States established the Bracero program to supply the demand for growers).

⁴²³ See Jamie R. Aguila, *Mexican/U.S. Immigration Policy Prior to the Great Depression*, 31 J. SOC'Y FOR HISTORIANS OF AM. FOREIGN REL. DIPL. HIST. 211 (while some sources report up to 150,000 repatriations during this period, Mexican and US records conflict as to whether

facilities in the United States motivated the mass deportations of both U.S. and Mexican citizens which occurred between 1929 and 1939. Estimates of those repatriated vary from 500,000 to 2,000,000 – of which between 60 and 75 percent are estimated to have been U.S. citizens born to Mexican parents.⁴²⁴ While it is difficult to ascertain the exact number, it is believed that approximately one-third of Mexicans in the U.S. were repatriated by 1931.⁴²⁵

The U.S. relationship with Latinx immigrants has been a turbulent love affair based on labor needs and economic plight. By 1943, the U.S. labor shortages caused by World War II motivated agreements between the U.S. and Mexico to import Mexican braceros to do agricultural work in the U.S.⁴²⁶ The Mexican Farm Labor Supply Program and the Mexican Labor Agreement brought approximately 220,000 Mexican workers into the U.S. between 1942 and 1947.⁴²⁷ The Bracero Program, which guaranteed, but did not always deliver or pay, decent living conditions and an exemption from military service, ended in 1964.⁴²⁸ U.S. labor demands also sparked migration from Puerto Rico, driving an estimated 20,000 Puerto Ricans a year to the mainland U.S. through Operation Bootstrap initiated in 1944.⁴²⁹ The Bracero Program brought approximately 2 million Mexicans to work the agricultural fields. However, between 1954 and 1958, the U.S. government deported approximately 3.8 million individuals of Mexican descent in a policy dubbed “Operation Wetback.” This policy, which began the substantial U.S. personnel increase to monitor on the U.S.-Mexico border, was largely unsuccessful in keeping unauthorized Mexican immigrants out of the U.S. So long as employers continued to hire immigrants, and the economic conditions in Mexico were unfavorable, the flux of undocumented immigrants would persist.⁴³⁰

emigration from the US to Mexico increased in 1921, and only a limited number of formal deportations were recorded). See also Rosales, *supra* note 84, at 400–01.

⁴²⁴ ACUÑA, *supra* note 421, at 217.

⁴²⁵ See *id.* See also Neil Betten & Raymond A. Mohl, *From Discrimination to Repatriation: Mexican Life in Gary, Indiana, During the Great Depression*, 42 PAC. HIST. REV. 370 (1973) (Mexicans in the Midwest were repatriated at higher rates, 10 percent versus 3 percent nationally). See also The Mexican Farm Labor Agreement initiated on August 4, 1942. The Agreement was extended with the Migrant Labor Agreement of 1951, enacted by Congress as an amendment to the Agricultural Act of 1940 (Pub. L. 78).

⁴²⁶ BICKERTON, *supra* note 422, at 895, 901.

⁴²⁷ ACUÑA, *supra* note 421, at 262.

⁴²⁸ *An Act: To Amend the Agricultural Act of 1949*, PUB. L. 82–78, 78, 65 STAT. 119, 121 (1951). See also LILIA FERNANDEZ, OF IMMIGRANTS AND MIGRANTS: MEXICAN AND PUERTO RICAN LABOR MIGRATION IN COMPARATIVE PERSPECTIVE, 1942-1964, 29 UNIV. ILL. PRESS BEHALF IMMIGR. ETHN. HIST. SOC. 6–39 (2010).

⁴²⁹ See *id.* See also CLARA E. RODRÍGUEZ, PUERTO RICANS: IMMIGRANTS AND MIGRANTS A HISTORICAL PERSPECTIVE (2000) (mass migration to the US mainland took place under the US and Puerto Rican state sponsored, Operation Bootstrap/ Manos a la Obra program. Operation Bootstrap was implemented to aid in curtailing unemployment and perceived problems of overpopulation in Puerto Rico with an end goal of modernizing and industrializing the country).

⁴³⁰ See Puerto Rico, US House of Representatives: History, Art & Archives, HISTORY.HOUSE.GOV, <http://history.house.gov/Exhibitions-and-Publications/HAIC/Historical-Es>

Another effort to curtail immigration from Mexico was launched in 1965 with the enactment of the Immigration and Nationality Act (INA).⁴³¹ It removed the national origins quota system established in the 1920s that gave preference to Northern Europeans and added a nondiscrimination provision that prohibited discrimination in the issuance of visas on a number of grounds, including nationality.⁴³² The INA of 1965 created visa categories that gave preference to skilled immigrants and family members of individuals legally residing in the United States.⁴³³ This new policy changed the face of the American population. Despite these measures, between 1965 and 2000, Mexicans were the largest group of immigrants, followed by immigrants from the Dominican Republic and Cuba.⁴³⁴

One of the most important immigration policies for integrating immigrants into the fabric of U.S. society was the Immigration Reform and Control Act of 1986 (IRCA). IRCA offered a path to legalization to approximately 3 million unauthorized immigrants and also developed sanctions for employers who hired them.⁴³⁵ This legislation toughened border security and levied employer sanctions but it also offered an opportunity for many unauthorized immigrants, primarily Mexican, who had developed roots in the United States, to adjust their immigration status and legally remain in the country.⁴³⁶ IRCA was established after a great deal of political turmoil that ultimately resulted in bipartisan support driven primarily by conservative business owners and immigrant rights advocates. While the policy permitted many family members to reunite, the policy required each person to meet the requirements, preventing entire families from immigrating together.

