



# Civil Rights

## A Civil Rights Guide to Building a Prosperous America

League of United Latin American Citizens



# **A CIVIL RIGHTS GUIDE TO BUILDING A PROSPEROUS AMERICA**



League of United  
Latin American Citizens

*Revised 2010  
III Edition*



Printed Courtesy of:



Western Union congratulates LULAC on its  
81st Anniversary and its tremendous  
record of accomplishments for  
Hispanic Americans.

**National LULAC thanks**

Richard Sambrano, Ed Elizondo and Victoria Neave for the work and dedication in updating the LULAC Civil Rights Manual.

Thank you also to Luis Nuño Briones/LUNUBRI Publishing for helping with the layout and design of the 2010 LULAC Civil Rights Manual.



## FOREWORD

Dear Brothers and Sisters in LULAC:

It gives me great pleasure to announce the third edition of the National LULAC Civil Rights Manual, an update that the LULAC membership and the community as a whole should find useful in addressing civil rights and related issues.

The manual has been especially helpful in assisting members achieve progress through a positive approach, an approach that has evolved over the years. It includes best practices developed by the LULAC leadership, government officials and corporate representatives. It is intended as a guide for LULAC members, government officials and community leaders to use as they examine the nature of civil rights and related issues in the community.



The manual has been essential and has evolved to meet today's challenges while remaining true to its original mission-- eliminating prejudice and removing barriers based on ethnic discrimination through democratic processes. And yes, the LULAC objectives continue to be ensuring the political, educational, social and economic equality of Latinos.

I for one, along with many of you my brothers and sisters, over the years have been privileged to contribute in the development of the best practices found in the manual and can attest that those best practices have significantly contributed to the enormous progress LULAC has made in education, employment, law enforcement, housing, voting rights, lending disparities, immigration and health and human services. Although I regret that we cannot list every single success, we proudly highlight several key accomplishments in each respective chapter.

Finally, please join me in congratulating LULAC National Civil Rights Commission Chair, Richard Sambrano, and his stellar team for their tireless efforts to provide the community with this extraordinary resource-- the 3rd Edition of the LULAC National Civil Rights Manual, A Guide to Building a Prosperous America.

Sincerely,

Rosa Rosales  
LULAC National President



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## National LULAC Board, Meeting with Mexican President Vicente Fox



LULAC visit with President Vicente Fox at Los Pinos in Mexico City  
*Year 2005*

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Theresa Venegas Filberth	National Secretary
Blanca Vargas	National Chaplain
Luis Nuño Briones	National Historian

# National Civil Rights Commission



The Commissioners serve at the direction of National President, Rosa Rosales. Their roles and responsibilities include, among other things, conflict prevention and resolution activities. They provide guidance to different levels of the LULAC organization as it relates to civil rights including, but not limited to, technical assistance and training



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Commission Chair



**Mary Ramos**  
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**Victoria Neave**  
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Convention Program



**Ken Dalecki**  
Special  
Contributor  
LULAC News



## Case Work

# Roles and Responsibilities of the California LULAC Commission

There are twelve California LULAC Commissions with distinct roles and responsibilities listed as follows: California LULAC Civil Rights Commission (CLCRC); California LULAC Education Commission (CLEC); California LULAC (Green) Environmental Commission (CLGEC); California LULAC Health Commission (CLHC); California LULAC Housing Commission (CLHAC); California LULAC Immigrant Affairs Commission (CLIAC); California LULAC Legislative Commission (CLLC); California LULAC



Youth Commission (CLYC); California LULAC Young Adult Commission (CLYAC); California LULAC Women's Commission (CLWC); California LULAC Seniors Commission (CLSC) and the California LULAC Veteran Affairs Commission (CLVAC).

The Commissions are advisory bodies to the State Board and delve into present day issues affecting each Commission Constituency. The Commissions may work through local LULAC Councils or address issues independently. The Commissions are formed from LULAC members throughout the state. The Commissions plan, coordinate events, forums, public hearings, outings, workshops, speakers and co-sponsor the same with other organizations. They conduct research and propose topics, positions and possible action which may result in policy, resolutions or suggestions for legislative action that California LULAC may advance locally, regionally, state-wide or nationally.

### Civil Rights Commission

The California LULAC Civil Rights Commission is headed by Chairman, Jan Tucker, and Co-Chair and LULAC National Vice President for the Far West, Angel Luevano. The California Commission became involved in the following case. Mr. Jose Carmen Murillo y Garcia was arrested while he was living in Laredo, Texas in May 2009 on a 33-year-old murder warrant from Los Angeles County, California.

In spite of the fact that he had been fingerprinted and run through national criminal record checks on multiple occasions by immigration authorities, the warrant never showed up.

Jose didn't even know he was wanted for murder. He was given an extradition hearing without a translator. When he demanded to contact the Mexican consulate in both Texas and California, his rights under the Vienna Convention were ignored. Finally in September, his court appointed lawyer contacted LULAC civil rights commissioner Jan Tucker, who promptly filed a complaint to the Mexican Consular Protection service and swung into action to assist Jose's defense.

To counter the prosecution's contention that on September 8, 1976 Jose had supposedly murdered a man in Los Angeles County, abandoned his car in San Ysidro by the Mexican border and then fled into Mexico to hide out for years, Tucker located Baptismal records for Jose's eldest son demonstrating that on September 14, 1976 he'd been in St. Alphonsus Church in Fresno for his son's baptism.

Tucker helped the attorney obtain Jose's immigration files from the Department of Homeland Security with a Touhy Request. Those records showed he'd been voluntarily fingerprinted by INS -- not something somebody would do if they knew they were wanted by the law for murder.

To counter claims by the prosecutor that Jose had changed his surname from Murillo Garcia to Garcia Murillo to avoid prosecution, Tucker testified as an expert witness on the differences between Spanish language and English language surnames. He also explained to the jury the relevance of countless documents from Mexico demonstrating that it would have been impossible for Jose to hide in Mexico, especially when he was registered to vote with his thumb print, photo, and a data strip on his registration card.

In November 2009, the jury hung 9-3 for a not-guilty verdict. The case will be retried and LULAC is continuing its efforts to see that Jose's rights under the Constitution and international treaties are respected.



**Jan Tucker**  
LULAC Civil Rights  
Commission



**Angel Luevano**  
LULAC V.P. Far West



# Intake Interview Record

## I. LULAC Intake Member Completing questionnaire:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State & Zip: \_\_\_\_\_  
Area Code & Phone: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_  
Date of This Report \_\_\_\_\_

## II. Complainant's Contact Information:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State & Zip: \_\_\_\_\_  
Area Code & Phone: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_

## III. Respondent Information:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State & Zip: \_\_\_\_\_  
Area Code & Phone: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_

## IV. Subject/Type of Complaint (Indicate with an x):

Employment  Housing  Educational  Police  Immigration Related  Code Enforcement  
 Banking  Treatment at Retail Store  Treatment at Restaurant  Other \_\_\_\_\_

## V. Witness(es), If any: Provide complete name and contact information for each witness(es) \_\_\_\_\_

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## Case Work

# Commission for Women



**Regla Gonzalez**  
*LULAC V.P. for Women*

The mission of the LULAC Commissions for Women is to advocate, promote and facilitate initiatives that are in the best interest of LULAC's mission to enhance the economic, educational, political, health and civil rights of the Latino population.

One of the ways that the Commissions' mission is achieved through the engagement of women from across the country at the Annual LULAC National Women's Conferences where their consciousness is raised and their ability to become leaders is enhanced.

