TEMPLE LAW REVIEW

© 2023 TEMPLE UNIVERSITY OF THE COMMONWEALTH SYSTEM OF HIGHER EDUCATION

VOL. 96 NO. 1 FALL 2023

ESSAY

JUDGE NELSON A. DÍAZ AND LATINX LEADERS' LEGACIES

Chief Judge Juan R. Sánchez and Sarah Zimmerman[*]

The struggle for civil rights has never been black and white; multiracial coalitions have been imperative in fighting for equality under the Constitution.[1] *With the creation of the new Hon. Nelson A. Díaz Professorship in Law, Temple University Beasley School of Law has brought important recognition to the role Latinxs have played in this movement. It has spotlighted a trailblazer in the Latinx community and committed to support other leaders who follow in his footsteps. The authors participated in a panel discussion in the Spring of 2023, which celebrated Judge Díaz and Latinx*[2] *leadership in the law.*[3] *This Essay will build on that event, detailing Judge*

---

[*] Juan R. Sánchez has served as a United States district judge for the Eastern District of Pennsylvania since 2004. He became chief judge on August 1, 2018. Prior to serving as a federal district judge, he served as a judge on the Court of Common Pleas of Chester County, Pennsylvania, and spent fourteen years in the Chester County Public Defender's Office. He was born in Puerto Rico and moved to Bronx, New York, when he was twelve. He received his B.A., cum laude, from City College of the City University of New York, and his J.D. from the University of Pennsylvania Law School. Sarah Zimmerman clerked for Chief Judge Sánchez from 2022 to 2023 and is currently a law clerk on the United States Court of Appeals for the Fifth Circuit. She received her J.D. from Temple University Beasley School of Law in 2022, graduating magna cum laude and Order of the Coif. The views expressed here are the authors' own.

1. *See* Mari J. Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory out of Coalition*, 43 STAN. L. REV. 1183, 1190 (1991) ("No subordinated group is strong enough to fight the power alone, thus coalitions are formed out of necessity."). Although this Essay focuses on the contributions of Judge Díaz and other Latinx leaders in the struggle for civil rights, it is important to recognize that the Black community has been uniquely affected by the racist legacy of our country and has historically taken the lead in setting "the tone and standard of advocacy for the Civil Rights Movement." William R. Tamayo, *When the "Coloreds" Are Neither Black nor Citizens: The United States Civil Rights Movement and Global Migration*, 2 ASIAN L.J. 1, 4 (1995).

2. As it is the term Temple used in announcing the Díaz Professorship, we use "Latinx" throughout this Essay, rather than the gendered Latino/a. The term Latinx is both gender neutral and reflective of the diversity

Díaz's legacy of advocacy and service and exploring the many Latinx contributions to the civil rights movement that the Professorship seeks to showcase. With Judge Díaz's generous gift, Temple has invested in Latinx representation and recognition, broadening our understanding of who fights for our civil rights, and for whom.

JUDGE DÍAZ'S CAREER

Nelson A. Díaz was born in Harlem, New York, in 1947.[4] Having grown up in public housing, he credits education with his ascent from poverty.[5] After receiving a bachelor of science degree from St. John's University, in New York City, he moved to Philadelphia to attend Temple University School of Law, where he would become the first Puerto Rican student to receive a juris doctor degree.[6] This kicked off a career of "firsts"—from being the first Puerto Rican to be admitted to the Pennsylvania Bar Association, to being the first Latinx judge elected to the Court of Common Pleas of Philadelphia County, Judge Díaz was a pioneer.[7]

Throughout his career, he has been dedicated to expanding opportunities for the Latinx community. For example, as a White House fellow, in 1977, he was instrumental in the creation of a staff position "wholly dedicated to issues within the Latino community."[8] He served as the Executive Director of the Spanish Merchants Association of Philadelphia, the chair of the Democratic National Committee's Hispanic Caucus, and a board member of the United States Hispanic Leadership Institute.[9] In addition to his advocacy and support for issues of importance to the Latinx community, he has also worked with such varied organizations as the Exelon Corporation, the Free Library of Philadelphia, and the William Penn Foundation.[10] These are just a few of the many civic roles Judge Díaz has played throughout his long career.