By 1990, the population of foreign born individuals in the United States was 7.9 percent—approximately 7.8 million of which were of Latinx descent.⁴³⁷ The Immigration Act of 1990 was passed by Congress as an amendment to the 1965 legislation and aimed to promote skilled labor immi-

says/Separate-Interests/Puerto-Rico/, archived at <https://perma.cc/M8DV-PAMH> (last visited Sept. 8, 2017) (in 1917, Congress passed the Jones Act which granted citizenship to Puerto Ricans. This led to an increase in Puerto Rican migration).

⁴³¹ *An Act: To amend the Immigration and Nationality Act, and for other purposes*, PUB. L. 89-236, 89, 79 STAT. 911, 922.

⁴³² 8 U.S.C. 1152(a)(1).

⁴³³ For a further discussion of admission of refugees and asylum seekers during this time period, see Linda T. Cox, *When Is There Going to Be a United States Law Governing the Admission of Refugee and Asylum Seekers*, 2 DICK. INT'L L. ANN. 205, 219 (1983). See also The United States Refugee Act of 1980, PUB. L. 96-212, 94 STAT. 102.

⁴³⁴ Muzaffar Chishti, et al, *Fifty Years On, the 1965 Immigration and Nationality Act Continues to Reshape the United States*, Migration Policy Institute, October 15, 2015, at <https://www.migrationpolicy.org/article/fifty-years-1965-immigration-and-nationality-act-continues-reshape-united-states>.

⁴³⁵ Immigration Reform and Control Act of 1986, PUB. L. 99-603, 100 STAT. 3359.

⁴³⁶ *Id.*

⁴³⁷ See Campbell Gibson & Kay Jung, *Historical Census Statistics on the Foreign-born population of the United States: 1850 to 2000*, 1 U.S. Census Bureau (2006). See also Jorge del Pinal, *We the American. . .Hispanics*, U.S. Department of Commerce Economics and Statistics Administration Bureau of the Census, 6 (1993) (details the number of Latinx immigrants in the United States by 1990).

gration and family reunification.⁴³⁸ The legislation limited unskilled workers to 10,000 per year, however, it permitted 700,000 immigrants into the U.S. between 1992-1994, and 675,000 thereafter – 480,000 of which were family-based immigration visas. Under previous law, visas were limited to 500,000.⁴³⁹ The law was instrumental in creating employment and restricting family-based visas to close family members of those in the United States. It established the Temporary Protected Status that benefited a number of Salvadorian and Nicaraguan immigrants who were unable to return to their country as a result of extraordinary and temporary conditions.⁴⁴⁰ It also lifted knowledge of English as a testing requirement for naturalization of individuals with long-term status as legal residents. Importantly, it removed the classification of homosexuals as “sexual[ly] deviant” immigrants. Legal permanent residency for foreign laborers was expanded but temporary access for visiting scholars was restricted.⁴⁴¹

The Immigration Act of 1990 was the biggest change in immigration laws since 1965. From 1990 to 2000, the U.S. saw the largest rates of immigration in U.S. history – approximately 10-11 million new immigrants during the 10-year period. It facilitated legal immigration but strengthened the U.S. Border Patrol which resulted in a crackdown on undocumented entries. The increase in the number of immigrants was primarily felt in states such as California, Florida and New York.⁴⁴² Concern about increasing immigration led to public protests and even public referenda against undocumented immigrants.⁴⁴³ The pushback from states was clearly heard in D.C. Congress responded by passing a new law that instilled stronger punitive measures for those who immigrated without authorization.

⁴³⁸ The Immigration Act of 1990, PUB.L. 101-649, 101, 104 STAT. 4978, 5089.

⁴³⁹ *Id.*

⁴⁴⁰ *Id.* See also LARRY M. EIG, THE NICARAGUAN ADJUSTMENT AND CENTRAL AMERICAN RELIEF ACT: HARDSHIP RELIEF AND LONG-TERM ILLEGAL ALIENS, preface (1998) (the 1980s–1990s were tumultuous years in Central America. Civil strife plagued the region, especially in Nicaragua, El Salvador, and Guatemala. This resulted was a wave of refugees leaving their war-torn countries for the United States. Due to court settlements and review policies, the Government allowed these Central Americans to reside and work in the U.S. for over a decade with TPS. Through enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 the Government established the Nicaraguan Adjustment and Central American Relief Act (NACARA) (title II of PUB. L. 105–100). Under this law, Nicaraguans, Cubans, Salvadorans, Guatemalans (along with certain Warsaw Pact natives) were eligible for relief and many were able to adjust to permanent resident status).

⁴⁴¹ *Id.*

⁴⁴² Steven A. Camarota, *Immigrants in the United States – 2000: A Snapshot of America’s Foreign-Born Population*, CIS (Jan. 1, 2011), <https://cis.org/Immigrants-United-States-2000>, archived at <https://perma.cc/WT9E-QHHT>.