The Commissions' surveys reflect that women continue to learn from the experience of being a part of the LULAC network and the conferences also increase

their knowledge as consumers of products offered by its corporate partners.

The LULAC Women's Commission initiatives have made a big difference in Latinas getting elected to top positions in national, state, and local elections. Latinas have made tremendous strides in holding positions of influence within the American society.

The National Vice President for Women heads the National Women's Commission. Margaret Moran from San Antonio served four years in this capacity and through her leadership brought about a consciousness and stability to the Commission. Her business acumen played a major part in the success of the conferences and her approach to seeking high profile experts in their fields speaks volumes. She greatly expanded the participation of the youth and young adults communities and ensured that LULAC youth and Young Adults served on the National Women's Commission.

Regla Gonzales from Boston is on her second year as the titular head of the Commission and hosted the 2009 Women's Conference in Boston and the 2010 conference in Puerto Rico.

There are LULAC State Commissions for Women in some states. In 2007, Texas LULAC State Deputy Director for Women, Jodi Perry, established the first Women's Commission as an advisory board comprised of LULAC District Deputy Directors for Women and appointees in accordance with Commission by-laws.

### Latina Think Thank:

The Commission immediately identified issues that needed approach, addressing and action for the good of LULAC Latinos, their families and the communities LULAC serves. One of the Commission's many accomplishments was the establishment of a LATINA THINK TANK to

educate, engage, and empower Tejanas in the Hispanic community. The THINK TANK partners with District Deputy Directors for Women, LULAC Members including youth, young adults and adult Latinas with other Latina organization. The Commission, established a Texas LULAC LATINA NETWORK utilizing a yahoo group, a website link and public forums to include other Latina organizations when appropriate. The Commission also established a LATINA AGENDA as the voice of the Latina community to LULAC, elected officials, governmental entities and board/commissions to push for the advancement of Latino families.

The approach used by the Texas Commission for Women was to hold summits that would focus on women's issues identified by a Latina survey and provided leadership development and professional skills necessary for proving influential leadership within the communities LULAC serves.



*Photo by Luis Núño Briones*

**National Women's Commission**



## Case Work

# Commission for Women

### Get Out the Vote Project:

Another Commission accomplishment was getting the Vote Out Project. State legislatures in response to the federal government's failure to overhaul the immigration laws, considered 1,404 immigration measures and enacted 170 bills, an



Jodi Perry Showing Proclamation

unprecedented surge of state-level lawmaking as reported by the National Conference of State Legislatures. The anti-immigrant resentment was fueled by communities pushing political positions resulting in unconstitutional bills. The need for positive immigration debate, voter registration and get the vote out drives became essential to protect the constitutional rights of Latinos. The multi-fold project sought to educate and train members to be civically engaged in the best interest of LULAC's mission to enhance the economic, educational, political and health and civil rights of Texas Latinos.

The Texas LULAC Legislative Committee headed by Jodi Perry took the approach that to effectively advocate, promote and empower LULAC's legislative platform, a Civic Engagement Boot Camp would be needed to educate, train and empower members to become actively engaged in local and state lawmaking policy. The registering of voters, lobbying of lawmakers, and getting the vote out would be achieved upon the successful education and training of members of the good of Latino families and the communities they serve.

A most successful Civic Engagement Boot Camp was held in the Fall of 2007 followed by a Fall and Winter STATEWIDE VOTER REGISTRATION

DRIVE in partnership with the Texas LULAC Legislative Coalition and TRUST Coalition members including youth and young adults.

### Other Initiatives:

Other initiatives of the Texas Women's Commission include:

- The implementation of a pilot program to establish the feasibility of a training institute to train members to be equipped with the knowledge and skills that would enable them to make effective contributions to the achievement of justice and equality for all.
- A forty-hour clinic to certify members to be state recognized mediators making them eligible to be members of the Texas State Bar Alternative Dispute Resolution Section. Young Adults and Adults also trained Youth members to peer mediate thereby improving human relations within LULAC and in their communities.,

# Our History of National LULAC Presidents



Ben Garza  
1929-1930



Alonso S. Perales  
1930-1931



Manuel C. González  
1931-1932



J.T. Canales  
1932-1933



Mauro M. Machado  
1933-1934



Emilio Lozano  
1934-1935



James Tofolla, Jr.  
1935-1936



Frank J. Galván, Jr.  
1936-1937



Ramón Longoria  
1937-1938



Filemón T. Martínez  
1938-1939



Ezequiel Salinas  
1939-1940



Antonio M. Fernández  
1940-1941



George Sánchez  
1941-1942



Benjamin Osuna  
1942-1943



Modesto A. Gómez  
1943-1944



William Flores  
1944-1945



Arnulfo Zamora  
1945-1947



Dr. José Maldonado  
1947-1948



Raoul A. Cortez  
1948-1950



Dr. George J. Garza  
1950-1952



John J. Herrera  
1952-1953



Alberto Almodárez  
1953-1954



Frank Pinedo  
1954-1955



Oscar M. Laurel  
1955-1956



Félix Tijerina  
1956-1960



Héctor Godínez  
1960-1961



Frank Valdéz  
1961-1963



Paul Andow  
1963-1964



William D. Bonilla  
1964-1965



Alfred J. Hernández  
1965-1967



Roberto Ornelas  
1967-1969



Alfred J. Hernández  
1969-1970



Paul Garza, Jr.  
1970-1971



Pete V. Villa  
1971-1973



Joseph R. Benites  
1973-1975



Manuel González  
1975-1977



Eduardo Morga  
1977-1978



Eduardo Peña, Jr.  
1978-1979



Rubén Bonilla  
1979-1981



Tony Bonilla  
1981-1983



Mario Obledo  
1983-1985



Oscar Morán  
1985-1988



José García De Lara  
1988-1990



José Vélez  
1990-1994



Belén Robles  
1994-1998



Rick Dovalina  
1998-2002



Hector M. Flores  
2002-2006



Rosa Rosales  
2006-2010







## LULAC Landmark Cases

### **Salvatierra vs. Del Rio Independent School District (1936)**

Summary: Long before *Brown v. Board of Education*, Mexican Americans had engaged in numerous court battles against segregation. Those cases paved the way for the eventual victory achieved by *Brown*. The first Mexican American case, *Salvatierra v. Independent School District*, took place in Del Rio, Texas, in 1930. Jesus Salvatierra and other parents sued the town's school board on the grounds that Mexican American students were being deprived of the resources given Anglo students by separating Mexican American children on account of their race. The district judge issued a ruling in favor of the plaintiffs, but the state's higher courts later overturned it in favor of the school district. *Salvatierra's* case spurred the growth of LULAC as the *Salvatierra* ruling legalized the public segregation of children of Mexican descent. During the case the first chapters of LULAC were organized in West Texas through San Angelo, Ozona, Sonora, and Marfa.

### **Mendez vs. Westminster (1946)**

Summary: The United States Court of Appeals for the Ninth Circuit held that the segregation of Mexican and Mexican American students into separate "Mexican schools" was unconstitutional. The court ruled that equal protection of the laws pertaining to the public school system in California was not provided by furnishing in separate schools the same technical facilities, text books, and courses of instruction to children of Mexican and Latin ancestry that were available to the other public school children. The *Mendez* lawsuit, filed by LULAC, ended 100 years of segregation in California's public schools and became a key precedent for *Brown vs. Board of Education*.

### **Delgado vs. Bastrop I.S.D (1948)**

Summary: The League of United Latin American Citizens, joined by the American G.I. Forum of Texas, successfully challenged the practice of racial segregation in the Texas school districts. The United States District Court, Western District of Texas, ruled that maintaining separate schools for Mexican descent children violated the Fourteenth Amendment of the United States Constitution.