From early on, Judge Díaz recognized the importance of developing a diverse legal workforce that reflects the community it serves. While a student at Temple University School of Law, Judge Díaz was instrumental in growing the school's ranks

---

of origin of Spanish speakers around the world. *See* Tanisha Love Ramirez & Zeba Blay, *Why People Are Using the Term 'Latinx'*, HUFFPOST (Oct. 17, 2017), https://www.huffpost.com/entry/why-people-are-using-the-term-latinx_n_57753328e4b0cc0fa136a159 [https://perma.cc/4TPN-J4J4].

3. *The Díaz Professorship: Panel Discussion and Reception*, TEMPLE UNIV. BEASLEY SCH. OF L., https://law.temple.edu/events/the-Diaz-professorship-panel-discussion-and-reception-february-27-2023/ [https://perma.cc/H9H6-VQVF] (last visited Nov. 6, 2023).

4. HIST. SOC'Y OF PA., NELSON A. DIAZ PAPERS 1 (2005), https://hsp.org/sites/default/files/legacy_files/migrated/findingaid3079diaz.pdf [https://perma.cc/SA3T-5TPB].

5. *Nelson Diaz for Mayor 2015*, https://www.nelsondiazformayor.com/ [https://perma.cc/XYT7-LDVR] (last updated May 20, 2015) ("As someone who grew up in poverty and got out because I got an education, this issue is personal to me.").

6. HIST. SOC'Y OF PA., *supra* note 4, at 1.

7. *See id.* at 2.

8. *Nelson Diaz for Mayor 2015*, *supra* note 5; *see also White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics*, U.S. DEP'T OF EDUC. (last updated May 10, 2023), https://sites.ed.gov/hispanic-initiative/ [https://perma.cc/BP72-E9CB].

9. HIST. SOC'Y OF PA., *supra* note 4, at 2, 14–15.

10. *Id.* at 2.

of diverse students.[11] Later, when serving as the City Solicitor of Philadelphia, he helped create an honors program to recruit local law graduates to the City's Law Department, encouraging other Philadelphians to engage in the public service he found so fulfilling.[12] The Díaz Professorship continues this legacy of supporting others' leadership.

Finally, Judge Díaz's own career is an illustration of the tremendous civil rights contributions of Latinxs. As General Counsel at the Department of Housing and Urban Development, Judge Díaz investigated and resolved numerous civil rights complaints, including over fifteen major segregation cases.[13] In so doing, he became part of a long line of Latinx organizers and attorneys who have fought for equality under the law, to the benefit of their own community as well as society at large.

LATINX CONTRIBUTIONS TO THE FIGHT FOR CIVIL RIGHTS

The Latinx community, acting in cooperation with Black Americans, has played an important role in the fight against school segregation and other forms of educational inequity. *Mendez v. Westminster School District*,[14] a key case brought in 1945 on behalf of Latinx students in the Southern District of California, helped to pave the way for the seminal decision of *Brown v. Board of Education*.[15] After an influx of Mexican immigrants to California and the Southwest in the early part of the twentieth century, school districts created separate "Mexican schools," ostensibly due to language differences.[16] Five parents of Latinx students filed a class action lawsuit against various districts in Orange County, California, alleging these segregative policies violated the Fourteenth Amendment.[17] The district court determined the schools' alleged basis for separating Latinx students from their white peers was spurious, as assignment was often based on students' names rather than language proficiency.[18] The court found these policies unconstitutional, explaining that segregation hindered Latinx students from learning English and developing a "common cultural attitude," both of which are "imperative for the perpetuation of American institutions and ideals."[19] Ultimately, the district's system of segregation violated the "equal protection of the laws," a "paramount requisite in the American system of public education."[20]

---

11. *Id.* at 1–2.

12. *Id.* at 2.

13. *Nelson Diaz for Mayor 2015*, *supra* note 5; *see also* Jared Brey, *At HUD, Diaz Opinion Marked Shift in Public Housing Development*, WHYY: PLANPHILLY (March 3, 2015), https://whyy.org/articles/at-hud-diaz-opinion-marked-shift-in-public-housing-development/ [https://perma.cc/B4T5-QR6E].

14. Mendez v. Westminster Sch. Dist. (*Mendez I*), 64 F. Supp. 544 (S.D. Cal. 1946), *aff'd*, 161 F.2d 774 (9th Cir. 1947).

15. 347 U.S. 483 (1954); *see also* George A. Martínez, *African-Americans, Latinos, and the Construction of Race: Toward an Epistemic Coalition*, 19 CHICANO-LATINO L. REV. 213, 217–18 (1998).

