

Testimony of

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September 5, 2007

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"The 50th Anniversary of the Civil Rights Act of 1957 and its Continuing Importance"
United States Senate Committee on the Judiciary
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Chairman Leahy, Members of the Committee, I am Peter Zamora, Washington, D.C. Regional Counsel for the Mexican American Legal Defense and Educational Fund (MALDEF). Founded in 1968, MALDEF is a national nonprofit legal organization that employs litigation, policy advocacy, and community education programs to protect and promote the civil rights of the Latino community.

I am pleased to join my esteemed colleagues in celebrating the fiftieth anniversary of the Civil Rights Act of 1957. The Civil Rights Act of 1957 remains as important today as it was fifty years ago, when it codified the intent of Congress that the federal government should play a central role in protecting the civil rights of all Americans. The Act is not a historical relic, but a catalyst for the active federal role in civil rights enforcement that continues to strengthen our democracy and our civic life. Now, as much as ever, we continue to rely upon federal civil rights protections authorized by the Civil Rights Act of 1957 as we strive to create a fair and equal nation in the 21st century.

I. THE CIVIL RIGHTS ACT OF 1957 AND THE ACTIVE FEDERAL ROLE IN CIVIL RIGHTS ENFORCEMENT

In his 1957 State of the Union address, President Dwight D. Eisenhower urged Congress to approve civil rights legislation that would move the nation closer to the goal of fair and equal treatment of all U.S. residents. Heeding this call, the United States Senate overcame political deadlock and filibuster to join the House of Representatives in passing the first federal civil rights legislation approved by Congress since 1875.

The Civil Rights Act of 1957 intended to ensure that all qualified citizens be allowed to vote without distinctions based on race or color, and it specifically prohibited interference with voting rights in any special, general, or primary election of federal officers.¹ To enforce of these provisions, the Act authorized the U.S. Attorney General to bring civil proceedings on behalf of individuals deprived of their voting rights.² It also authorized an additional Assistant Attorney General and empowered this position with the duty to initiate federal civil rights enforcement actions.³

The Civil Rights Act of 1957 ensured that the voting rights were no longer dependent upon actions brought by private individuals at their own expense, and possibly at the risk of physical and economic retaliation.⁴ Rather, Congress, after many decades of inaction, asserted an active federal role in ensuring that America lives up to the guarantees enshrined in our Constitution. In authorizing the creation of the Civil Rights Division of the Department of Justice, Congress provided key federal enforcement mechanisms that continue to play a central role in guaranteeing that all Americans may freely participate in U.S. civil society without fear of unlawful discrimination.

II. THE ONGOING NEED FOR AN ACTIVE FEDERAL ROLE IN CIVIL RIGHTS ENFORCEMENT

We currently live in a critical period for the U.S. Latino community, one in which civil rights are particularly at risk. Congress's failure to enact comprehensive immigration reform legislation has exacerbated an ongoing civil rights crisis that affects all Americans but falls especially hard upon the Latino community. Latinos, who comprise the largest and fastest-growing minority group in the nation, continue to require that the federal government fulfill the vision of the 1957 Civil Rights Act in moving our nation closer to fairness and equality.

In part because the 110th Congress has not approved comprehensive immigration reform at the federal level, states and localities have increasingly taken it upon themselves to enact laws intended to intimidate, destabilize, and displace undocumented immigrants. Localities including Hazelton, Pennsylvania; Farmer's Branch, Texas; and Prince William County, Virginia have recently approved laws that regulate immigration and limit the rights of and benefits available to immigrants. These local laws, which often violate federal law, may target undocumented immigrants, but they undermine the civil rights of all those who live in these communities, especially those who allegedly look or sound "foreign." Debate surrounding these ordinances is often characterized by heated rhetoric directed against the foreign born and those who speak foreign languages and fosters a hostile atmosphere that imperils civil rights and empowers anti-immigrant organizations and individuals.⁵ To an extent unprecedented in recent years, America's Latino population has become a focus of hateful and racist rhetoric and violence.⁶

As the nation's Latino population grows to a projected 24% of the nation's total population by 2050⁷, the increasing presence of Latino citizens in local communities across the nation, including communities that have not historically had a strong Latino presence, will result in pressing civil rights issues. We are rapidly becoming a society in which there will be no single ethnic or racial majority, but the potential for infringing upon the rights of any minority group will be ever present. For this reason, the strong federal role in civil rights enforcement made possible by the Civil Rights Act of 1957 remains as critical to the nation in the 21st century as it was in the 20th century.