### **Hernandez vs. Texas (1954)**

Summary: A landmark United States Supreme Court case that decided Mexican Americans and all other racial groups in the United States had equal protection under the 14th Amendment of the U.S. Constitution. Pete Hernandez, a Mexican agricultural worker, with the help of LULAC appealed his conviction of murder on the basis that persons of Mexican descent who were otherwise qualified were systematically excluded from service as jury commissioners, grand jurors, and petit jurors. The Court reversed the conviction on the basis that Hernandez did not receive an impartial jury.

### **Cisneros vs. Corpus School District (1970)**

Summary: The first case to extend the U.S. Supreme Court's *Brown v. Board of Education of Topeka*, Kansas decision (1954) to Mexican Americans. A desegregation class action lawsuit was brought against the Corpus Christi Independent School District and its Board of Trustees by parents of Mexican and African American children in the public school system. It was found that non-Anglo children in the Corpus Christi School District were unconstitutionally segregated from Anglo children as a result of official action by the Board. It was further shown the Corpus School Board had discriminated against Mexican-Americans by failing to employ Mexican-American teachers in the system to reflect the ratio of Mexican-American students to the total scholastic population of the school district. LULAC helped file this case that defined Mexican Americans as a minority for the first time.

### **White vs. Regester (1973)**

Summary: LULAC aligned themselves with Latino attorneys who worked with the Mexican American Legal Defense and Education Fund (MALDEF). The *White* case marked the first time that MALDEF lawyers argued a case before the Supreme Court of the United States. This litigation, in some ways, can be seen as partial fulfillment of the earlier promise of the *Hernandez* case. The Court found that Texas's reapportionment of the House of Representatives did not provide for adequate representation for a group that had suffered the "effects of invidious discrimination," and ordered that districts be redrawn. The ruling eventually led to the establishment of the single-member districts that provided a greater opportunity for Mexican Americans to represent their interests in the state legislature. Ultimately, this ruling engendered dramatic change in the drawing of county, city, and school board districts throughout Texas.



## LULAC Landmark Cases

### **LULAC vs. Immigration & Naturalization Service (1987)**

Summary: An injunctive order was issued that required the INS to consider untimely applications for legalization filed by undocumented immigrants who were previously dissuaded from filing by the INS's original reentry policy. The LULAC order was subsequently stayed on August 30, 1988 while the INS appealed the injunctive order. Under the terms of this stay, the INS agreed to grant a stay of deportation and temporary employment authorization to all LULAC class members whose applications provided prima facie evidence showing of eligibility for legalization, but the INS was not obligated to process the applications.

### **LULAC vs. Mattox (1989)**

Summary: Members of LULAC scored a victory across a number of Texas counties where a lawsuit was filed that determined the way judges would be elected, not appointed. The trial court concluded that at-large election of district judges in the state's urban counties similarly violated minority voting rights of both African and Mexican Americans.

### **LULAC vs. Clements (1993)**

Summary: The U.S. Supreme Court affirmed the district court's judgment that Texas' method of electing district court judges violated the Voting Rights Act by diluting the voting power of minorities as to eight of the counties at issue, but reversed the judgment as to the ninth county. The court remanded for the district court to give Texas 180 days to develop a plan to remedy the vote dilution, or, if in the district court's view, the plan did not comply with the Act, for the district court to determine a remedial plan.

### **LULAC vs. INS (2003)**

Summary: A class action lawsuit was filed by LULAC against the INS that could provide an avenue for over 100,000 immigrants to become permanent legal residents. The Secretary of Homeland Security approved a settlement for certain qualified undocumented immigrants to receive amnesty who were unlawfully turned away from being approved for permanent legal status.

### **LULAC vs. Perry (2006)**

Summary: When Republicans gained control of the Texas legislature in 2003, the legislature drew a new Congressional map in order to increase the number of Republicans in the Texas delegation of the U.S. Congress. The U.S. Supreme Court ruled that only District 23 of the 2003 Texas redistricting violated the Voting Rights Act. The Court found the Texas congressional district diluted the voting rights of Latinos, but refused to throw out the entire plan, ruling that the plaintiffs failed to state a sufficient claim of partisan gerrymandering.



**First LULAC National Convention in 1929**

# Education



## Chapter 1





# Chapter 1 ~ Education

**LULAC affirms its commitment to the elimination of any form of discrimination, especially toward Hispanics, at all levels of public education, and to ensure all children have the right to an education.**

Hispanic children continue to attend public schools which often maintain low educational standards and low teacher/administrator expectations. New immigrant families, burdened by the daily struggle to survive as they attempt to adjust to the social, cultural and legal norms of their new country do not always share the same value systems common to native-born Americans and may be unaware of their rights in the local educational system.

In order to meet the needs of our Hispanic students, promote success and retention in schools, and provide for a competent and successful work force, we must work with parents and students while also providing high educational standards and accountability in our schools and addressing issues of disparity.

## COMMON ISSUES/CONCERNS/PERCEPTIONS

The following issues, concerns and perceptions are common in many of the school districts where Hispanic representation is a significant percentage of the student population:

- a) High student dropout rate, due to multiple factors, including economic pressure to work, peer pressure, illiterate parents, lack of family support for education, early pregnancy, etc.
- b) Under representation of Hispanics on school boards and professional staff.
- c) Lack of adequate Hispanic student representation in extra-curricular activities, due to a variety of factors, including cultural differences, economic needs forcing children to work after school, busing, etc.
- d) Shortage of quality multi-ethnic text books and teaching materials.
- e) Principal/teacher/counselor attitudes toward Hispanic students that penalize students unfairly and limit their possible access to educational and career choices.
- f) Assignment of Hispanic children to ESL and Special Education classes without appropriate testing and in cases when students may be better off elsewhere.
- g) Unequal discipline (punishing Hispanic students more severely than non-Hispanics for similar offenses).
- h) Inadequate involvement of Hispanic parents in school activities, often because feelings of alienation, cultural differences, or fear.
- i) Inequitable distribution of financial resources that contribute to substandard facilities, equipment and materials.

To keep abreast of activities within schools, monitoring

committees comprised of students and adults should be organized by concerned citizens' groups, with the help of local LULAC councils. Coalescing with other groups and/or organizations is crucial.

Do not assume that the issues/concerns/perceptions listed above will automatically apply to the given school district or campus in question. Conduct your own assessment utilizing the perceptions inventory following:

## CONFLICT RESOLUTION OPTIONS

### 1) Resolution of issues/concerns/perceptions directly.

All efforts possible should be undertaken to resolve these issues, concerns or perceptions at the teacher, principal, superintendent, and board level, in that order.

### 2) Organization at the local level to support positive educational endeavors, share concerns, strengthen the learning environment, and resolve conflicts.

Parents should organize and work cooperatively to support teachers and administrators. If they have regularly encouraged the educational process, attended parent-teacher conferences and built a positive relationship with their child's teacher, cultural concerns and conflicts are more easily resolved.

### 3) Mediation facilitated by a third party.

See sample letters for assistance in requesting help. Also read about the Community Relations Service, U.S. Department of Justice and Chapter 8 on Mediation.

### 4) Assistance from state education agencies.

The state education agency in your state may be



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requested to review discrimination complaints. These agencies, if the allegations appear to have merit, will investigate and order the respective school district to get into compliance. When investigations are not determined to be based on race or national origin discrimination, but determine that disparities exist, those state education agencies often make recommendations to other appropriate agencies.