16. Gilbert G. Gonzalez, *Chicano Educational History: A Legacy of Inequality*, 22 HUMBOLDT J. SOC. RELS., no. 1, 1996, at 43, 45–46.

17. *Mendez I*, 64 F. Supp. at 545.

18. *Id.* at 550.

19. *Id.* at 549.

20. *Id.*

In relying on the Equal Protection Clause, *Mendez* foreshadowed *Brown*'s famous rejection of the "separate but equal" doctrine.[21] Indeed, the case was a direct opportunity to test legal theories before *Brown*, as some lawyers worked on both cases.[22] Although the Supreme Court did not cite to *Mendez*, the influence of the case is apparent throughout the briefing in *Brown*.[23] For example, counsel in *Brown* mirrored the *Mendez* plaintiffs' strategy of using social science research as "expert" testimony against segregation.[24]

Mendez is also significant for its reliance on multiracial coalitions. Thurgood Marshall helped write a brief that the National Association for the Advancement of Colored People (NAACP) submitted as amicus curiae.[25] The American Jewish Congress and the Japanese American Citizens League also submitted amicus curiae briefs.[26] Some scholars have even referred to the NAACP's brief in *Mendez* as a "dry run" of its arguments in *Brown*.[27] In fighting school segregation, Black and Latinx advocates were natural allies.[28] They set an example of cooperation over competition, and demonstrated a clear understanding that civil rights are not a "zero sum game."[29] Instead, the coalition focused on its common cause, to the benefit of all.[30]

Mendez also serves as an illustration of the power of effective community organizing in creating lasting change.[31] Litigation was brought only after parents had spent years demanding change from school boards, without success.[32] The attorneys in *Mendez* thus engaged in an early example of what would come to be known as "community lawyering," a client-centered collaborative practice.[33] This approach to impact litigation stands in contrast to the classical "attorney as expert" style of

21. *See* Kristi L. Bowman, *The New Face of School Desegregation*, 50 DUKE L.J. 1751, 1774–75 (2001); Martínez, *supra* note 15, at 217–18.

22. Shana Bernstein, *From California to the Nation: Rethinking the History of 20th Century U.S. Civil Rights Struggles Through a Mexican American and Multiracial Lens*, 18 LA RAZA L.J. 87, 92 (2007).

23. *See* Bowman, *supra* note 21, at 1775 & n.172.

24. Bernstein, *supra* note 22, at 93.

25. Christopher Arriola, *Knocking on the Schoolhouse Door:* Mendez v. Westminster, *Equal Protection, Public Education, and Mexican Americans in the 1940's*, 8 LA RAZA L.J. 166, 194–95 (1995).

26. *Id.* at 194.

27. RICHARD KLUGER, SIMPLE JUSTICE: THE HISTORY OF *BROWN V. BOARD OF EDUCATION* AND BLACK AMERICA'S STRUGGLE FOR EQUALITY 400 (Vintage Books 2004) (1975).

28. *See* Kevin R. Johnson, *The Struggle for Civil Rights: The Need for, and Impediments to, Political Coalitions Among and Within Minority Groups*, 63 LA. L. REV. 759, 775 (2003).

29. *Id.* at 776.

30. *See* Richard Delgado, *Derrick Bell's Toolkit—Fit to Dismantle that Famous House?*, 75 N.Y.U. L. REV. 283, 303–06 (2000) (citing *Mendez* as an example of successful coalition building across minority groups).

31. *See* Arriola, *supra* note 25, at 184–86 (describing the plaintiffs' success as "truly a community effort").

32. *Id.* at 183–84; *see also* Charles Wollenberg, Mendez v. Westminster*: Race, Nationality and Segregation in California Schools*, 53 CAL. HIST. Q. 317, 325 (1974).

