



Department of Justice

STATEMENT OF

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BEFORE THE

**COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

CONCERNING

**OVERSIGHT OF THE CIVIL RIGHTS DIVISION OF
THE DEPARTMENT OF JUSTICE**

PRESENTED

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**Statement of
Thomas E. Perez
Assistant Attorney General
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**Before the
Committee on the Judiciary
United States Senate**

**Concerning
Oversight of the Civil Rights Division of the Department of Justice**

**Presented
April 20, 2010**

Mr. Chairman and Members of the Committee, thank you for allowing me the opportunity to testify before you today about the great progress we are making in the Civil Rights Division, and about our continued vision for restoration and transformation.

This Administration has made clear its commitment to civil rights enforcement. In his State of the Union Address in February, President Obama recognized the importance of sustained efforts to advance civil rights, and he acknowledged the hard work of the Civil Rights Division, saying *“My administration has a Civil Rights Division that is once again prosecuting civil rights violations and employment discrimination.”*

In keeping with the President’s statement, the Department has made improving civil rights enforcement one of its high priority performance goals. I also am personally committed to the restoration and transformation of the Civil Rights Division, as is the Attorney General, whose support of the Division has been unwavering and complete.

By restoration and transformation, we do not mean to imply that we will return the Division to an earlier era. Rather, we are working to ensure it is prepared to tackle both existing and emerging challenges for civil rights in the 21st Century. That means enforcing all of the laws within our authority.

Perhaps most importantly, this involves assembling a team of committed, talented career attorneys and professional staff to carry out the Division’s critical work. Between 2003 and 2007, more than 70 percent of the Division’s attorneys left, many taking with them years of experience and expertise. In order to succeed in the restoration and transformation of the Division, we need to replenish our ranks, and we are fortunate that Congress has provided us with the resources to do so in the FY 2010 budget.

To ensure an effective, impartial and transparent process for rebuilding our ranks, one of our first priorities was to revamp our hiring processes to ensure that the very best candidates are selected. Those new policies are available to anyone on the Division's Web site. With new policies in place, we are in the process of working to fill the 102 new positions allocated in the President's FY 2010 budget. These critical new positions will ensure the Division can carry out robust enforcement of our nation's cherished civil rights laws.

At the same time that we work to bring additional, committed lawyers and professionals on board, we have been significantly expanding our enforcement activities, renewing our commitment to enforce all of the laws under the Division's jurisdiction fairly and aggressively.

Fair Housing and Fair Lending

As we grapple with the fallout from the nationwide housing crisis and the resulting wave of foreclosures, we must also be sure to address discriminatory practices that contributed to the crisis. Fair housing and fair lending enforcement are a top priority for the Division, and already we have seen progress. As of the end of March, the Division's Housing and Civil Enforcement Section had initiated 215 matters; filed 46 lawsuits, including 25 pattern or practice cases; and entered into 42 consent decrees under the new Administration.

In November, we announced the largest monetary settlement of rental-discrimination claims the Justice Department has ever obtained under the Fair Housing Act. The owners of numerous apartment buildings in Los Angeles agreed to pay \$2.7 million to settle allegations that they discriminated against African Americans and Hispanics, as well as families with children, preferring instead to rent units to Korean tenants.

Meanwhile, as part of the Administration's commitment to combating financial crime, we have increased efforts on the fair lending front, hiring a new Special Counsel for Fair Lending and creating a Fair Lending Unit in the Housing Section. During the first year of this Administration, the Housing Section initiated 38 lending discrimination matters, 29 of which were referrals from bank regulatory agencies. In March, we announced a settlement of more than \$6 million with two subsidiaries of AIG to resolve allegations of discrimination against African American borrowers by brokers with whom the subsidiaries contracted. The settlement marked the first time that the Department of Justice has held a lender accountable for failing to monitor its brokers to ensure that borrowers are not charged higher fees because of their race.