## 5) Assistance from Office for Civil Rights, U.S. Department of Education:

There is an Office for Civil Rights, under the U.S. Department of Education in each of the ten federal regions in the country. Since most school districts receive federal funds, these offices have special interests and a mandate to monitor them for compliance. A letter outlining concerns and requesting intervention should trigger a response from the Department of Education with either their direct involvement or they may refer you to other resources. (See sample letters for assistance if you choose to request their help.)

## 6) Lawsuits in Federal court:

When all of the above options have failed, LULAC recommends that local councils and/or state offices consider filing, either on their own, or in coalition with other organizations, lawsuits in Federal court. To do that, however, the councils must first comply with all the basic procedures for handling of Legal Cases found in chapter 9 of this manual.

## PARENTAL RIGHTS AND RESPONSIBILITIES IN EDUCATION

Please note that this applies to legal guardians and court-appointed managing conservators

### PARENTAL AND STUDENT RIGHTS

Parents have the right to the following services for their children:

- Have an interpreter in their native language.
- Have services provided to their sons/daughters with special needs.
- Receive prior notice each time the district proposes or refuses to initiate a change in the identification of a child.
- To give a written consent of evaluations, supports, and services before being asked to make any decisions.
- To request a multidisciplinary evaluation.
- Receive written prior notice in their native language before any changes are made.
- To participate in meetings and must attend all

Admissions, Review, Dismissal meetings.

- Right to confidentiality.
- Right to review records.
- Right to file a complaint.
- Send their sons/daughters to the district which they or either parent resides.
- Reasonable access to the school administrator to request a change in class or teacher to which the student has been assigned to

### PARENTAL RESPONSIBILITIES

At the same time, parents have the following educational responsibilities.

#### Enrolling

- To provide appropriate identification including report cards and student records from their previous school whether in the US or in a different country, immunization records and a birth certificate with legal identity, legal name and age.
- Fill out appropriate registration forms, sign them, and turn them in.
- Not to falsify information on forms for student's registration.

*Note: Social Security is not required to enroll a student in a school.*

#### Attendance

- Send their son or daughter to school and if absent, send a written notice to the school within the district's required time.
- Must send the student to school if he/she is enrolled in kindergarten or pre-kindergarten.

*Note: Every district requires a certain percentage of attendance in class to receive credit.*

If the parent does not send the student to school, the school or attendance official can file a complaint against the parent in a county court for truancy.

#### Medication

- Send a written request to give permission to administer medication.
- Send the medication in its original container and properly labeled.

#### Involvement

- Make sure the student's homework task is completed on time to turn in.
- Attend parent conferences and meetings and maintain frequent communication with teachers.
- Talk to appropriate teacher, counselor, or principal



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when concerned.

- Read, sign and turn in to the school all required forms, letters or notices.

## Grooming

- Assure the student is well groomed and that such will not disrupt or interfere with school.

Note: Individual districts have grooming restrictions.

## WE INCLUDE THE FOLLOWING LIST OF PARENTAL RIGHTS IN TEXAS AS AN EXAMPLE

Please consult your local school system to obtain a copy of your rights according to the laws in the state where you reside.

## PROVISIONS OF TEXAS STATE LAW

### GENERAL

- Appeal to the school board of trustees regarding designated school in the district of parent's child(ren)
  1. request a hearing before the school board may present evidence as the basis for the petition before the school board.
- Reasonable access to school principal or designated administrator approving student transfers, reassignments within a school district to request a reassignment or change of student, class or teacher. If reassignment or change will to affect the assignment or re-assignment of another student. Decision rests with the school board.
- Request the addition of a specific academic class in keeping with the required curriculum if sufficient interest is shown in the addition of the class to make it economically practical to offer the class. Decision rests with the school board.
- Request a change in the class or teacher to which the parent's child has been assigned. Should a parents request be denied by a school board, parents may not appeal such decision to the commissioner of education.
- File a complaint with the school board of trustees and the commissioner of education about any school district employee who encourages or coerces a child to withhold information from the child's parents.
- Appeal in writing to the commissioner of education if aggrieved by actions or decision of any school board of trustees that violate the school laws of this state except in matters pertaining to transfers, reassignments, attendance or disciplinary actions against the parent's child(ren).
- Request to enroll their child(ren) who are residing in the school district separate and apart from the parent, if the child's presence in the school district is not for the primary purpose of participation in extra curricular activities and subject to admission criteria adopted by the school board of trustees regarding proper conduct of child.
- Request to excuse their child(ren) from attending school for the purpose of observing religious hold days, including traveling for the purpose, prior to the absence of the child. A student whose absence is excused for this purpose shall be allowed a reasonable time to make up school work missed on those days. The administration of the Texas Assessment of Knowledge and Skills (TAKS) cannot be rescheduled during the absence of students who are excused. Decision rests with the school board.
- Appeal any action against their child(ren) that violates their child's absolute right to individually, voluntarily and silently pray or meditate in school in a manner that does not disrupt the instructional or other activities of the school.
- Appeal to the commissioner of education if the district fails to comply with the requirements established by state law regarding bilingual education and ESL programs.
- Appeal the placement of their child(ren) in a bilingual education or ESL program to the local school board of trustees if the parents disagree with the placement of their child.
- Provide information to the agency regarding their child(ren)'s special education program when the Agency monitors the school district for compliance with federal and state law relating to special education.
- Participate in the development of an individual transition plan for their child enrolled in a special education program who is at least 16 years of age.
- Determine the language normally used in the home and the language normally used by their child(ren) for purposes of completing the state required home language survey in grades PreK-8th for bilingual education and ESL program eligibility.

### STUDENT RECORDS:

- Access the right to review all written school records of their child(ren) except as provided by federal law. The Right to review will include:
  1. Attendance records
  2. Test scores
  3. Grades
  4. Disciplinary records
  5. Counseling records
  6. Psychological records
  7. Applications for admission
  8. Health and immunization information
  9. Teacher and counselor evaluations
  10. Reports of behavioral patterns
  11. Access to a copy of each state assessment

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instrument administered there is a 10 day response under open records act.

## TEACHING MATERIALS:

- Parents have the right to review within reasonable hours all teaching materials, textbooks and other teaching aids used in the classrooms.

## MEETINGS:

- Parents have the right to any meeting of the school board of trustees, except for closed meetings, executive sessions held in compliance with subchapter D. exceptions to requirement that meetings be open and E. procedures relating to closed meeting of pertaining to open meetings of the Texas Government Code.

## PARENTAL CONSENT

- Parents have the right to disapprove a psychological examination, test or treatment unless required under the law pertaining to child abuse reporting and programs.
- Parents can either approve or disapprove the making of a videotape or recording of their child by representatives of a school district. District can only make a videotape for the sole purpose of using it for safety, maintenance of order, discipline in school or in school buses, a purpose related to a co-curricular or extracurricular activities.
- Parents can temporarily remove their child from a class or any school related activity that conflicts with the parents religious or moral beliefs if the parent gives a written statement to the child's teacher authorizing the removal from a class activity. Parents MAY NOT authorize this removal in order to avoid a test or prevent the child from taking subject for the entire

semester.

- All graduation requirements imposed by the school district and the State shall be met by the exempted student.
- Parents can approve or disapprove the entry into the bilingual education or ESL program, exit from the process or placement in such programs, this must be done in writing to the appropriate entities.

## PERCEPTIONS INVENTORY

Based on your experience in the community and dialogue with community groups and individuals, respond to the statements below. Your response is expected to reflect your judgment about the Hispanic community's perception of disparity of treatment in education and their level of confidence in systems for redress of grievances.