33. *See generally* GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992).

lawyering, more directly responding to the needs of the community and encouraging deeper and more lasting democratic participation.[34]

The radical nature of *Mendez*'s equal protection holding was filtered out on appeal, as the Ninth Circuit affirmed the district court on narrow statutory grounds.[35] However, although *Mendez* has not enjoyed the same prominence in legal history as *Brown*, [36] the decision had important consequences beyond paving the way for that seminal case. While the Ninth Circuit did not adopt the district court's equal protection holding, its reliance on the California statute was effective: it put public pressure on the state government to repeal the laws allowing segregation.[37] Significantly, Chief Justice Warren, author of the majority opinion in *Brown*, was the governor of California at the time and signed the repeal.[38] This experience likely shaped his thinking when *Brown* came across his desk at the Supreme Court, just a few years later.[39] *Mendez* also helped lay the groundwork for similar pre-*Brown* segregation challenges in other states.[40] These changes benefitted not only Latinx communities, but also other minority groups like Asian Americans and Indigenous Americans.[41]

Even after *Brown* formally dismantled the "separate but equal" regime, schools remained breeding grounds of inequity along several axes, including language.[42] In many communities, the Latinx population bore the brunt of these systems' negative impacts. For example, in 1970, there were over 250,000 Puerto Rican students in New York City public schools,[43] but very few received appropriate Limited English Proficiency instruction.[44] Like their Mexican American peers in California, the New York Puerto Rican community members had spent decades organizing and demanding

34. *See* Anthony V. Alfieri, *Rebellious Pedagogy and Practice*, 23 CLINICAL L. REV. 5, 11, 13 (2016). "Impact litigation" refers to the use of "test cases" in establishing new legal rules to the benefit of greater society. Gwendolyn Leachman, *Fighting Chance: Conflicts over Risk in Social Change Litigation*, 42 CARDOZO L. REV. 1825, 1836 (2021).

35. Westminster Sch. Dist. v. Mendez (*Mendez II*), 161 F.2d 774, 780 (9th Cir. 1947).

36. Bowman, *supra* note 21, at 1754 (decrying the "widely neglected history" of *Mendez* and the role of Latinxs in desegregating schools); *see also* Thomas A. Saenz, Mendez *and the Legacy of* Brown*: A Latino Civil Rights Lawyer's Assessment*, 6 AFR.-AM. L. & POL'Y REP. 194, 199 (2004) (explaining why *Brown* is celebrated instead of *Mendez*).

37. Arriola, *supra* note 25, at 199.

38. Bernstein, *supra* note 22, at 94.

39. *Id.*

40. Arriola, *supra* note 25, at 199; *see also, e.g.*, Gonzales v. Sheely, 96 F. Supp. 1004, 1005 (D. Ariz. 1951); Cisneros v. Corpus Christi Indep. Sch. Dist., 324 F. Supp. 599, 606–08 (S.D. Tex. 1970).

41. Arriola, *supra* note 25, at 199; *see also* CHARLES M. WOLLENBERG, ALL DELIBERATE SPEED: SEGREGATION AND EXCLUSION IN CALIFORNIA SCHOOLS, 1855-1975, at 118, 127, 132 (1978).

42. *See* Juan F. Perea, *Buscando América: Why Integration and Equal Protection Fail To Protect Latinos*, 117 HARV. L. REV. 1420, 1423 (2004) (noting how *Brown*'s legacy has been less successful for Latinx people, who are "more segregated by race, poverty, and language than any other ethnic group").

43. Isaura Santiago Santiago, Aspira v. Board of Education *Revisited*, 95 AM. J. EDUC. 149, 157, 172 tbl.4 (1986).

44. *Id.* at 158.

better outcomes for their students.[45] This local fight resulted in the creation of grassroots organizations such as Aspira and United Bronx Parents, whose leaders engaged in direct action and community education, and even testified before Congress's Select Committee on Equal Educational Opportunity for Puerto Rican Children.[46] This community also worked in coalition with others: in 1966, for example, Black, white, and Puerto Rican activists took over the New York City Board of Education property for two days, calling themselves "The People's Board of Education."[47] Ultimately, however, like the Mexican American parents in *Mendez I*, Puerto Rican advocates became frustrated with the perceived lack of change and turned to the courts to vindicate their educational rights.[48]

On behalf of Aspira, the newly created Puerto Rican Legal Defense and Education Fund (PRLDEF) sued the New York City Board of Education, claiming that its failure to provide bilingual education violated due process and equal protection.[49] While the litigation was pending in the Southern District of New York, the Supreme Court decided *Lau v. Nichols*, a case brought on behalf of non-English speaking Chinese students in San Francisco.[50] The Court found Chinese American students had been denied the same "meaningful opportunity" to access education as white students.[51] The state's failure to provide bilingual education to these students violated Title VI of the Civil Rights Act of 1964,[52] which bars discrimination "on the ground of race, color, or national origin . . . [in] any program or activity receiving federal financial assistance."[53] The *Lau* Court noted that "[b]asic English skills are at the very core of what . . . public schools teach."[54] The fight for bilingual education had become a multiracial and multiethnic struggle: PRLDEF filed an amicus curiae brief in *Lau* and could now use the favorable decision to support resolution of the *Aspira* case.[55]