III. SPECIFIC AREAS OF FEDERAL CIVIL RIGHTS ENFORCEMENT THAT ARE CRITICAL TO THE LATINO COMMUNITY IN THE 21ST CENTURY

The Civil Rights Division enforces anti-discrimination protections in myriad areas of American civic life, from voting and education to housing, employment, and the freedom to exercise religious beliefs. While each of these protections is relevant to the Latino community, I will emphasize select areas of Civil Rights Division activity that particularly affect the Latino population in the United States.

A. VOTING RIGHTS

For American democracy to function effectively, all eligible voters must be allowed to participate in U.S. elections. The Civil Rights Division's Voting Section is responsible for enforcing the Voting Rights Act of 1965, the National Voter Registration Act of 1993, the Help America Vote Act of 2002, and other key federal statutes designed to safeguard the right to vote of all citizens, including racial and language minorities. The Voting Section's vigorous enforcement of Section 2, Section 5, and Section 203 of the Voting Rights Act are essential in ensuring that Latino voters may fully and equally participate in the political process and elect their candidates of choice.

Recent election-related discrimination against Latinos demonstrates the ongoing need for an active Civil Rights Division that is committed to protecting minority voters' ability to elect their candidates of choice.

In the weeks leading up to the November 7 elections, a major party congressional candidate's campaign in Orange County, California, mailed a letter to 14,000 registered Latino voters that was specifically designed to intimidate them and keep them from voting. The letter, written in Spanish, falsely stated that immigrants may not vote (when, in fact, eligible naturalized immigrants may freely participate in U.S. elections). The letter also declared that "there is no benefit to voting" in U.S. elections. MALDEF notified the Attorney General of this voter intimidation effort, and the Civil Rights Division began an investigation.

In another instance, in Tucson, Arizona, at the polls on November 7th, 2006, MALDEF attorneys witnessed anti-immigrant activists aggressively intimidating Latino voters in Tucson, Arizona. One of these activists wore dark clothing with a badge-like emblem and carried a handgun in a holster, giving the false impression that he was a law

enforcement official. The men intercepted Latino voters approaching the polling place, pushed a video camera in their faces and asked them to write down their personal information. MALDEF attorneys referred the matter to Civil Rights Division attorneys for investigation.

In addition, in 2006 the United States Supreme Court found that the 2003 Texas congressional redistricting plan impermissibly used race to discriminate against Latino voters.⁸ MALDEF successfully argued the case on behalf of Latino voters before the Supreme Court on March 1, 2006. In a majority opinion authored by Justice Anthony Kennedy, the Court held that the state's redistricting plan amounted to vote dilution in violation of Section 2 of the Voting Rights Act.⁹ A state or political subdivision violates Section 2 of the Voting Rights Act "if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election ... are not [as] equally open to ... members of [a racial group as they are to] other members of the electorate." The Supreme Court sided with Latino voters in finding that the State of Texas removed 100,000 Latino voters from a congressional district on the basis of race alone, thereby impermissibly preventing these voters from electing their candidate of choice to the U.S. House of Representatives.¹⁰

The Voting Section is currently engaged in significant enforcement efforts to protect access to the polls for language minority U.S. citizens. On October 13, 2006, the United States filed a complaint against the City of Philadelphia under Sections 203 and 208 of the Voting Rights Act for failure to establish an effective Spanish bilingual program and for denying limited-English proficient voters their assistor of choice.¹¹ A settlement agreement signed on April 26, 2007, requires, among other things, that the city establish an effective bilingual program, including bilingual interpreters and alternative-language information; allow limited-English proficient voters to utilize assistants of choice; provide alternative-language information; and undertake a program of voter list maintenance. On June 4, 2007, the U.S. District Court for the Eastern District of Pennsylvania entered an order retaining jurisdiction to enforce the terms of the settlement agreement until July 1, 2009.