Simply, in your best judgment, would the Hispanic community strongly agree or strongly disagree with the following statements? Any statement with which you strongly disagree should be a concern for which potential remedies need to be considered.

Circle your best response: 1 indicates you strongly agree and 5 that you strongly disagree.

1. School administrators allocate funds for buildings and equipment equally across the district, regardless of whether a school is predominantly Hispanic or non-Hispanic.

1    2    3    4    5

2. Hispanic parents have "voice" in school board matters equal to that of non-Hispanic parents.

1    2    3    4    5

3. Hispanic students are suspended and expelled at the same rate as non-Hispanic students.

1    2    3    4    5

4. There is a fair representation of Hispanic teachers in each school within the district to provide Hispanic students with positive role models.

1    2    3    4    5

5. Qualified Hispanics have an equal opportunity to be hired and promoted at all levels of administration in the school district as non-Hispanics.

1    2    3    4    5

6. Encouragement for Hispanic students to complete high school is as strong as encouragement for non-Hispanic students.

1    2    3    4    5

7. Hispanics have a fair representation of members on the





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school board.

1 2 3 4 5

8. Hispanic parents and students have equal opportunity to appeal suspensions and expulsions as non-Hispanics.

1 2 3 4 5

## POTENTIAL SOLUTIONS & REMEDIES

- a) The establishment of a Superintendent's parents/ students' educational advisory council. (See Sample - Education Advisory Committee By-Laws).
- b) The development and implementation of a minority staff recruitment plan.
- c) Electing members to the school board through a single member district election process.
- d) Reviewing and revising student discipline codes.
- e) Developing strategies to ensure that Hispanic parents participate in school activities.
- f) Insist on multi-cultural awareness training for all school personnel.

## ISSUES/CONCERNS/INTERESTS

The following are common issues/concerns/interests often identified by parent group meetings:

- 1) The perception by some parents and students that Hispanic students are disciplined differently than non-Hispanics for similar offenses.
- 2) The lack of Hispanic representation on the school board.
- 3) The perception by some parents/students that there is a serious under-representation of Hispanics in administration, teaching, counseling, coaching and other professional job categories.
- 4) The perception that there is a serious lack of bilingual support staff making it difficult, if not impossible, for parents that do not understand or speak English to effectively communicate with school officials.
- 5) The perception by some parents that some members of the school district staff are lacking in understanding the Hispanic culture.
- 6) The perception by some parents and students that Hispanic parent involvement in school activities is wanting.
- 7) The perception by some parents and students that Hispanic students are seriously under represented in the student national honor society and extra curricular activities.

## LULAC SUGGESTED ACTIVITIES

- 1) Provide community leadership by helping identify

problems/issues/concerns by holding meetings of the membership and other interested community individuals at which discussions are held.

- 2) Appoint monitoring committee to assess situation, obtain statements, interview students/parents, obtain data from school, obtain EEO-4 Report (which provides employment statistics) and assess equal employment posture of school system.
- 3) Use the Perceptions Inventory in the Education chapter of this manual to help you make a determination regarding the issues/problems/concerns.
- 4) Have monitoring committee develop a list of issues/problems/concerns based on statements from students/parent's interviews, the results of the perception inventory and the discussions with members and other concerned individuals.
- 5) Reduce the list of issues/problems/concerns into well-defined statements of the issues/problems/concerns using the word "perception" so that you are not put in a position to prove anything.
- 6) Form a coalition with other organizations where practical for emphasizing community-wide efforts.
- 7) Attempt resolution of problems by meeting with school principal, superintendent, or school board level in that order.
- 8) Involve the LULAC District or State Director as necessary.
- 9) Hold press conference if your meeting with school officials does not produce results, or if they refuse to meet with you.
- 10) Contact the Community Relations Service, U.S. Department of Justice in your region for assistance. Phone numbers are in the Law Enforcement section of this manual.
- 11) If necessary, file complaint with the respective state education agency.
- 12) If necessary, file complaint with the Office of Civil Rights, U.S. Department of Education. In the state of Texas the number is 214-880-2459.
- 13) Encourage and support Hispanic candidates to run for election to the school board.
- 14) Consult the chapter on Voting Rights of this manual for further information regarding elections.
- 15) Consult the chapter on Employment for further information regarding employment issues.
- 16) Review the sample memorandum of understanding and/or agreement in the Education Chapter 1 of this manual for a good indication of what issues and/or remedies (agreements) may apply to your situation.
- 17) Review the Ground Rules for Mediation in the Mediation Chapter 8 of this manual so that you may become aware of the Community Relations Services (CRS) mediation approaches. There may be a mediation center in your city that could provide the same service as CRS. If you elect to mediate rather than request investigation by state agency or Office of Civil Rights,



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- contact the CRS in your region.
- 18) Review the Ground Rules for discussion in the Mediation Chapter 8 of this manual.
  - 19) Have confidence in yourself and those members of your group. Stay optimistic and do not give up.

## EDUCATION ADVISORY COMMITTEE BY-LAWS

### ARTICLE I: NAME

The name of the committee is the education advisory committee of the John Doe School District.

### ARTICLE II: PREAMBLE AND PURPOSE

To promote cooperation and understanding between the School District and all sectors of the community.

### ARTICLE III: ACTIVITIES

- a) Evaluate and review promotion and hiring practices of John Doe School District.
- b) Encourage fair and equitable implementation of policies.
- c) Review needs of schools regarding minority students.
- d) Evaluate performance of schools with respect to minority students.
- e) Seek involvement and participation of minority parents and patrons in school activities.
- f) Promote understanding, harmony and communication among parents, staff, administration, faculty, board and students.
- g) Seek involvement and participation of all parents and patrons in the district.

### ARTICLE IV: MEMBERSHIPS

- a) Membership shall consist of 15 people living in the attendance zone.
- b) There shall be \_\_\_\_ kinds of members:

### ARTICLE V: OFFICERS

- A) Officers
  1. Chairperson
  2. Vice-chairperson
  3. Secretary

**B) Nominations shall be made at the February meeting. Election by secret ballot and installation of officers shall be conducted at the March meeting. Terms begin at installation.**

### C) Duties of officers

1. The Chairperson shall:
  - a) Preside over all meetings.
  - b) Establish an agenda for all meetings.
  - c) Receive all proposals and ensure that action is taken on the proposals.
  - d) Keep a record of all proposals and their results.
  - e) Send the call for all meetings.
  - f) Serve as liaison between meetings.
  - g) Serve as official spokesperson for the committee.
  - h) Establish subcommittees.
2. The Vice-chairperson shall:
  - a) Assume duties of chairperson in his absence.
  - b) Assume any duties delegated by the chair person.
3. The Recording Secretary shall:
  - a) Keep a record of all the minutes of the meetings.
  - b) Determine that a quorum is present and record the names of those present.

### D) Term of Office

1. Officers shall serve for one year.
2. No officer shall serve more than two consecutive years in the same office.





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## SAMPLE

A complaint letter must contain the following:

1. Name, address and telephone numbers of the complaining party.
2. Basis on which you believe you or others may have been discriminated against. Please specify what you believe in the basis of the alleged discrimination, i.e., race, national origin, color, sex, handicap or age.
3. Person(s) affected by the discrimination. You may name an individual, provide lists of individuals or describe a group of persons.
4. Name and address, if you know it, of the organization, (school board, public school, university, vocational school, governing board or other institution) you believe is discriminating.
5. Approximate date(s) of any act(s) you alleged to be discriminatory.
6. A brief description of what happened which you believe was discriminatory. It is important that you be as specific as you can to assist us in determining the issue(s) that must be investigated.
7. The complaining party's original signature. Any additional information , which may be helpful when the complaint is investigated, may be included in the letter.