On the heels of the Supreme Court's decision in *Lau*, Aspira and the New York City Board of Education entered into a consent decree, requiring schools to offer bilingual education when there were twenty or more speakers of the same non-English language in any single grade.[56] This resolution was significant, because it involved the

---

45. Anthony De Jesús & Madeline Pérez, *From Community Control to Consent Decree: Puerto Ricans Organizing for Education and Language Rights in 1960s and '70s New York City*, CENTRO J., Fall 2009, at 7, 11.

46. *See id.* at 11, 20 (chronicling the "Por Los Niños" campaign for bilingual education).

47. *Id.* at 18 (describing this event as "an effort to gain the attention of educational administrators who were not responding to these communities' need to have decision-making power in their schools").

48. Santiago Santiago, *supra* note 43, at 158 ("Having met with little success in other strategies and having witnessed a flurry of court cases involving blacks [sic] and Chicanos, Puerto Rican educators were anxious to test whether the courts would serve as a more effective change agent.").

49. Aspira of New York, Inc. v. Bd. of Educ., 58 F.R.D. 62, 64 (S.D.N.Y. 1973).

50. 414 U.S. 563, 564 (1974).

51. *See id.* at 568.

52. 42 U.S.C. § 2000d.

53. *Id.*

54. *Lau*, 414 U.S. at 566.

55. Santiago Santiago, *supra* note 43, at 159.

56. Emma Curran Donnelly Hulse, *Disabling Language: The Overrepresentation of Emergent Bilingual Students in Special Education in New York and Arizona*, 48 FORDHAM URB. L.J. 381, 400 (2021).

largest school district in the United States.[57] With some eighty thousand Puerto Rican students hypothetically affected, the resolution suggested that such success could be replicated anywhere in the nation.[58] As is often the case, however, implementation was slow and uneven.[59] Frustrated after two years of limited perceived change, Aspira successfully brought contempt proceedings against the Board of Education for failure to comply with the consent decree.[60] This approach—suing for contempt to achieve compliance with a consent decree as well as to recover attorney's fees—was relatively novel at the time and created a more "stringent and searching standard" for enforcement, to be applied in other areas of civil rights law.[61]

The fight for language access was not only an issue in schools. It also became an issue within the context of voting rights, another area in which Latinxs have played an important role. PRLDEF again led the fight in 1973, suing, inter alia, New York City and Philadelphia for conducting their elections in English, only.[62] Both courts ruled for the plaintiffs, with holdings premised on the fact that the right to vote is broader than mere physical access to the voting booth.[63] As the district court in the Southern District of New York wrote, "Plaintiffs cannot cast an effective vote without being able to comprehend fully the . . . ballot itself."[64] This expansive interpretation of voting rights has had far-reaching implications for limited English proficient voters nationwide.[65] These cases also reinforced the idea that civil rights must include state support in accessing rights.[66] Just as, is the right to vote is meaningless without the state providing bilingual ballots for Spanish-speakers, so too is the right to access the courts is meaningless without the state appointing counsel for the indigent.[67]

---

57. De Jesús & Pérez, *supra* note 45, at 23.

58. *Id.* (citing Santiago Santiago, *supra* note 43, at 150).

59. Santiago Santiago, *supra* note 43, at 161–62 (describing the Board of Education's compliance with the consent decree as slow and even "begrudging[]").

60. Aspira of New York, Inc. v. Bd. of Educ., 423 F. Supp. 647, 648–49 (S.D.N.Y. 1976).

61. Anthony J. Plastino, Comment, *The Legal Status of Bilingual Education in America's Public Schools: Testing Ground for a Statutory and Constitutional Interpretation of Equal Protection*, 17 DUQ. L. REV. 473, 486–87 (1978).

62. Torres v. Sachs, 381 F. Supp. 309, 311–12 (S.D.N.Y. 1974); Arroyo v. Tucker, 372 F. Supp. 764, 765 (E.D. Pa. 1974).

63. *Arroyo*, 372 F. Supp. at 767; *Torres*, 381 F. Supp. at 312–13.

64. *Torres*, 381 F. Supp. at 312.