Hate Crimes and Criminal Enforcement

Regrettably, hate crimes continue to be a problem in communities across the nation. As a prosecutor for much of my early career, I saw firsthand how hate-fueled violence can damage communities. President Obama and Attorney General Holder have made the prosecution of hate crimes a top priority. Passage of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, provided critical new tools for these prosecutions, and we are working

to train attorneys and law enforcement officials in its enforcement. Already the Criminal Section has several open investigations under the new statute.

In the meantime, we have seen an increase in the prosecution of hate crimes cases under our existing authority. From the beginning of this Administration through the end of March 2010, the Criminal section filed 19 hate crime cases, charging 37 defendants.

For example, on December 10, 2009, a federal grand jury returned three indictments arising out of a fatal, racially-motivated beating and related police corruption in Shenandoah, Pennsylvania. According to the indictment, on July 12, 2008, several people were walking home from a local festival when they encountered Luis Ramirez, a 25-year-old Mexican immigrant. The defendants then attacked Ramirez in a public street by striking and kicking him while members of the group yelled racial slurs at him. Ramirez died two days later from his injuries. The three indictments include federal hate crime, obstruction of justice, conspiracy, official misconduct and extortion charges, arising from the fatal beating as well as the attempt by one of the local police officers to cover it up. These kinds of incidents and attempts to cover them up have no place in this country in 2010, and we are committed to aggressive enforcement.

In addition to its work on hate crimes, the Criminal Section has continued robust enforcement in its other areas, law enforcement misconduct and human trafficking. In recent months we have had a series of announcements related to the investigation of police officers who were involved in the shooting of unarmed civilians in New Orleans in the days following Hurricane Katrina. The incident on the Danziger Bridge, which occurred on September 4, 2005, involved one shooting on the east side of the bridge that resulted in the death of one civilian and the wounding of four others, and a second shooting on the west side that resulted in the death of Ronald Madison, a 40-year-old man who had severe disabilities. Ronald Madison's brother, Lance, was arrested on eight counts of attempting to kill police officers, but he was later released without indictment. The police maintained that they fired at the civilians in self-defense, after the civilians fired at police, but there was no evidence ever found to support the claim that any of the civilians were armed. To date, three New Orleans Police officers have pleaded guilty to federal charges related to a cover-up of the shooting incident and admitted that the shootings were unjustified.

We also continue aggressive enforcement of human trafficking laws, which are a high priority for the Department. For example, in February, a federal jury convicted an Arlington, Texas, husband and wife of engaging in a nine-year scheme to compel the labor of a Nigerian victim as their domestic servant. The couple lured a widowed Nigerian mother of six to the United States to be their domestic servant by falsely promising a salary and support for her children, who she was struggling to support. The defendants procured fraudulent immigration documents, confiscated the victim's documents, harbored her in their home, compelled her to work long hours with no days off for little or no pay, used a scheme to isolate her and restrict her communications, withheld her documents and pay, and refused her requests to return home or be paid. The defendants also failed to provide support for the victim's six children in Nigeria,

limited and monitored contact with her family in Nigeria, isolated her from normal society in the United States, and refused to allow her to regularly attend church.

In another recent trafficking case, Maryland man was convicted on charges related to a sex trafficking operation involving minors. The defendant, who used drugs to coerce underage girls to have sex with clients, faces up to life in prison and potential fines in excess of \$1 million.

Equal Employment Opportunity

After a significant decline in the number of employment discrimination cases brought in the last Administration, our vigorous enforcement on this front has been especially important. In fact, the Division filed 29 employment-related lawsuits in the Administration's first year, the largest number ever filed by the Division in a single year. Of these 29 new lawsuits, 19 were brought under the Uniformed Services Employment and Reemployment Rights Act, and 10 under Title VII. The 19 USERRA lawsuits filed since the beginning of the new Administration exceed the 16 filed during the previous three years combined.

The Division has also been working to reinvigorate its Section 707 pattern or practice enforcement program, establishing a targeting initiative that employs a systematic approach to identify potential cases. As a result, the Division has more than a dozen active pattern or practice investigations. For example, in New Jersey, the Division is challenging examinations for promotion to police sergeant, which we believe have had a disparate impact upon both African Americans and Hispanics. These promotional exams are used by all of the municipalities in the state that are part of the civil service system.