Minority communities are often subject to discrimination as they gain political influence. Latino voters require a robust Voting Section that is fully staffed with well-qualified attorneys and experts who are committed to protecting minority voters' rights. While MALDEF frequently brings legal actions such as *LULAC v. Perry* on behalf of Latino voters, private individuals and organizations lack sufficient resources to guarantee free and fair elections for all voters nationwide. The growing Latino electorate must be able to depend upon the Civil Rights Division to protect the federal interest in nondiscriminatory elections and to work to ensure that no voter is wrongly disfranchised.

B. EDUCATIONAL OPPORTUNITIES

Many American children suffer in schools that are so unequal and inadequate that the programs and conditions violate the students' federal civil rights. Latino children, who comprise 1 in 5 U.S. public school students, often face significant barriers to fair and equal educational opportunities.¹² Because one-third of Latinos living in the United States are under the age of 18, the Latino community is especially concerned by the need for equality in American's public schools.¹³

Through the Educational Opportunities Section, the Civil Rights Division enforces federal statutes that prohibit discrimination in public elementary and secondary schools and public colleges and universities.¹⁴ The Section has litigated to prevent school districts from engaging in discriminatory practices involving decisions of school districts in reorganizing the structure of a district, new methods of assigning students to classes, construction of new schools, and modification of student attendance zones. For example, in *United States v. Board of Education of the City of Chicago*¹⁵, the Educational Opportunities Section filed and won several enforcement motions to ensure that minority students were provided with the opportunity to transfer to better-performing schools, desegregation programs were adequately funded, and English language learner students were given appropriate instructional services.¹⁶

The nation's 5.5 million English language learner (ELL) students¹⁷ often face particularly unequal and inadequate educational opportunities. Over the past fifteen years, ELL student enrollment has nearly doubled, and experts predict that one-quarter of the total U.S. public school population will be made up of ELLs by 2025.¹⁸ Over three-quarters of ELLs are Latino, and nearly half of K-12 Latino students are ELL.¹⁹ Nativeborn U.S. citizens predominate in the ELL population.²⁰

The Educational Opportunities Section enforces the Equal Educational Opportunities Act (EEOA), which requires state educational agencies (SEAs) and school districts to take action to overcome language barriers that impede English Language Learner (ELL) students from participating equally in school districts' educational programs.²¹ As part of its efforts to enforce the EEOA, the Section investigates complaints that SEAs or school districts are not providing adequate services to ELL students. In June 2003, the Section signed a settlement agreement with the Plainfield, New Jersey School District regarding its obligation to provide appropriate instruction and services to ELLs under the EEOA.²² The agreement includes requirements to identify and serve ELLs; to integrate ELLs with native speakers of English; to make libraries and media centers accessible to ELLs; and to provide academic support to ELLs enrolled in general education classes.²³ In another case, in October of 2003, the Section signed a settlement agreement with the School District of Bound Brook, New Jersey, addressing its ELL-related obligations under the EEOA.²⁴ The agreement requires the district to provide, among other things, timely assessment of all students with non-English speaking backgrounds; quality curricula and instruction for ELLs; adequate teacher training; and careful monitoring and reporting on the academic progress of ELLs who are currently enrolled in the program as well as those who have exited from the program.²⁵

As federal, state, and local governments respond to the recent Supreme Court decision regarding voluntary school integration plans in Seattle and Louisville, a robust Civil Rights Division must protect against school re-segregation. Given the importance of diversity in education and the trend toward increasingly segregated public schools, the Section must review local actions and play an active role in preventing unlawful discrimination. 56% of Latino students are currently educated in majority Latino public schools, so efforts to integrate our schools are crucial for this sector of our nation.²⁶ As the Latino community continues to grow and anti-immigrant sentiment increases in certain areas of the country, the Section's monitoring and enforcement activities must also increase.