65. *See* David H. Hunter, *The 1975 Voting Rights Act and Language Minorities*, 25 CATH. U. L. REV. 250, 257–58 (1976) (describing how Congress "built on" *Torres* and *Arroyo* in amending the Voting Rights Act); Juan Cartagena, *Latinos and Section 5 of the Voting Rights Act: Beyond Black and White*, 18 NAT'L BLACK L.J. 201, 209 (2005) ("[B]enefits gained from [the Voting Rights Act amendments] reached all language minority voters throughout the country as it demonstrated the viability of creating comprehensive, bilingual alternatives to English-only electoral systems, and on a large scale.").

66. *See* Robin L. West, *Toward a Jurisprudence of the Civil Rights Acts*, *in* A NATION OF WIDENING OPPORTUNITIES: THE CIVIL RIGHTS ACT AT 50, at 70, 72, 86–87 (Ellen D. Katz & Samuel R. Bagenstos, eds., 2015).

67. *See* Gideon v. Wainwright, 372 U.S. 335, 343 (1963); *see also* Powell v. Alabama, 287 U.S. 45, 68–69 (1932) ("The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel.").

Finally, within the Latinx community, voting rights cases like the 1974 case *Torres v. Sachs*[68] aided in the creation of a national coalition of civil rights organizers and litigators, who built upon each other's successes in other jurisdictions to create more pervasive change.[69] The court in *Torres* relied on a decision regarding Mexican American voting rights from the Western District of Texas, which in some ways tied the experiences of these geographically and culturally disparate communities together.[70] Latinx advocates also banded together with other language minorities to assert their rights.[71] However, cases like *Torres* and *Arroyo v. Tucker* also helped to highlight the unique irony of the Puerto Rican experience in the United States.[72] Federal law made persons born in Puerto Rico U.S. citizens, permitted them to be educated in Spanish, exempted them from English language voting requirements when in Puerto Rico, and allowed them unrestricted migration to the mainland.[73] Without protection at the polls outside of Puerto Rico, though, these regulations and their intent would be in direct conflict.[74]

These cases also served to broaden the interpretation of the Voting Rights Act, initially enacted to protect Black Americans, and to extend its reach to other minority groups.[75] In a similar way, cases involving Latinx representation in jury selection worked to frame civil rights—this time, the right to a fair trial—as a multiracial issue. For example, in the 1954 case *Hernandez v. Texas*, the Supreme Court held that the systematic exclusion of Mexican American jurors violated the Equal Protection Clause of the Fourteenth Amendment.[76] The Court rejected the "two-class theory," which suggested the Fourteenth Amendment only protected against discrimination "between 'white' and Negro" individuals.[77] Instead, it found that, because "community prejudices are not static," constitutional protection may need to be extended to different groups at different times.[78] This dynamic view of equal protection contributed to the 1986 decision in *Batson v. Kentucky*[79] and established precedent for extending the

---

68. 381 F. Supp. 309 (S.D.N.Y. 1974).

69. *See* Cartagena, *supra* note 65, at 209.

70. *Id.* at 209 & n.50.

71. *See, e.g.*, *Torres*, 381 F. Supp. at 312–13 (citing Lopez v. Dinkins, 73 Civ. 695 (S.D.N.Y. 1973) (case brought by coalition of Spanish- and Chinese-speaking voters)); *see also* Cartagena, *supra* note 64, at 208.

72. 372 F. Supp. 764 (E.D. Pa. 1974).

73. *See* 8 U.S.C. § 1402; 20 U.S.C. § 6648; 52 U.S.C. § 10303(e).

74. *See* Puerto Rican Org. for Pol. Action v. Kusper, 490 F.2d 575, 578 (7th Cir. 1973) (describing this "plight" of Puerto Ricans as being "a result of government policy"). PRLDEF filed an amicus curiae brief in this Chicago case as well. *See id.* at 576.

75. Hunter, *supra* note 65, at 254–55.

76. 347 U.S. 475, 482 (1954).

77. *Id.* at 478.

78. *Id.*

79. 476 U.S. 79 (1986); Justice Powell, writing for the majority in *Batson*, cited *Hernandez v. Texas* seven times. *See id.* at 84 n.3, 85 n.5, 86 n.7, 88, 90, 94, 100.