In July 2009, the Division obtained a highly significant victory in *United States v. City of New York*, when the District Court found that New York City's use of two written examinations to hire firefighters resulted in an unlawful disparate impact on African-American and Latino applicants, and granted summary judgment with respect to liability in favor of the United States and the Vulcan Society, Inc., an organization of African-American firefighters. This victory paved the way for the Court's January 2010 order that calls for remedial relief for African-American and Latino victims stemming from the City's use of the two examinations (including priority hiring relief for approximately 293 of such victims), as well as the implementation of new, lawful hiring practices.

Also in the employment context, in addition to work under Title VII and USERRA, the Division's Office of Special Counsel for Immigration-Related Unfair Employment Practices is responsible for enforcing the non-discrimination provision of the Immigration and Nationality Act. The Office carries out its mission through investigations based on charges filed by workers, as well as through telephone interventions, technical assistance, and outreach to both workers and employers. Last month, the Division signed a Memorandum of Understanding with U.S. Citizenship and Immigration Services to share information regarding possible discriminatory use of E-Verify.

Moreover, we are participating in robust interagency efforts to strengthen the government's ability to enforce the anti-discrimination laws. For example, the Division has been a key member of the President's National Equal Pay Enforcement Task Force, which is charged with recommending improvements in the government's enforcement of laws banning pay discrimination. Along with the Equal Employment Opportunity Commission, the Department of Labor's Office of Federal Contract Compliance Programs, the Office of Personnel Management, and the White House, we have made significant progress in identifying new initiatives that the government can take to reach the elusive promise of equal pay for equal work. This is particularly appropriate to note now, as April 20 marks Equal Pay Day, which has been recognized as the date each year on which women's wages finally catch up to the wages earned by their male counterparts the preceding year.

Disability Rights

The Division has made considerable progress in the protection of rights for individuals with disabilities. The Disability Rights Section in the first year of the Administration filed 12 lawsuits and reached 39 settlement agreements. This work includes 14 new agreements under Project Civic Access, which allow the Division to work cooperatively with local governments to ensure greater access to civic programs and services for individuals with disabilities.

In January, the Division entered into a consent decree with the owner and operator of an RV resort in Silverhill, Alabama. The Division's complaint alleged that the resort, upon learning that a guest family's two-year-old child has HIV, banned the family from using the common areas, such as the swimming pool and showers. The child's parents had planned a month-long stay at the family-themed RV resort while the father commuted to nearby Mobile, Alabama, for ongoing cancer treatment. After the resort denied them full use of the facilities, the family left early the next morning. Under the terms of the consent decree, the company that owns the resort will establish policies, procedures, and training practices to ensure that patrons and their families are not discriminated against on the basis of disability. The company will also pay a \$10,000 civil penalty to the United States and \$36,000 in damages to the affected family.

Another recent highlight was the announcement of settlement agreements with several institutions of higher education regarding the use of inaccessible electronic book readers, such as the Kindle DX. The universities agreed not to purchase, recommend, or promote use of any dedicated electronic book reader, unless the devices are fully accessible to students who are blind and have low vision. The universities agree that if they use dedicated electronic book readers, they will ensure that students with vision disabilities are able to access and acquire the same materials and information, engage in the same interactions, and enjoy the same services as sighted students with substantially equivalent ease of use.

Meanwhile, the Administration's first year proved to be a landmark for federal enforcement of the Supreme Court decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), a ruling requiring states to eliminate unnecessary segregation of persons with disabilities and provide those individuals with services in the most integrated setting appropriate. The *Olmstead* decision

has often been called the *Brown v. Board of Education* of the disability rights movement, and in the last year the Department filed amicus briefs in five separate cases in Connecticut, Virginia, North Carolina, Illinois, and Florida, and intervened in a case in New York.