⁴⁴³ One way that states reacted to the increase of immigrants was to restrict admission or financial aid to undocumented students. While 19 states now allow undocumented students to pay in-state tuition, the others charge undocumented students out of state tuition or prohibit enrollment altogether. Educators for Fair Consideration, *The Case for Undocumented Students in Higher Education*, E4FC, http://www.e4fc.org/images/E4FC_TheCase.pdf, archived at <https://perma.cc/28JE-KPCQ>.

The Illegal Immigration Reform & Immigrant Responsibility Act (IIRIRA) of 1996 was signed into law.⁴⁴⁴ This legislation made deportation a remedy for minor law offenses, not punishable by jail time.⁴⁴⁵ The law provided for retroactive application until the practice was ruled unconstitutional by a 2001 U.S. Supreme Court decision.⁴⁴⁶ While the Supreme Court decision relieved some deportation orders that existed for crimes committed prior to 1996, but the law still offers the basis for making convictions of crimes that were not deportable offenses at the time, now deportable offenses. In fact, the majority of federal criminal prosecutions are now related to some illegal entry into the U.S. or other immigration-related offense.⁴⁴⁷ The 1996 law gave the U.S. Attorney General the ability to enter into Memorandum of Understanding with local law enforcement departments to perform immigration law enforcement that was usually reserved for federal agents. This new provision, 287(g), did not deputize local law enforcement but nonetheless anti-immigrant sentiment facilitated the use of this provision to expand immigration law enforcement to municipalities and states such as Alabama, Arizona, California, Florida, North Carolina, and Texas – all states with growing Latinx populations.⁴⁴⁸ The criminalization of immigrants was further exacerbated by the September 11, 2001 terrorist attacks on U.S. soil.⁴⁴⁹ Congress responded to concerns about domestic terrorist attacks by passing the USA Patriot Act.⁴⁵⁰ In the name of national security, anti-immi-

⁴⁴⁴ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, PUB. L. NO. 104–208, 110 STAT 3009–546, 8 U.S.C. 1101.

⁴⁴⁵ *Id.* (the law states that if an individual remains in the U.S. illegally between 180-364 days, they must leave for three years before a pardon can be issued by the United States government. If the individual is in the United States without authorization for one year or more, then they must stay out for 10 years unless they obtain a waiver. If someone who left the US returns before the set penalty time, they can no longer apply for a waiver for ten years).

⁴⁴⁶ *INS v. St. Cyr*, 533 U.S. 289 (2001).

⁴⁴⁷ The data on federal criminal prosecutions for fiscal year 2016 showed that 52 percent of all federal prosecutions were related to illegal entry, re-entry, and other immigration-related offenses. See TracReports, Inc., *Immigration Now 52 Percent of All Federal Criminal Prosecutions*, <http://trac.syr.edu/tracreports/crim/446/>

⁴⁴⁸ For more on who has implemented 287(g) agreements, see U.S. Immigration and Customs Enforcement, Delegation of Immigration Authority 287(g) Immigration and Nationality Act, <https://www.ice.gov/287g>.

⁴⁴⁹ Serge Schmemmann, *U.S. ATTACKED; President Vows to Exact Punishment for 'Evil'*, N.Y. TIMES, (Sept. 12, 2001), <http://www.nytimes.com/packages/html/nyregion/9-11imagemap.html>, archived at <https://perma.cc/2N2Q-F74B>. See also Editorial, *September 11, 2001*, WASH. POST (Sept. 12, 2001), https://www.washingtonpost.com/opinions/september-11-2001/2011/09/09/gIQApSwuFK_story.html?utm_term=.9d4825d65146, archived at <https://perma.cc/VP85-TTdz>. See also James Barron, *Thousands Feared Dead as World Trade Center is Toppled*, N.Y. TIMES, (Sept. 11, 2001), <http://www.nytimes.com/2001/09/11/national/thousands-feared-dead-as-world-trade-center-is-toppled.html>, archived at <https://perma.cc/F9QT-QVGA>.

⁴⁵⁰ PUB. L. NO. 107–56, 115 STAT. 272. This legislation amended the Immigration and Nationality Act once more to expand those who were not eligible for admission or who are deportable as a result of terrorist activities. See INA § 212(3)(B) (grounds for inadmissibility on terrorism-related grounds include, but are not limited to, the following: Engaged in ‘terrorist activity;’ engaged or likely to engage in terrorist activity after entry; incited terrorist activity with intent to cause serious bodily harm or death; are representatives or current members of a terrorist organization; endorsed or espoused terrorist activity; received military-type training

grant rhetoric began to manifest itself along the U.S.-Mexico border under the Minutemen organization.⁴⁵¹ Private individuals began to patrol, report and even detain unauthorized border crossings in 2004.⁴⁵² As a result, between 1998 and 2016, there were an average of 365 annual deaths reported in the Southwest Border Section by the U.S. Border Patrol.⁴⁵³