If you would like our assistance in formulating your complaint or in answering other civil rights related questions, you may come to our office or contact a representative from our office at XXX-XXX-XXXX.

Sincerely,

George D. Cole  
Special Project Team  
Office for Civil Rights

Enclosures

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## SAMPLE

February 11, 2004  
Office of Civil Rights  
United States Department of Education 1999 Bryant St. Suite 2600  
Dallas, Texas 75201

Dear OCR:

I live in a racist town and my children attend a racist school district. We need help and fast. The problems have been going on since the beginning of the school year. I wish to file a complaint, as I believe there is discrimination by the Whiteside ISD here in Temple, Texas.

Let me tell you about my sons, Jose and Herbie and some of their friends, all Mexicans got into a big fight at the high school with some white students. All of these Mexican boys, my sons included, were suspended for two weeks while nothing happened to the white boys, nothing! I believe this is racism as the boys told me that Mr. Wigley; the principal has called my sons, animals, wetbacks, troublemakers and retards. He has said more than once that they should all go back to Mexico! I myself have heard him say this. The white teachers will pick on Hispanic boys and girls for minor things, but let the white students get away with murder. There was an incident just weeks ago where Maria Rivera hit a teacher and was suspended for the rest of the school year, yet Britney, Megan, and Lindsey were in a fight in which a teacher got a broken arm trying to stop them. The white girls were suspended for three days. That's unfair.

My daughter Cristina told me that Mr. Briggs, the coach has touched her repeatedly and won't stop touching her even though she has told him to stop. Some of her girl friends have made similar complaints about the same coach, but the principal has not stopped him or has done nothing even though they have complained about the coach several times.

I have another son, Tomas, who is in third grade at Townly Elementary School. I think that he has a disability, as he is at least two grade levels where he should be. My requests that Tomas be tested are ignored and they go on deaf ears. I have testing results from a doctor that I paid out of my own pocket. I have shared the tests with them, which shows that he might have a problem, but they won't listen and I don't believe that he getting an appropriate education.

OCR, please help me as I don't believe that my children are getting an equal education. Please call me at phone number below.

Sincerely,



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## SAMPLE

UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS SOUTHERN DIVISION

Arkansas, Louisiana, Mississippi, Oklahoma, Texas  
1999 Bryant St. Suite 2600  
DALLAS, TEXAS 75202

January 30, 2004

Mr. or Mrs. XXXXXXXX  
734 XXXXXXXXX Drive  
XXXXXXX, Texas 79000

Dear Mr. or Mrs. XXXXXXXX:

This is in response to your correspondence, received in our office on January 15, 2004 regarding your child's discriminatory treatment by the YYYYYYYY Independent School District located in XXXX, Texas. The United States Department of Education, Office for Civil Rights (OCR), has enforcement responsibilities with respect to discrimination against students by recipients of Federal financial assistance under the following jurisdictions:

Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. Part 104 and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35; Title VI of the Civil Rights Act of 1964 and its implementing regulation at 34 C.F.R. Part 100; and Title IX of the Education Amendments of 1972 and its implementing regulation at 34 C.F.R. Part 106. In addition, OCR has enforcement responsibilities under the Age Discrimination Act of 1975 and its implementing regulation at 34 C.F.R. Part 110, which prohibits discrimination against students on the basis of age.

For your review, I have enclosed copies of literature which provide information regarding the rights of students under these laws and regulations, and the responsibilities of local education agencies complying with their requirements.

If you have reason to believe that an organization which receives money from the Department of Education is treating members of a protected group in a discriminatory manner because of race, national origin, sex, disability or age, you or any individual may file a complaint with us by submitting a letter or facsimile (FAX) at (214) 880-3082 to:

Mr. Taylor D. August  
Director, Dallas Office  
Office for Civil Rights, Southern Division  
United States Department of Education  
1999 Bryant St. Suite 2600  
Dallas, Texas 75201

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## WHERE TO FILE A DISCRIMINATION COMPLAINT

With the Office for Civil Rights, U.S. Department of Education.

A discrimination complaint against a recipient of federal financial assistance can be filed by contacting the OCR regional office that serves the state or territory in which the recipient institution is located.

THE REGIONAL OFFICES ARE LISTED BELOW:

### REGION I - Boston Office

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Office for Civil Rights  
U.S. Department of Education  
J.W.McCormack Post Office and Courthouse  
Room 701,01-0061  
Boston,MA 02109-4557  
Telephone: 617-223-9662  
FAX: 617-223-9669; TDD: 617-223-9695  
Email: OCR\_Boston@ed.gov

### REGION II - New York Office

New Jersey, New York, Puerto Rico, Virgin Islands

Office for Civil Rights  
U.S. Department of Education  
75 Park Place  
New York, NY 10007-2146  
Telephone: 212-637-6466  
FAX: 212-264-3803; TDD: 212-637-0478  
Email: OCR\_NewYork@ed.gov

### REGION III - Philadelphia Office

Delaware, Maryland, Pennsylvania  
Office for Civil Rights  
U.S. Department of Education  
100 Penn Square East, Suite 515  
Philadelphia, PA 19107  
Telephone: 215-656-8541  
FAX: 215-656-8605; TDD: 215-656-8604  
Email: OCR\_Philadelphia@ed.gov

### REGION IV - Atlanta Office

Alabama, Florida, Georgia, North Carolina, South Carolina, Tennessee

Office for Civil Rights  
U.S. Department of Education  
61 Forsyth St. S.W., Suite 19T70  
Atlanta, GA 30303-3104

Telephone: 404-562-6350  
FAX: 404-562-6455; TDD: 404-331-7236  
Email: OCR\_Atlanta@ed.gov

### REGION V - Chicago Office

Illinois, Indiana, Minnesota, Wisconsin

Office for Civil Rights  
U.S. Department of Education  
111 N. Canal Street, Suite 1053  
Chicago, IL 60606-7204  
Telephone: 312-886-8434  
FAX: 312-353-4888; TDD: 312-353-2540  
Email: OCR\_Chicago@ed.gov

### REGION VI - Dallas Office

Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Office for Civil Rights  
U.S. Department of Education  
1999 Bryan Street, Suite 2600  
Dallas, TX 75201  
Telephone: 214-880-2459  
FAX: 214-880-3082; TDD: 214-880-2456  
Email: OCR\_Dallas@ed.gov

### REGION VII - Kansas City Office

Iowa, Kansas, Missouri, Nebraska, North Dakota, South Dakota

Office for Civil Rights  
U.S. Department of Education  
8930 Ward Parkway, Suite 2037  
Kansas City, MO 64114  
Telephone: 816-268-0550  
FAX: 816-823-1404; TDD: 800-437-0833  
Email: OCR\_KansasCity@ed.gov

### REGION VIII - Denver Office

Arizona, Colorado, Montana, New Mexico, Utah, Wyoming

Office for Civil Rights  
U.S. Department of Education  
Federal Building  
1244 Speer Boulevard, Suite 310  
Denver, CO 80204-3582  
Telephone: 303-844-5695  
FAX: 303-844-4303; TDD: 303-844-3417  
Email: OCR\_Denver@ed.gov

### REGION IX - San Francisco Office

California  
Regional Civil Rights Director  
Office for Civil Rights - Region IX  
U.S. Department of Education



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Old Federal Building  
50 United Nations Plaza  
Room 239, 09-8010  
San Francisco, California 94102  
(415) 556-7000; TDD (415)556-6806