Civil Rights of Institutionalized Persons

In the critical area of protecting the civil rights of individuals confined in state and locally run institutions, the Division has been actively engaged in investigations, litigation, and compliance activities. In September, the Division filed suit under the Civil Rights of Institutionalized Persons Act (CRIPA) against Erie County, New York, regarding unconstitutional conditions at two correctional facilities. Our suit addresses concerns regarding suicide prevention and mental health care, protection from harm, medical care and environmental health and safety.

The Division also recently filed a motion for immediate relief in *United States v. Georgia* to protect individuals confined in the state's psychiatric hospitals from harm. Despite the agreement reached with the state last year, for which we await approval from the court, the hospitals continue to be dangerous and hundreds of individuals who could and should be served in the community remain institutionalized and continue to be exposed to dangerous conditions.

Discriminatory Policing

While we recognize that law enforcement officers put their lives on the line to protect public safety every day and take seriously their oaths to uphold the Constitution, we are committed to holding law enforcement accountable when violations occur. Since the beginning of the Administration, the Division has opened four investigations to evaluate whether there is evidence of a pattern or practice of discriminatory policing in violation of section 14141 of the Violent Crime Control and Law Enforcement Act of 1994. These include an investigation, begun in September 2009, of the police department in East Haven, Connecticut, looking into discriminatory police practices, unlawful searches and seizures, and excessive use of force; and an investigation of the police department in Suffolk County, New York, examining allegations that police have failed to investigate hate crimes involving Hispanics, failed to protect Hispanics from hate crimes, and discouraged reporting of such crimes.

Voting Rights

The Civil Rights Division is also reinvigorating its work in protecting voting rights. The Voting Rights Section is working especially hard to ensure that it is prepared to handle the influx of more than 2,700 redistricting plans, as well as many voting-related changes, that will be submitted for review under Section 5 of the Voting Rights Act after release of the 2010 Census results in early 2011. This tremendous increase in workload after the Census is one of the greatest institutional challenges for the Voting Section each decade, and we are working to hire more staff, upgrade technology, and update our procedures in anticipation of this challenge. The

Section also continues its critical work monitoring federal, state, and local elections across the country to ensure that voting takes place free of unlawful intimidation.

Last fall, the Section entered a consent decree on remand from the Supreme Court allowing the Northwest Austin Municipal Utility District Number One to avail itself of the statutory option to bail out from coverage under Section 4 of the Voting Rights Act, thus mooted the district's challenge to the constitutionality of Section 5. Earlier this month, private plaintiffs from the City of Kinston, North Carolina filed a new challenge to the constitutionality of Section 5, and we are prepared to defend the statute vigorously.

We are stepping up enforcement of Section 2 of the Voting Rights Act, which prohibits voting practices and procedures that are discriminatory in purpose or effect. In 2009, the Voting Section obtained consent decrees under Section 2 in its cases against the Town of Lake Park, Florida designed to cure vote dilution for black voters, and the Village of Port Chester, New York designed to cure vote dilution for Hispanic voters, caused by the at-large methods of election in those jurisdictions.

The Voting Section will place continued emphasis on enforcement of the language minority requirements of the Voting Rights Act, which require certain jurisdictions to provide assistance and information in minority languages to affected communities. Earlier this year, we filed a case against Riverside County, California under Section 203 of the Act to ensure adequate information and assistance for Spanish-speaking language minority voters. A settlement agreement was reached and an agreed order is awaiting approval from a three-judge court. Last fall, we reached an amended consent decree with Cibola County, New Mexico enforcing the language minority requirements under Section 203 for Native American voters. We have also participated as amicus in a private case in Volusia County, Florida to ensure the protection of voting rights for Spanish speaking voters of Puerto Rican origin under Section 4(e).

Another priority is vigorous enforcement of the provisions of the National Voter Registration Act (NVRA) requiring that eligible voters be able to register at state social services agencies and offices that serve persons with disabilities. We are undertaking a nationwide review of compliance with the voter registration requirements of the NVRA, which require that drivers license, public assistance, and disability service offices provide registration opportunities. The Section has begun inquiries of seven states, and intends to expand its inquiries elsewhere. Just last month, we won a summary judgment decision against New York for its failure to offer voter registration opportunities under the NVRA at offices serving students with disabilities at the State's public universities and colleges and community colleges.