Despite these tragedies, Latinxs with economic need, safety concerns, and family relationships in the U.S. continued to immigrate without documentation. While it is estimated that undocumented immigration from Latin America fell by 710,000 from 2009 to 2015, the anti-immigrant climate, portrayed as national security concerns continued.⁴⁵⁴ In states with high immigrant populations that were undergoing significant demographic changes, such as Arizona, crackdowns on undocumented immigrants expanded to impose sanctions on employers who hired them, landlords who rented to them, and others who protected them.⁴⁵⁵ These laws led to racial profiling of Latinxs who, regardless of immigration status or citizenship, could be turned over to immigration officials if they failed to show proof of residency or license.⁴⁵⁶ Most recently, the Texas legislature passed a bill that

from or on behalf of a terrorist organization; or are spouses or children of anyone who has engaged in terrorist activity within the last five years [with certain exceptions]). *See also* Sahar F. Aziz, *Policing Terrorists in the Community*, HARV. NAT'L SEC. J. (2014) (the Muslim population is largely comprised of first- or second-generation immigrants. Counterterrorism law enforcement is not guided by empirical evidence which results in enforcement of Muslims who are religious, hold critical views of American domestic or foreign policy, or are unassimilated into the dominant Anglo-Judeo Christian-American culture. This had led to distrust between the Muslim immigrant community and the police.).

⁴⁵¹ Yoxall, *supra* note 415, at 531.

⁴⁵² *Id.* at 533.

⁴⁵³ *Southwest Border Deaths By Fiscal Year, (Oct. 1st through Sept. 30th) Southwest Border Deaths By Fiscal Year (Oct. 1st through Sept. 30th)*, U.S. BORDER PATROL, <https://www.cbp.gov/sites/default/files/assets/documents/2016-Oct/BP%20Southwest%20Border%20Sector%20Deaths%20FY1998%20-%20FY2016.pdf>, archived at <https://perma.cc/7BWE-RW4J> (last visited Sept. 8, 2017). *See also* Maria Jimenez, *Humanitarian Crisis: Migrant Deaths at the U.S. – Mexico Border*, ACLU (Oct. 1, 2009), https://www.aclu.org/files/pdfs/immigrants/humanitarian_crisisreport.pdf, archived at <https://perma.cc/TXL3-LM4W>. *See also* GAO-06-770, *Illegal Immigration: Border Crossing Deaths Have Doubled Since 1995; Border Patrol's Efforts to Prevent Deaths Have Not Been Fully Evaluated*, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, (Aug, 2006), <http://www.gao.gov/new.items/d06770.pdf>, archived at <https://perma.cc/6UDJ-VW9M>. *See also* Edinburg Politics, TEXAS TO RECOGNIZE THOUSANDS OF SOUTH TEXAS DESCENDANTS OF MEXICAN AMERICANS MURDERED BY TEXAS RANGERS DURING MATANZA (MASSACRE) OF 1915 EDINBURG POLITICS (2017), <http://edinburgpolitics.com/2017/10/12/texas-descendants-of-mexican-murdered-rangers-matanza-massacre/>, archived at <https://perma.cc/UFB3-EZUY> (last visited Oct 19, 2017) (Texas recognizes the deaths of hundreds of Mexicans that lived along the U.S.-Mexico border who were murdered for being Mexican.).

⁴⁵⁴ Jeffrey S. Passel & D'Vera Cohn, *As Mexican share declined, U.S. unauthorized immigrant population fell in 2015 below recession level*, PEW RESEARCH CENTER, (2017), <http://www.pewresearch.org/fact-tank/2017/04/25/as-mexican-share-declined-u-s-unauthorized-immigrant-population-fell-in-2015-below-recession-level/>, archived at <https://perma.cc/P3XN-DLPE>.

⁴⁵⁵ *See* Support our Law Enforcement and Safe Neighborhoods Act, ARIZ. S. B. 1070, *See also* Save our State, CAL. PROPOSITION 187.

⁴⁵⁶ For a discussion of the intersection of immigration and criminal laws, *see* Raquel Aldana and Sylvia R. Lazos Vargas, *Aliens in Our Midst Post-9/11: Legislating Outsideness within the Borders*, 38 U.C. DAVIS L. REV. 1683 (2004-2005) and Anthony Mucchetti, *Driv-*

prohibits local governments and law enforcement agencies to limit their ability to serve as agents of the federal government for purposes of immigration enforcement.⁴⁵⁷ The law includes penalties for local law enforcement that do not cooperate with federal immigration authorities.⁴⁵⁸ While part of the law is currently being litigated, it serves as another example of how state laws increase the power of local law enforcement to enforce immigration law.⁴⁵⁹

An important group of Latinx immigrants are the children of undocumented immigrants known as DREAMers. DREAMers are individuals who were brought into the U.S. by their parents when they were children. They either arrived without authority or overstayed visas and are now in the country without permission. This group is called the DREAMers because they support the Development, Relief, and Education for Alien Minors (DREAM) Act—proposed federal legislation that outlines a process by which undocumented immigrants, who entered the U.S. illegally as children, can obtain legal status through permanent residency.⁴⁶⁰ The DREAM Act was introduced in 2001 in a variety of forms but has not obtained sufficient support by those who see such an act as rewarding and incentivizing illegal immigration.⁴⁶¹ DREAM Act supporters argue that the bill provides individual opportunity and societal benefits to minors who entered or remained in the United States illegally as a result of their parents' decisions, not their own. Although Congress has repeatedly failed to pass the DREAM Act, the Obama Administration responded to critiques by immigrant rights advocates and established the Deferred Action of Childhood Arrivals (DACA) policy in June 2012.⁴⁶²

ing While Brown: A Proposal for Ending Racial Profiling in Emerging Latino Communities, 8 HARV. LATINO L. REV. 1 (2005).