## REGION X - Seattle Office

Alaska, Hawaii, Idaho, Nevada, Oregon,  
Washington, American Samoa, Guam, Trust  
Territory of the Pacific Islands

Office for Civil Rights  
U.S. Department of Education  
915 Second Avenue Room 3310,  
Seattle, WA 98174-1099  
Telephone: 206-220-7900  
FAX: 206-220-7887; TDD: 206-220-7907  
E-mail: OCR\_Seattle@ed.gov

Cleveland Office  
Office for Civil Rights  
U.S. Department of Education  
Bank One Center, Suite 750  
600 Superior Avenue, East  
Cleveland, OH 44114-2611  
Telephone: 216-522-4970  
FAX: 216-522-2573; TDD: 216-522-4944  
E-mail: OCR\_Cleveland@ed.gov

District of Columbia Office  
Office for Civil Rights  
U.S. Department of Education  
1100 Pennsylvania Ave., N.W., Rm. 316  
P.O. Box 14620  
Washington, D.C. 20044-4620  
Telephone: 202-208-2545  
FAX: 202-208-7797; TDD: 202-208-7741  
E-mail: OCR\_DC@ed.gov

### Where To Write for Further Information:

Specific information about programs administered by OCR and programs administered by other offices in the Department can be found in the 1991 Guide to Department of Education Programs stock #065-000-00449-6).

Copies may be purchased for \$4.00. Checks should be made payable to the Superintendent of Documents. Telephone orders can be charged to VISA or MasterCard accounts.

### Write or call:

The Superintendent of Documents  
U.S. Government Printing Office  
Washington, D.C. 20402  
(202) 783-3238

To obtain free copies of technical assistance resource materials that relate to race, color, national origin, sex, handicap, or age discrimination, write to:

U.S. Department of Education  
Office of Civil Rights  
Mary E. Switzer Building, Room 5000  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202

## UNITED STATES DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS

### INFORMATION ABOUT OCR'S COMPLAINT RESOLUTION PROCEDURES

#### COMPLAINT EVALUATION

OCR begins by evaluating complaints. OCR's objective in complaint evaluation is to determine whether or not OCR can proceed to complaint resolution. OCR cannot proceed to complaint resolution under a variety of circumstances. For instance, where OCR has no jurisdiction; where a complaint is not timely; where another agency has already reached a binding decision; or where the person alleged to be injured declines to cooperate with OCR's investigation.

OCR will actively work with complainants and examine other sources of information to ensure that the agency has sufficient information to evaluate complaints appropriately. OCR staff will provide appropriate assistance to complainants who may need help in providing information that OCR needs.

It is expected that complainants will also work actively with OCR to ensure that OCR has the information needed; OCR can initiate complaint resolution only for those complaints for which sufficient information has been provided.

Generally, OCR will take action only with respect to those complaints that have been filed within 180 calendar days of the last act of alleged discrimination, or where the complaint alleges a continuing discriminatory policy or practice. If a complaint is not filed in a timely manner, the complainant may request a waiver, which may be granted only under limited circumstances.

OCR is responsible for enforcing the following Federal civil rights laws:

- a) Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin;
- b) Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in educational programs;
- c) Section 504 of the Rehabilitation Act of 1973, which

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- prohibits discrimination on the basis of disability;
- d) The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age; and
- e) Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability.

- If OCR determines that the evidence is insufficient to support a finding of a violation;
- If the complainant withdraws his or her complaint;
- If OCR obtains information indicating that the allegations raised by the complaint have already been resolved.

## COMPLAINT RESOLUTION

OCR's primary objective in complaint resolution is to resolve the complainant's allegations of discrimination promptly and appropriately.

OCR has a variety of tools for resolving complaints. These include: Early Complaint Resolution (ERC), agreements for corrective action, and enforcement. Any approach, or combination of approaches, may be initiated at any time and multiple approaches may be used to resolve any complaint.

### A. Early Complaint Resolution

Early Complaint Resolution provides the parties involved the opportunity to immediately resolve the allegations prompting the complaint. If the complainant and the recipient are willing to utilize this approach, OCR will work with the parties to facilitate resolution of the complaint. OCR does not sign, approve, or endorse any agreement reached between the parties; however, OCR will assist both parties in understanding pertinent legal standards and possible remedies.

OCR does not monitor any agreement between the parties in ECR, but if the recipient does not follow through on the agreement, the complainant may file another complaint with OCR.

### B. Agreements

OCR's investigations continue until such time as OCR can determine an appropriate resolution of the complaint allegations under OCR regulatory standards. OCR may use a variety of fact finding techniques, which may include informal fact findings such as joint discussions with the complainant and recipient.

Any agreement for corrective action will specify the action, if any, to be taken by the recipient to resolve each complaint allegation. Implementation of such agreements will be monitored by OCR.

### C. Other Ways Complaints Can be Resolved

OCR may also consider a complaint resolved when any of the following occur:

- If the complaint has been investigated by another agency and the resolution of the complaint meets OCR standards;

## LETTERS OF FINDINGS AND ENFORCEMENT

If OCR determines that the recipient has violated one or more violations of the civil rights laws, and the recipient is unwilling to correct the violation(s), OCR will promptly issue a violation letter of findings specifying the factual findings and the legal basis for the violation(s). OCR will again attempt to negotiate a corrective action agreement.

If OCR is still unable to obtain voluntary compliance, OCR will move immediately to enforcement by either initiating administrative enforcement proceedings or referring the case to the Department of Justice. OCR can also move immediately to defer any new or additional federal financial assistance to the recipient, and will begin administrative enforcement proceedings to terminate existing federal assistance.

## ADDITIONAL INFORMATION FOR THE COMPLAINANT

### A. Information About the Right To File a Separate Court Action

The complainant should be aware that a separate court action may be filed regardless of OCR's findings. It should be clear that, in resolving complaints, OCR cannot and does not represent the complainant in the way that a person's private attorney would. If the complainant wishes to file a court action, he/she may do so through an attorney.

### B. Prohibitions Against Intimidation or Retaliation

A recipient may not intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone who has either taken action or participates in an action to ensure secure rights protected by the civil rights statutes enforced by OCR. If any individual believes that he or she is being harassed or intimidated by a recipient because of the filing of a complaint or participating in the resolution of it, a complaint alleging such harassment or intimidation may be filed with OCR.



### C. Investigatory Uses of Personal Information

OCR processes complaints and conducts compliance reviews regarding discrimination on the basis of race, color, national origin, sex, disability, or age at institutions that receive Federal financial assistance from the Department of Education. The resolution of complaints may involve the



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collection and analysis of personal information, such as student records (including academic standing) and, in some cases, employment records. No law requires a complainant to give personal information to OCR, and no sanctions will be imposed on complainants or other individuals who do not cooperate in providing information requested by OCR in connection with its case resolution process.

However, if OCR is unable to obtain information needed to investigate or to otherwise resolve allegations of discrimination, it may be necessary for OCR to discontinue its complaint resolution activities.

There are two laws governing personal information submitted to all federal agencies, including OCR: the Privacy Act of 1974 (Privacy Act), 5 U.S.C. § 552(a) and the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

The PRIVACY ACT OF 1974 protects individuals from the misuse of personal information held by the Federal Government. The law applies to records that are kept and can be located at by the individual's name, social security number, or other personal identifier.

It regulates the collection, maintenance, use, and dissemination of certain personal information in the files of Federal agencies. Persons who submit information to OCR should know that the information that OCR collects is analyzed by authorized personnel with the agency and will be used only for authorized civil rights compliance and enforcement activities.