The Section also won a summary judgment decision against Virginia last fall under the Uniformed and Overseas Citizens Absentee Voting Act for its failure to ensure absentee ballots were timely provided to eligible uniformed service members and overseas citizens. We are working closely with the states and the Department of Defense on implementation of the new amendments to UOCAVA enacted as part of the Military and Overseas Voter Empowerment Act that go into effect at the general election this fall.

Educational Opportunities

Securing equal educational opportunity remains a serious civil rights issue across the nation, and the Division is working to ensure students have access to equal opportunity in schools. In July 2009, the Division helped achieve a victory for female high school athletes, filing an *amicus* brief in support of Florida parents who filed suit under Title IX of the Education Amendments Act of 1972 after the State's high school athletic association adopted discriminatory reductions in the game schedule for female student athletes. Our work helped prompt a resolution, pursuant to which the high school athletic association agreed to restore the full schedule and to refrain from making any policy changes that treat one gender differently from the other.

We continue to ensure that school districts operating under court orders as a result of former de jure segregation are living up to the requirements of their court orders and the Equal Protection Clause. Just last week, a federal court in Mississippi ordered further desegregation in such a school district. In Walthall, Mississippi, after the Educational Opportunities Section filed a motion for further relief, the court ordered the school district to eliminate policies that have resulted in significant racial segregation among students. The school district was permitting hundreds of students to attend schools outside of their assigned residential attendance zones, creating essentially a "white" school and several "black" schools. Additionally, at certain schools, the school district was grouping or clustering white students together in particular classrooms, resulting in large numbers of all-black classes at every grade level in those schools. The court's order requires the district to modify its transfer policy to permit students to transfer to a school outside their residential zone only if the student can demonstrate a compelling justification for the transfer. The court further ordered the district to implement protocols to ensure that students will be assigned to classrooms in a manner that will not lead to segregation.

We also recognize that a Civil Rights Division in the 21st Century must address the major civil rights challenges of our day, and high on that list is protecting the civil rights of lesbian, gay, bisexual and transgendered (LGBT) individuals. We will vigorously protect the civil rights of all young people, including LGBT youth, to be free from forms of bullying and harassment that violate Title IX's protection against sex discrimination in education. In January, the Division moved to intervene in a case in Mohawk County, New York, involving the harassment of a gay male student who does not conform to gender stereotypes. The complaint alleged that the school district failed to adequately address the harassment in violation of Title IX's prohibition against discrimination on the basis of sex-stereotyping. This was the first time in nearly a decade that the Division has entered a Title IX case involving sex-stereotyping discrimination. Last month we reached a settlement in the case, requiring the school district to, among other things, retain an expert consultant to review policies related to harassment, and train faculty and staff annually on discrimination and harassment.

Religious Freedom

We have had many successes in the past fourteen months in protecting the religious freedom of all Americans. Some examples include winning the right for Muslim women and others wearing religious head coverings to access Georgia courthouses; obtaining a ruling from the en banc Seventh Circuit Court of Appeals protecting the right of Jewish condominium residents to be free from discrimination when placing a religiously mandated parchment container, called a mezuzah, on the doorposts of their units; obtaining minor modifications to the uniform policy for bus drivers in Washington, D.C. to enable Muslim and Christian women bus drivers to continue working without violating their faiths; and obtaining long prison sentences for two men who spray-painted swastikas on a Tennessee mosque and burned it to the ground.

Coordination and Review

The Division's Coordination and Review Section has the critical mission of ensuring that Federal agencies and all programs that receive federal funding comply with civil rights laws, and, to enhance our ability to carry out this mission, the Division has been working to strengthen relationships with sister agencies. The Section has reinvigorated its program of guidance and technical assistance for civil rights agencies and others responsible for grant-related civil rights compliance. Last summer, the Section held a major conference focusing on Title VI of the Civil Rights Act of 1964, bringing together representatives of most federal funding agencies, major community and advocacy groups and funding recipients. The conference was the first of its kind since 1977.