⁴⁵⁷ Patrick Svitek, Texas Gov. Abbot Signs 'Sanctuary Cities' Bill Into Law, *The Texas Tribune*, May 7, 2017

⁴⁵⁸ *Id.*

⁴⁵⁹ Julian Aguilar, Judge Temporarily Blocks Immigration Enforcement Law, August 30, 2017, <https://www.texastribune.org/2017/08/30/judge-temporarily-blocks-sanctuary-cities-law/>.

⁴⁶⁰ Development Relief, and Education for Alien Minors Act, H.R. 1918, 107th Cong. (2001).

⁴⁶¹ The Immigrant Children's Educational Advancement and Dropout Prevention Act of 2001, H.R. 1582, 107th Cong. (2001) was introduced by Luis Gutierrez which allowed for undocumented students protection from deportation and had an eventual path to residency. It had 34 cosponsors. *See also* Student Adjustment Act of 2001, H.R. 1918, 107th Cong. (2001) (introduced by Chris Cannon which lowered the age eligibility to 21 years of age and had 62 cosponsors). *See also* DREAM Act, S. 2205, 110th Cong. (2007) (introduced by Richard Durbin, Charles Hagel, and Richard Lugar). *See also* DREAM Act, S. 3827, 111th Cong. (2010) (Introduced by Richard Durbin and Richard Lugar).

⁴⁶² Memorandum from Janet Napolitano, Sec'y of Homeland Sec. to David v. Aguilar, Acting Comm'r, U.S. Customs and Border Enforcement; Alejandro Mayorkas, Dir., U.S. Citizenship and Immigration Serv.; and John Morton, Dir., IMMIGRATION AND CUSTOMS ENFORCEMENT (June 15, 2012), <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>, archived at <https://perma.cc/YM7M-MKSH>. *See also* Robert J. Delahunty & John C. Yoo, *Dream on: The Obama Administration's Nonenforcement of Immigration Laws, the Dream Act, and the Take Care Clause*, 91 TEX. L. REV. 781, 856 (2013) (explains how despite its claims to the contrary, the Administration's

DACA provided DREAMers with renewable two-years of deferred action from deportation and permission to work.⁴⁶³ While it was estimated that approximately 1.7 million individuals were eligible to apply for DACA, in August 2012, only 741,546 work permits were issued by June 2016.⁴⁶⁴ DACA permitted DREAMers to work, attend college, and get drivers licenses. These activities permit DREAMers to come out of the shadows and partake in American life. However, on September 5, 2017, Attorney General Jeff Sessions announced the immediate suspension of DACA.⁴⁶⁵ The Trump Administration stated it would honor unexpired DACA authorizations and permit renewals of those whose DACA expired on or before March 5, 2018.⁴⁶⁶ The decision was accompanied by a request for a more permanent

non-enforcement decision with regard to DREAMers is an unexcused breach of executive duty under the Take Care Clause of the U.S. Constitution).

⁴⁶³ See Marisa Bono, *When A Rose Is Not a Rose: DACA, the Dream Act, and the Need for More Comprehensive Immigration Reform*, 40 T. MARSHALL L. REV. 193, 219 (2015) (explains that while DACA provided some temporary relief, it has created substantial uncertainty for DREAMers and the public at large, and threatened the objectives of a cohesive federal immigration system). See also Shoba Sivaprasad Wadhia, *In Defense of DACA, Deferred Action, and the Dream Act*, 91 TEX. L. REV. 59 (2013) (explains that proper authority was exercised to implement DACA).

⁴⁶⁴ *Number of I-821D, Consideration of Deferred Action for Childhood Arrivals by Fiscal Year, Quarter, Intake, Biometrics and Case Status 2012-2016*, U.S. Citizenship and Immigration Services, 2016.

⁴⁶⁵ Memorandum from Elaine C. Duke, Sec'y of Homeland Sec to James W. McCament, Dir., U.S. Citizenship and Immigration Serv.; Thomas D. Homan, Dir., Immigration and Customs Enforcement; Kevin K. McAleenan, Dir., U.S. Customs and Border Enforcement; Joseph B. Maher, Gen Couns.; Ambassador James D. Nealon, Assistant Sec'y, Int'l Engagement; Julie M. Kirchner, Citizenship and Immigration Services Ombudsman (Sept. 5, 2017), <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>, archived at <https://perma.cc/68MM-6QG6>.