C. EMPLOYMENT PROTECTIONS RELATING TO NATIONAL ORIGIN AND CITIZENSHIP STATUS

The vitality of the Civil Rights Division's Office of Special Counsel for Immigration-Related Unfair Employment Practices ("OSC") is also particularly important to the Latino community. OSC protects against employment discrimination based upon national origin and citizenship and immigration status, unfair documentary practices during the employment eligibility verification process, and retaliation. It also acts to prevent unlawful discrimination through outreach and provides advice and counsel (2005), p18 (finding that 76% of elementary school and 56% of secondary school ELLs are citizens, and that over one-half of the ELLs in public secondary schools are second- or third-generation citizens. on policy issues affecting the civil rights of U.S. citizens and immigrants.

Congress created OSC primarily to address discrimination against individuals who allegedly look or sound "foreign" or who are not U.S. citizens.²⁷ During fiscal year 2006, OSC received 346 charges of alleged discrimination and directly handled more than 7,567 calls on its worker and employer hotlines.²⁸ Specific allegations included unlawful citizen-only hiring policies; refusals to employ naturalized citizens, immigrants granted asylum, and lawful permanent residents because of discriminatory documentary practices; termination of documented immigrants because participating employers did not follow proper employment eligibility verification guidelines; and improper termination of work-authorized immigrants granted temporary protected status.²⁹

Latino workers are particularly vulnerable to this type of workplace discrimination because they are more likely to bear innate characteristics that correlate with national origin and perceived immigration status. Nearly 50% of OSC's settlements during FY 2005 involved Hispanic workers.³⁰ A robust Office of Special Counsel for Immigration-Related Unfair Employment Practices is essential to ensure that the vast majority of U.S. Latinos who are citizens or work-authorized are not ensnared in overbroad or discriminatory immigration-related employment actions.

For example, Latino workers are often singled out for greater scrutiny of their work documentation or required to produce work authorization documents that are not legally required for employment in the United States. In March 2006, for example, OSC entered into a settlement agreement with a national retail chain to resolve a charge filed by a lawfully present asylee. The charge alleged that the retailer chain committed document abuse during the employment eligibility verification process when it discharged the individual for failure to produce one specific document to verify her work authorization. Although the asylee produced other legally accepted documents, the employer rejected them. OSC's investigation revealed that three other noncitizens were discharged for similar reasons, and that the employer

required non-citizens to present specific types of documents to verify work eligibility while allowing citizens to present a variety of documents. Under the settlement agreement, the retail chain agreed to provide back pay ranging from \$2,100 to \$13,800 (totaling more than \$22,000) to the four wrongfully-terminated employees, to pay a civil penalty of \$14,000, and to injunctive relief, including the training of its personnel in proper employment eligibility verification procedures.³¹

As the Department of Homeland Security enacts a planned increase in the enforcement of U.S. employment eligibility guidelines, we expect for the number of immigration-related unfair employment practices such as those described above to increase significantly. Employers who are intimidated by increased federal immigration enforcement in the workplace are likely to single out workers who allegedly look or sound "foreign." Therefore, Civil Rights Division enforcement actions will increase in importance as a necessary counter to the effects of stepped-up federal immigration enforcement, and the operations of a well-qualified Civil Rights Division staff dedicated to this function will become increasingly important.

D. LANGUAGE ACCESS

Limited English proficiency (LEP) is a significant barrier to full participation in U.S. society. Civil Rights Division implementation and oversight of federal legal requirements relating to language access and its efforts to combat language-based discrimination are essential civil rights concerns for the Latino community. Because language is often closely correlated with race and national origin, it is frequently used as a proxy for race and national origin discrimination.

The Civil Rights Division maintains significant authority to protect language minority rights and benefits under Executive Order 13166, which requires all recipients of federal funds, including federal agencies and federally assisted programs and activities, to provide meaningful access to those with limited English proficiency (as required by Title VI of the Civil Rights Act of 1964 and its implementing regulations). Through its Coordination and Review Section, the Civil Rights Division is responsible for the implementation of these requirements through the provision of technical and legal assistance, training, interagency coordination, and regulatory, policy, and program reviews. Actions taken thus far by the Section include: (1) an active outreach program which regularly communicates with affected communities; (2) the creation of a Federal Interagency Working Group on limited English proficiency; and (3) the development of "Know Your Rights" materials describing civil rights protections for LEP individuals.³²

Spanish speakers constitute nearly 1 in 8 U.S. residents, as over 32.2 million U.S. residents ages 5 and older speak Spanish at home.³³ As these individuals, the vast majority of whom are U.S. citizens or legal residents, learn English, the federal government must protect and promote their civil rights in critical areas of civic life. As the Latino population continues to grow in the 21st century, language access is a civil rights issue that will increase in importance. The Civil Rights Division must maintain and expand its role in ensuring that English language learners may access vital federal and federally-funded programs and be free from language-based discrimination as they learn the English language skills necessary to fully integrate into U.S. society.