Additionally, as of March 31, 2010, the Coordination and Review Section had 55 active administration investigations of recipients of funds from the Department of Justice, 27 of them involving allegations of failure to provide meaningful access to limited English proficient persons.

Amicus Participation

Amicus participation has traditionally been a critical part of the Division's efforts to defend and promote civil rights protections. Since the beginning of the new Administration, the Division's Appellate Section has renewed efforts to file amicus briefs in significant civil rights cases. For example, the Department filed successful briefs in *Ojo v. Farmers Group*, which held that the Fair Housing Act prohibits racial discrimination in both the denial and pricing of homeowner's insurance.

The Division also filed an amicus brief in *Fisher v. University of Texas*, arguing that the University has a compelling interest in achieving a diverse student enrollment and that its limited use of race in freshman admissions is narrowly tailored to further that interest. An amicus brief in support of plaintiffs-appellees in *Oster v. Wagner* argued that institutionalization is not a prerequisite for asserting an integration claim under Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act. The Division also filed amicus briefs

in the court of appeals in two other important Americans with Disabilities Act cases, *Armstrong v. Schwarzenegger* and *Chapman v. Pier 1 Imports*. And we have filed amicus briefs in significant cases brought under the Religious Land Use and Institutionalized Persons Act (*Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*) and the Servicemembers' Civil Relief Act (*Gordon v. Pete's Auto Service*).

These are just a few examples of briefs filed during the Administration, but they represent the Division's commitment to using all of the tools available to ensure the nation's civil rights laws are enforced to the fullest extent possible.

Restoration and Transformation

The Division has made remarkable progress in the new Administration, and, going forward, we will continue to work to vigorously enforce our nation's civil rights laws, assisted by the influx of new resources sought by President Obama and funded by Congress. Our vision of restoration and transformation will continue to guide our work in the months and years ahead.

We are working to enhance outreach to communities and stakeholders to ensure the Division's work is informed not only by statistics and complaints, but also by understanding how we can positively impact the lives of those individuals and communities that are affected by our work. Additionally, the Division is working to rebuild, or in some cases build for the first time, relationships with its federal agency partners in order to better protect the civil rights of all individuals. I have reached out to leaders at many federal agencies in order to ensure increased coordination and partnership.

As part of our transformation, we are focusing our efforts on matters with a broader impact, which will allow us to better leverage our existing tools and use our laws to their fullest extent, while taking on more complex investigations and cases that are more resource intensive. This will ultimately result in relief to more people and expand the reach of the Division in its critical protection of the rights of all Americans.

Meanwhile, the Civil Rights Division has a unique role to play in influencing and informing policy decisions relating to civil rights. While we have seen the passage of landmark civil rights laws over the course of the last 50 years, there remains a need for further protections. Within weeks of my confirmation, I was fortunate to be at the helm of the Civil Rights Division as Congress finally passed, and President Obama signed, the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, the most significant new piece of civil rights legislation to be enacted in several decades. I had the great privilege of working on this legislation years ago while on Senator Ted Kennedy's staff.

My first testimony before any committee in Congress as Assistant Attorney General was to offer the Administration's support for the Employment Non-Discrimination Act, which will fill a critical gap in our civil rights laws by ensuring that LGBT Americans finally are protected from the discrimination that has denied them the fundamental workplace equality we all deserve.

This legislation exemplifies just how the Division can become involved in discussions about civil rights issues in the 21st Century.

Some of our nation's most critical and treasured laws are those that advance equal justice and secure equal opportunity. It is the mission of the Civil Rights Division to make sure those laws continue to fulfill their purpose – namely, to protect the rights of all individuals so that equal opportunity can be a reality for everyone across the nation.

Thank you again for the opportunity to appear before you today to discuss the great and ongoing work of the Civil Rights Division. I welcome your questions.