⁴⁶⁶ *Id.* The announcement gave current DACA recipients whose permissions would expire by March 5, 2018, an opportunity to renew their DACA status so long as they filed a renewal request by October 5, 2017. Cf. Liz Robbins, *Post Offices Fails to Deliver on Time, and DACA Applications Get Rejected*, N.Y. TIMES, (Nov. 10, 2017), <https://www.nytimes.com/2017/11/10/nyregion/post-office-mail-delays-daca-applications.html?mtref=www.google.com&gwh=46374F3A80E682F849BA10D5C2A65BB0&gwt=pay>, archived at <https://perma.cc/BB5D-FVCP>.

solution by Congress.⁴⁶⁷ Federal courts have blocked the administration's decision pending a legal determination of the program's validity.⁴⁶⁸

These DREAMers have been at the forefront of leading the national conversation about how immigrants represent the future economic viability of this country. Part of the advocacy necessary to garner support for this legislation required that some DREAMers expose their immigration status and become models that supporters could point to as investments in our country's future.⁴⁶⁹ Some DREAMers also became more vocal advocates for themselves and their families when the number of deportations under the Obama Administration reached new heights.⁴⁷⁰ DREAMers have commanded a great deal of public support but have been unsuccessful in securing permanent amnesty for themselves or their parents. While DREAMers

⁴⁶⁷ In November 2014, the Obama Administration attempted to expand DACA by announcing the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA)—a program to grant deferred action for deportation to undocumented immigrants who have U.S. citizen or permanent legal resident children and who have lived in the U.S. since 2010. See Memorandum from Jeh Charles Johnson, Sec'y of Homeland Sec. to Leon Rodriguez, Dir., U.S. Citizenship and Immigration Serv.; and Thomas S. Winkowski, Dir., Immigration and Customs Enforcement; R. Gil Kerlikowske, ACTING COMM'R, U.S. CUSTOMS AND BORDER ENFORCEMENT (June 15, 2012), <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>, archived at <https://perma.cc/3M3B-KGRD>. Before DAPA could take effect, 26 states with Republican governors sued the Obama Administration in *Texas v. United States*, 86 F. Supp. 3d 591 (S.D. Tex. 2015), *aff'd*, 809 F.3d 134 (5th Cir. 2015). The states argued that DAPA violates federal statutes and the Constitution. The case reached the U.S. Supreme Court and resulted in a deadlock. *U.S. v. Texas*, 136 S. Ct. 2271 (2016) (per curiam). As a result, the DAPA injunction survived until June 15, 2017 when President Donald Trump announced its rescission. See Aria Bendix, *Trump Rolls Back DAPA*, THE ATLANTIC, (June 16, 2017), <https://www.theatlantic.com/news/archive/2017/06/trump-rolls-back-dapa-program/530571/>, archived at <https://perma.cc/UBZ6-LMSS>; and Tal Kopan, *Trump administration reverses DAPA in 'house cleaning'*, CNN, (June 16, 2017 6:37 PM ET) <http://www.cnn.com/2017/06/16/politics/dhs-scraps-dapa-keeps-daca-deferred-action/index.html>, archived at <https://perma.cc/5E57-W59S>.

⁴⁶⁸ Maria Sacchetti, *Federal judge gives Respite to 'Dreamers', says DACA can't end while lawsuit is pending*, WASH. POST (Jan. 10, 2018), https://www.washingtonpost.com/local/immigration/federal-judge-says-daca-cant-end-while-lawsuit-is-pending/2018/01/09/715745a8-f5ba-11e7-a9e3-ab18ce41436a_story.html?utm_term=.b32f4cb547ff, archived at <https://perma.cc/6B98-RL8Q>; see also Matt Stevens, *DACA Participants Can Again Apply for Renewal, Immigration Agency Says*, N.Y. TIMES (Jan. 14, 2018), <https://www.nytimes.com/2018/01/14/us/politics/daca-renewals-requests.html>, archived at <https://perma.cc/55NL-ADKT>; and Alan Feuer, *Second Federal Judge Issues Injunction to Keep DACA in Place*, N.Y. TIMES (Feb. 13, 2018), <https://www.nytimes.com/2018/02/13/nyregion/daca-dreamers-injunction-trump.html>, archived at <https://perma.cc/K45M-RJBC>.

⁴⁶⁹ Nick Valencia & Ray Sanchez & Jaide Timm-Garcia, *Undocumented Immigrants Come Out of the Shadows*, CNN, (Mar. 10, 2017), <http://www.cnn.com/2017/03/10/us/undocumented-immigrants-out-of-shadows/index.html>, archived at <https://perma.cc/LD6U-THPR>. See also Brian Latimer, *Yale-Bound Valedictorian Comes Out as Undocumented in Emotional Speech*, NBC NEWS (Jun. 9, 2016), <https://www.nbcnews.com/news/latino/yale-bound-valedictorian-comes-out-undocumented-emotional-speech-n589191>, archived at <https://perma.cc/Z94W-RAHY>.

⁴⁷⁰ Muzaffar Chishti et al., *The Obama Record on Deportations: Deportee in Chief or Not?*, MIGRATION POLICY INSTITUTE, (Jan. 26, 2017), <http://www.migrationpolicy.org/article/obama-record-deportations-deportee-chief-or-not>, archived at <https://perma.cc/33P9-6WM6>.

are not just of Latinx origin, they account for at least 76 percent of the population that is eligible to obtain relief under DACA.⁴⁷¹

IV. THE NETWORK FOR JUSTICE

The Network for Justice seeks to transform Latinx civil rights through sustained networking and collaboration among community organizations, the practicing bar, scholars, and law schools. Our research found significant underrepresentation of Latinxs and their advocates in legal matters of great significance to their future prospects. We believe there is an urgent need for an initiative that helps bridge the access to justice gap for Latinxs. A Network for Justice will help bring more legal information and services to Latinx communities that are underserved by the private bar, public interest organizations, government agencies, and law school clinics.