E. HATE CRIMES

The past several years have seen a growing number of violent assaults and attacks by white supremacists against Latinos, with crimes ranging from vandalism to brutal assaults and murders. ³⁴ In most cases the perpetrators did not know the victims, but targeted them solely because of their appearance.³⁵ In 2003, 7,489 hate crime incidents were reported to the FBI by 11,909 law enforcement agencies in 49 states and the District of Columbia; 3,844 of these crimes were motivated by racial bias, and 1,026 were motivated by ethnicity/national origin bias.³⁶

On April 22, 2006, for example, David Ritcheson, a Latino teenager from Spring, Texas (a suburb of Houston) was a victim of extreme bias-motivated violence based upon his Hispanic heritage. Ritcheson was beaten nearly to death by self-professed Skinheads, who cut him, burned him, poured bleach over him, and sodomized him with an outdoor umbrella pole while yelling anti-Hispanic slurs.³⁷ He was hospitalized for more than three months and endured 20-30 painful surgeries in the months following the attack.³⁸ Two men were convicted of aggravated sexual assault in the attack.³⁹

On April 17, 2007, Mr. Ritcheson displayed great courage in testifying before a Subcommittee of the U.S. House Judiciary Committee about his experience as a victim of a hate crime and his support of the Local Law Enforcement Hate Crimes Prevention Act. Apparently overwhelmed by the continuing effects of the vicious hate crime of which he was a victim, however, Mr. Ritcheson committed suicide on July 1, 2007.

The Criminal Section of the Civil Rights Division prosecutes incidents of bias-motivated violence, a function that continues to be a top priority for Latinos in the 21st century. The Division must prioritize the prosecution of hate crimes, especially in incidents in which local officials do not fully protect the civil rights of hate crimes victims. A Criminal Section that is fully staffed by experienced and well-qualified investigators and prosecutors is essential to ensuring that the tragedy of David Ritcheson is not repeated.

IV. CONCLUSION

The Civil Rights Act of 1957 codified important voter protections, but its most lasting effect may be that it fostered a tradition of strong federal civil rights enforcement. Congress has passed more comprehensive civil rights legislation since 1957, but the first civil rights act since Reconstruction is uniquely responsible for first engaging the federal government as the key guardian of Americans' core civil rights.

This anniversary is not merely as an occasion to reflect upon the great civil advancements of the 20th century, however, but a time to evaluate our nation's continuing civil rights needs. We must not rest on our laurels but respond effectively to civil rights enforcement trends in a nation that has changed very much since 1957, where discrimination may assume different forms than it did 50 years ago.

Increased tensions around local anti-immigrant ordinances and the integration of the growing Latino citizen population across the country make it a very real possibility that, without an active Civil Rights Division that enforces key anti-discrimination protections and prosecutes bias-motivated crime, we will see a continued increase in discrimination of all forms, up to and including extreme violence, against Latinos.

As minority populations increase in size and in proportion of the U.S. population, the proposition that every individual shall receive fair and equal treatment under the law must continue to be the principle under which we live. If the federal government does not meet its obligation to protect our civil rights in the 21st century, our nation will be much impoverished when we commemorate the 100th anniversary of the Civil Rights Act of 1957.

1 71 Stat. 637 (1957), 42 U.S.C. § 1971(b)(1964).

2 71 Stat. 637 (1957), 42 U.S.C. § 1971(c)-(d)(1964).

3 Id.

4 Christopher, Warren M., "The Constitutionality of the Voting Rights Act of 1965," 18 Stan. L. Rev. 1 (1965).

5 See, e.g., Extremists Declare 'Open Season' on Immigrants: Hispanics Target of Incitement and Violence, Washington, DC: Anti-Defamation League (2006) (available at: http://www.adl.org/main_Extremism/immigration_extremists.htm).