Fourteenth Amendment's protections—in all areas—to new legally cognizable groups.[80]

Applying *Batson* to Latinx prospective jurors, however, has not always resulted in the outcome advocates seek. In the 1991 case *Hernandez v. New York*, the Supreme Court rejected a defendant's *Batson* claim based on a prosecutor's use of peremptory challenges to exclude Latinx potential jurors.[81] The Court found the prosecutor had offered a reasonable "race-neutral" explanation for his strikes: concern that the prospective Spanish-speaking jurors would be unable to accept the official translation of Spanish testimony.[82] However, the Court noted that if the prosecutor had simply excluded Latinxs from the jury "by reason of their ethnicity," rather than for practical reasons involving the interpretation of testimony, the strikes would have violated *Batson*.[83] The *Hernandez v. New York* Court thus, in some ways, broadened equal protection rights by explicitly extending *Batson* beyond race to ethnicity; this suggests its holding could be expanded to encompass other identity markers as well.[84] The case also recognized that the Spanish language is central to Latinx identity, and that language could potentially be used as a "surrogate for race."[85] The plurality found, however, that the prosecutor's legitimate intent—to ensure jurors accepted the official translation of testimony—demonstrated that language was more than a proxy for discrimination based on race, ethnicity, or national origin.[86] These continue to be thorny issues which have the potential to impact wide swaths of Americans, especially as our country becomes more linguistically diverse. *Hernandez v. New York* helped to reframe civil rights from the classical Black/white perspective—what Chief Justice Warren referred to as the "two-class theory"[87]—and drew attention to the unique concerns of other minorities, including Latinxs.[88]

---

80. *See* Mary A. Lynch, *The Application of Equal Protection to Prospective Jurors with Disabilities: Will* Batson *Cover Disability-Based Strikes?*, 57 ALB. L. REV. 289, 329–31 (1993).

81. 500 U.S. 352, 361 (1991).

82. *Id.*

83. *Id.* at 355.

84. Lynch, *supra* note 80, at 330; Elaine A. Carlson, Batson*,* J.E.B.*, and Beyond: The Paradoxical Quest for Reasoned Peremptory Strikes in the Jury Selection Process*, 46 BAYLOR L. REV. 947, 967 (1994) (suggesting *Batson* could be extended to protect against exclusion based on religion, age, or disability).

85. Hernandez v. New York, 500 U.S. at 371; *see also* Deborah A. Ramirez, *Excluded Voices: The Disenfranchisement of Ethnic Groups from Jury Service*, 1993 WIS. L. REV. 761, 761, 763 (describing language as a "super-correlated" ethnic trait which "might deserve special scrutiny, regardless of whether or not there is evidence of a discriminatory intent"); Saenz, *supra* note 36, at 199 (detailing how language has historically been used as a proxy for discrimination against Latinxs).

86. Hernandez v. New York, 500 U.S. at 362 (determining the prosecutor did not act "with a forbidden intent").

87. Hernandez v. Texas, 347 U.S. 475, 478 (1954).

88. *See* Rachel F. Moran, *What If Latinos Really Mattered in the Public Policy Debate?*, 85 CALIF. L. REV. 1315, 1332 (1997) (arguing that the Black/white model has diminished courts' ability to "appreciate forms of discrimination that uniquely disadvantage Latinos"); Richard Delgado, *The Current Landscape of Race: Old Targets, New Opportunities*, 104 MICH. L. REV. 1269, 1285–86 (2006) (reasoning that all minorities are in their own way "exceptional"—Black Americans experienced slavery, while Mexican Americans suffered conquest and loss of language).

CONCLUSION

The Díaz Professorship continues this work, shining a spotlight on the special contributions of Latinx leaders in the civil rights movement. The story of Judge Díaz's career is one of hard work, public service, and generosity. With the establishment of the Díaz Professorship, Temple University Beasley School of Law helps write a new chapter to this story, extending Judge Díaz's legacy and drawing attention to the importance of Latinx representation in the legal profession. In 2022, only 5.8% of attorneys were Latinx, despite the community comprising 18.5% of the country's population.[89] Increasing these numbers is essential to ensuring that Latinxs have a seat at the table in conversations about law and justice. Finally, the Professorship supports a more nuanced understanding of the development of civil rights in our country—how far we have come, and how far we still have to go.

89. AM. BAR ASS'N, PROFILE OF THE LEGAL PROFESSION 2022, at 26 (2022), https://www.americanbar.org/content/dam/aba/administrative/news/2022/07/profile-report-2022.pdf [https://perma.cc/GSL5-4QUF].