The idea for the Network for Justice was inspired by the role that Howard Law School played in producing and supporting lawyers who advanced law and policy to promote the integration and inclusion of African Americans. However, there is no equivalent of Howard Law School for Latinxs today. The Network for Justice, therefore, seeks to build on existing community assets such as interdisciplinary research programs, law school clinics, existing initiatives by legal services providers, leadership development programs, and innovative technology to address the growing legal needs the Latinx community more effectively.

The dramatic demographic shift in the nation's overall racial and ethnic composition is unparalleled in many ways, making full integration and inclusion of previously underrepresented groups more imperative than ever. Latinxs in particular are no longer a small or regionally concentrated population. Latinxs now reside in every state in our nation and, in some communities, comprise a majority of the population. Despite these significant population shifts, Latinxs are still largely invisible in public life and are substantially underrepresented in law, legal education, and leadership circles.

This lack of representation is significant because how and whether this community engages in our democracy will contribute to the definition of

⁴⁷¹ The Migration Policy Institute estimates that 76 percent of eligible youth who are eligible or will be eligible for Deferred Action for Childhood Arrivals (DACA) are Latinx. See Sarah Hooker & Michael Fix, *County Level View of DACA Population Finds Surprising Amount of Ethnic & Enrollment Diversity*, MIGRATION POLICY INSTITUTE, <http://www.migrationpolicy.org/news/county-level-view-daca-population-finds-surprising-amount-ethnic-enrollment-diversity>, archived at <https://perma.cc/LK6L-43SZ>. However, their 2016 data of this population by country of origin suggests that 82 percent are eligible for DACA. The percentage was calculated by adding all the populations from Mexico and other Latin American countries (including Brazil) and taking that number (1,576,000) as a fraction of the total 1,932,000 individuals who are eligible for DACA. See DACA-Eligible Populations and Application Rates by Country of Origin, MIGRATION POLICY INSTITUTE (2016), <http://www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles>, archived at <https://perma.cc/5EAJ-SYNG>.

justice in the United States. Today, Latinxs lag behind in significant areas such as education and economic attainment. Nationwide, Latinos have experienced high levels of inequality. Approximately one-quarter of Latinxs live in poverty. Latinxs – documented and undocumented – are often the victims of employment discrimination and wage theft at higher rates than white laborers. Compounding this economic marginality are language barriers experienced by the 19 percent of the Latinx population that primarily speaks Spanish. Taken together, these obstacles often translate into a lack of access to law and justice.

This network will be especially crucial in reaching underserved populations in counties where the Latinx population has increased, but where there are fewer resources for the growing numbers of Latinxs. In the past 30 years, the curtailing of federal funding for the poor and restrictions on how those funds can be spent have greatly impacted all Latinxs, not just the large undocumented population that is restricted from receiving federally funded legal services. The current presidential administration threatens to severely underfund, or even eliminate, organizations such as the Legal Services Corporation, which has helped secure justice for millions of people, including low-income clients, seniors, and the disabled. As we look toward a future in which legal services are under attack, it is even more critical to develop a plan to assist underserved communities.

The lack of access to the legal system has serious consequences. For example, a 2014 report released by The Columbia Law School Human Rights Institute documents many of these inequalities, particularly as they related to immigration proceedings. As the report notes, “although federal law provides that defendants in immigration removal proceedings may not be denied the opportunity to be represented by retained counsel, there is no statute directing the federal government to pay for counsel in these cases. . . .”⁴⁷² Because Latinxs and other communities of color experience levels of poverty at higher rates than whites, this becomes especially burdensome for people and families who find themselves entrenched in an arcane and cumbersome immigration system.

These issues of legal representation are further complicated when we consider that in 2010 the Census reported that only 5 percent of all lawyers in the country are Latinx.⁴⁷³ As of 2014, only 7.9 percent of law school graduates nationwide are Latinxs. According to a Congressional Research Service Report, there are 66 Latinx U.S. District Court Judges (9.7 percent of total) and 14 Latinx U.S. Circuit Court Judges as of 2016 (7.8 percent of

⁴⁷² See COLUMBIA LAW SCHOOL HUMAN RIGHTS INSTITUTE & NORTHEASTERN UNIVERSITY SCHOOL OF LAW PROGRAM ON HUMAN RIGHTS AND THE GLOBAL ECONOMY, EQUAL ACCESS TO JUSTICE: ENSURING MEANINGFUL ACCESS TO COUNSEL IN CIVIL CASES, INCLUDING IMMIGRATION PROCEEDINGS (July 2014), http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/equal_access_to_justice_-_cerd_shadow_report.pdf, archived at <https://perma.cc/V3VL-TGDE>.

⁴⁷³ See Barry J. McMillion, *Number of Hispanic U.S. Circuit and District Court Judges: Overview and Analysis*, CRS OVERSIGHT (Oct. 15, 2015), <https://fas.org/sgp/crs/misc/IN10373.pdf>, archived at <https://perma.cc/SS6C-CSBG>.

total).⁴⁷⁴ There are many reasons for this lack of Latinx representation in the legal profession. A study of Latinx lawyers in the state of Washington, cites that 55 percent of Latino lawyers and 66.7 percent of Latina lawyers felt that they faced personal family obstacles in obtaining a law school education, with 23.3 percent of Latinx and 26.2 percent of Latina respondents noting that the family obstacles were “substantial.”⁴⁷⁵ This is in comparison to only 8.4 percent of non-Latinx male lawyers who felt that they faced substantial obstacles to pursuing a legal career. The data collected demonstrate that Latinxs face pressures that their white counterparts do not throughout the undergraduate and law school experience.