6 Id.

7 See <http://www.census.gov/Press-Release/www/releases/archives/population/001720.html>. Nearly 67 million people of Hispanic origin (who may be of any race) would be added to the nation's population between 2000 and 2050. The Hispanic population is projected to grow from 35.6 million to 102.6 million, an increase of 188 percent.

8 League of United Latin American Citizens, et al., v. Perry, et al., 538 U.S. 34 (2006).

9 42 U.S.C. §1973(b).

10 Id.

11 U.S. v. City of Philadelphia, Civ. Action No. 06-4592 (E.D. Pa. 2007).

12 Source: U.S. Department of Education. See <http://www.ncela.gwu.edu/expert/faq/08leps.html>.

13 "Minority Population Tops 100 Million," United States Census Bureau News May 17, 2007. See

<http://www.census.gov/Press-Release/www/releases/archives/population/010048.html>.

14 Specifically, the Section enforces Title IV of the Civil Rights Act of 1964, the Equal Educational Opportunities Act of 1974 (EEOA), and Title III of the Americans with Disabilities Act, as well as other statutes such as Title VI and Title IX of the Civil Rights Act, Section 504 of the Rehabilitation Act, the Individuals with Disabilities Education Act, and Title II of the Americans with Disabilities Act upon referral from other governmental agencies. The Section may intervene in private suits alleging violations of education-related anti-discrimination statutes and the Fourteenth Amendment to the Constitution. The Section also represents the Department of Education in lawsuits. See

<http://www.usdoj.gov/crt/edo/overview.htm>.

15 United States v. Board of Education of Chicago, Case No. 80 C 5124 (N.D. Ill. 2006).

16 See id.

17 Source: U.S. Department of Education. See www.ed.gov/admins/lead/account/lepfactsheet.html.

18 Source: U.S. Department of Education. See <http://www.ncela.gwu.edu/expert/faq/08leps.html>;

<http://www.ed.gov/nclb/methods/english/lepfactsheet.html>.

19 See <http://www.ncela.gwu.edu/expert/fastfaq/4.html>; see Lazarín, M., Improving Assessment and Accountability for English Language Learners in the No Child Left Behind Act, Washington, D.C.: National Council of La Raza (2006), pl.

20 See Capps, R., Fix, M., Murray, J., Ost, J., Passel, J., & Herwanto, S., The New Demography of America's Schools: Immigration and the No Child Left Behind Act, Washington, D.C.: The Urban Institute

21 20 U.S.C. § 1703(f).

22 <http://www.usdoj.gov/crt/edo/documents/bbrookag.pdf>.

23 Id.

24 <http://www.usdoj.gov/crt/edo/documents/plainfieldag.pdf>.

25 Id.

26 See Fry, R., The Changing Racial and Ethnic Composition of U.S. Public Schools, Washington, D.C.: Pew Hispanic Center (2007) (available at: <http://pewhispanic.org/files/reports/79.pdf>).

27 See <http://www.usdoj.gov/crt/activity.html#osc>.

28 Id.

29 Id.

30 Id.

31 Id.

32 See <http://www.usdoj.gov/crt/activity.html#coord>.

33 Source: 2005 American Community Survey. Among all those who speak Spanish at home, more than one-half say they also speak English very well.

34 See Extremists Declare 'Open Season' on Immigrants: Hispanics Target of Incitement and Violence, Washington, DC: Anti-Defamation League (2006) (available at: http://www.adl.org/main_Extremism/immigration_extremists.htm); see also "South Boston assault probed; stabbing may have been a hate crime," Boston Globe, April 6, 2007.

35 See http://www.adl.org/PresRele/Extremism_72/4904_12.htm.

36 See <http://miami.fbi.gov/hate.htm>.

37 See http://www.adl.org/Civil_Rights/Ritcheson.asp.

38 "Teen Survivor of Hate Crime Attack at Texas Party Jumps from Cruise Ship, Dies," Associated Press, July 2, 2007. See <http://www.foxnews.com/story/0,2933,287721,00.html>.

39 Id.