When it comes to Latinx elected officials, the numbers are equally disappointing. According to the 2017 National Association for Latino Elected Officials (NALEO), roughly 6,600 Latinxs hold elected office nationwide.⁴⁷⁶ NALEO reported that there were 321 Latinxs serving in the state legislatures of 38 states, with 77 serving in State Senates and 244 serving in state lower houses.⁴⁷⁷ Given that there are 7,383 state legislators in the United States, the overall percentage of Latinx legislators hovers at 5 percent.⁴⁷⁸ The low numbers in both the legal profession and elected office have profound implications for the broader Latinx population and the closing of the access to justice gap.

Although the Latinx population is significant, the level of engagement with these issues by scholars, lawyers, and leaders is low. Much of the anti-Latinx rhetoric that surrounded the 2017 Presidential campaign and the lack of structural responses to those attacks is just one indication of the lack of infrastructure to support laws, policies, and media stories that positively affect the Latinx community. Large percentages of Latinxs, whether immigrant, U.S. citizens, or not, continue to confront obstacles to fair wages, adequate housing, educational opportunities, and economic mobility.

While there are national organizations that support Latinx social service delivery, civil rights litigation, and policy, there is currently neither a state-based nor a national network that connects scholars, community organizations, law school clinics, and policy-makers to assist Latinos with law and policy matters. A commitment to service on behalf of lawyers, scholars, and educators will be even more crucial in the years to come, as working class individuals lose social safety nets, as LGBTQ communities see their civil liberties suppressed, and as immigrants are inhumanely detained and deported.

⁴⁷⁴ *Id.*

⁴⁷⁵ See MARIA CHAVEZ, EVERYDAY INJUSTICE: LATINO PROFESSIONALS AND RACISM 178 tbl.3.2 (2011).

⁴⁷⁶ See *Latino Elected Officials in America*, NALEO, http://www.naleo.org/at_a_glance, archived at <https://perma.cc/P5GY-FHZE> (last visited Mar. 9, 2018).

⁴⁷⁷ *Id.*

⁴⁷⁸ For a discussion on the specific characteristics that require Latinxs to be considered as a unique policy group, see Rachel F. Moran, *What if Latinos Really Mattered in the Public Policy Debate*, 85 CAL. L. REV. 1315 (1998).

The Network for Justice will also foster diversity, equity, and inclusion in the legal system by building a pipeline of leadership for the next generation of community organizers and legal minds who can provide services to the Latinx community in a sustained, culturally competent way. Our Network should encourage law schools to establish new programmatic offerings, which will elevate the quality of legal education and provide additional training opportunities in the public sector. We hope these opportunities will encourage young Latinxs to enter the legal profession in greater numbers. This advancement of knowledge and diversification of law students will produce a practicing bar that can better serve all clients, especially the Latinx population.

The legal needs and priorities of the Latinx community vary based on the specific demographic characteristics, assets and networks of each region. Regions with emerging Latinx communities who are primarily low-income and immigrant may not have as many community organizations, elected officials, or financial support to launch projects that engage different types of constituencies required to build support for their law and policy goals. For this reason, the Network for Justice is developing a pilot project to help identify principles that each community can use to guide its development of best practices that address their specific needs. This Network for Justice must be built through thoughtful community engagement strategies that incorporate the ideas and work of those whose rights it seeks to advance.

We envision this Network for Justice ultimately being national in scope; however, we selected California to launch a pilot project given that California is already experiencing the demographic shift we anticipate for the nation. Further, it has an organizational infrastructure that is unparalleled, and California already has a significant number of representatives in the state legislature who are advocating for Latino interests. A successful Network for Justice in California can serve as a model for other regional networks across the nation.

V. CONCLUSION

In this article, we have discussed the state of Latinx civil rights, providing a historical overview of the many injustices Latinxs have faced in the past and continue to face in the present. We provide an overview of the existing framework that sets the stage for network building as we work toward a more equitable future. We believe that our Network for Justice can provide one model for our communities to deploy in assisting Latinxs in securing their civil and legal rights. This is a network that seeks to draw from existing resources and does not intend to replicate work that has already been courageously accomplished by Latinx civil rights leaders and organizations throughout the decades. This model draws first and foremost from the existing community resources, recognizing that the foundational core of such a network should rest in the hands of Latinxs themselves.

Accomplishing real legal change will therefore require more than discussing and theorizing on the issues. It requires a methodological intervention that takes into consideration regional differences, divergent stakeholder priorities, and an acknowledgment that any model must draw first and foremost from the existing community resources. In proposing a methodological approach to networking for justice, we recognize that the necessity of community engagement in setting the priorities for regional networks. A follow up article will engage with network, community engagement and other relevant theories that help us identify best practices to garner regional engagement in the network. We believe that constructing a methodology that Latinx community can consider when developing their priorities will help bring positive change for law and policy initiatives that impact Latinx in the coming generations.