However, OCR may need to reveal certain information to persons outside the agency in the course of verifying facts or gathering additional information to develop a basis for resolving a complaint. Such details could include the physical condition or age of a complainant. Also, OCR may be required to reveal certain information to an individual who requests it under the provisions of the Freedom of Information (FOIA) (discussed below).

OCR will not release information to any other agency or individual except in the 11 instances defined in the

Department's regulation at 34 C.F.R. § 56.9(b), one of which is released under the FOIA.

Finally, the Office for Civil Rights does not reveal the name or other identifying information about an individual unless it is necessary for the completion of a investigation or for enforcement activities against an institution that violates the laws, or unless such information is required to be disclosed under the FOIA or the Privacy Act.

OCR will keep the identity of complainants confidential except to the extent necessary to carry out the purposes of the civil rights laws or unless disclosure is required under the FOIA, the Privacy Act or otherwise by law.

The FREEDOM OF INFORMATION ACT gives the public a right of access to records and files of Federal agencies, including those of OCR.

Individuals may obtain items from many categories of records of the Federal Government, not just materials that apply to them personally. OCR must honor requests under the FOIA with some exceptions.

Generally, OCR is not required to release documents during the case resolution process or enforcement proceedings if the release could have an adverse effect on the ability of OCR to do its job.

Any Federal agency may refuse a request for records compiled for law enforcement purposes if their release could constitute an unwarranted invasion of privacy for an individual. Also, a request for other records, such as medical records, may be denied where disclosure would be a clearly unwarranted invasion of privacy.





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SAMPLE MOU

MEMORANDUM OF UNDERSTANDING AND AGREEMENT  
Between  
XXXX INDEPENDENT SCHOOL DISTRICT  
And  
HISPANIC CONCERNED CITIZENS/RESIDENTS

On September 23 and October 20, 2003, XXXX School Superintendent XXXX, Assistant Superintendent XXXX and XXXX Board of Trustees members convened by the Community Relations Service, U.S. Department of Justice, with members of a group of concerned Hispanic parents to discuss mutual interests.

The following represents the major concerns/interests and corresponding items agreed to by the parties.

**1) Communities in School Program:**

The perception that Communities in School (CIS) program will be left understaffed, with no representation in some campuses, and the program non-existent at the high school.

**RESPONSE:**

The parties agree that there are several reasons why the CIS program has been shifted to the middle school site only and why it is not understaffed.

CIS of XXXX County is located at the following campuses. The number of CIS staff members assigned to each is in parenthesis:

Northwest Middle School (1)  
Central Elementary in XXXX (1)  
XXXX Elementary and Middle School ( 1 )  
XXXX High School (1)  
XXXX Middle School ( 1 )

The XXXX CIS site is now staffed by one person. This is exactly the same as all the other sites in the county. XXXX was the only county site that had more than one CIS staff member.

There are several reasons why the XXXX site has been changed. The first is to staff it like the other sites with one CIS staff member. XXXX ISD no longer has the funds to support two positions. For the past three years, the district had one staff member who was full time, and one who was a district employee assigned to CIS for approximately 25% of the day.

Each CIS site receives the same amount of funds to operate the program. The other sites paid for one person's salary and student services. XXXX CIS funds paid for the full-time person, like the other districts, and an additional \$5,000 for salary of the part-time person. This second position resulted in a serious funding problem, because nearly all of XXXX ISD's allotment was spent on salaries, with little left over to provide the required student services. In May the school district received word that each site would receive \$5,000 less next year to fund one position and provide the necessary student services. Therefore, the part-time position had to be eliminated.

The second reason for shifting CIS to the middle school is that when CIS began in XXXX, it started out at the middle school. The reason it was expanded to the high school was to enable the district and other sites to receive the services of a Texas Work force Commission repositioned staff member. At least one school in the county served by CIS had to be a high school; XXXX High School was not a site at that time. After a year, the TWC position was eliminated due to fund cuts.

Another reason why it was logical to place CIS on the middle school instead of the high school campus had to do with the number of counselors on each campus. For the first time, the high school has two full-time counselors who can adequately meet the needs of the 350 students. The middle school has only one full-time counselor to deal with approximately the same number of students.



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## SAMPLE MOU CONTINUED

The CIS campus manager at the middle school is Hispanic and bilingual. She is able to meet the language needs of the students on that campus. Every campus in the district has at least one person who can translate.

High school students can still be referred to CIS when they need help accessing community services. The state CIS guidelines have changed so that students no longer have to be a part of CIS. Anyone in the county who needs help can receive it by enrolling in a CIS program.

The district's goal is to provide the best program, benefiting the most students with the funds that it has available. With the CIS campus manager located on the middle school campus, the district has accomplished this goal.

The campus manager is certified to be a social worker as required by the CIS guidelines.

### **2) Racial Slurs:**

The perception that some students of the CIS program have been victims of racial slurs.

#### RESPONSE:

The district can find no reference to this concern. All employees that were involved in CIS have been questioned and no knowledge of slurs has been reported.

#### AGREEMENT:

It is agreed that the school district will aggressively investigate complaints of racial slurs.

### **3) The concern that there are no Hispanics on the school board:**

#### RESPONSES:

The ( )ISD responded that the district and board of trustees have a record of trying to encourage community involvement in all school-related activities. They have expanded the number of locations for the posting of agendas, moved the meetings to a larger and more comfortable site, and published requests for greater participation by their constituents. To the best of the district's determination, there has never been a community member to run for a board election who was Hispanic. However, the record of the district and of the Board of Trustees shows consistent support of the community, students, and parents of Hispanic descent. The board and administration would welcome the involvement of its Hispanic community in running for a position on the board.

#### AGREEMENT:

The parties agree to wait until a Hispanic seeks a board position and if he/she does not get elected the district will revisit the Hispanic group's recommendations that:

- a) the school district conduct a demographic study to determine whether Hispanic living patterns are such that single member district elections will enhance the potential for electing Hispanics to the board,
- b) should the results of the demographic study indicate that single member district elections would enhance the potential of electing Hispanics to the board, the school board will give consideration to establishing single member election districts,
- c) should school board vacancies arise in the future due to resignations, or for other reasons, the board consider appointing Hispanics to serve the remaining respective term of those who resign.

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## SAMPLE MOU CONTINUED

4) The concern that there is only one Hispanic teacher

### RESPONSE:

The district employed an Hispanic teacher last year. Unfortunately, they lost that very valuable employee to a district whose salary schedule far exceeded ( )ISD. The district does not currently have any Hispanic teachers despite all efforts in this area. It does have four teachers who speak fluent Spanish.

Recruiting, posting strategies, and other things that the district is doing are found in the Interest and Issues “XXXX Hispanic Community Report”, September 24, 2002.

### AGREEMENTS:

The parties agree that the school district will develop a staff recruitment plan that will include, among other things:

a) consideration of XXXX Independent School District’s recruitment strategies.

If such strategies are determined to be appropriate and beneficial at the ( )ISD, the ( )ISD will consider implementing them;

b) recruitment opportunities in South Texas and Brownwood A&I University;

c) paying stipends;

d) advertisements for available people in predominantly Hispanic markets;

e) the use of Hispanic parents in the recruitment process, including the members of the negotiating team involved in these discussions.

5) The perception that there is little Hispanic parental involvement in school activities:

### RESPONSE:

Hispanic parents are involved in every aspect of the school district, from the district and campus leadership teams, health advisory council migrant meetings, various improvement committee meetings, PTA, to parents night at the school. The district strives to translate as much information as possible into Spanish for the parents. This includes the school newsletter, parent notices, and even the high school graduation ceremony.

### 6) Retaliation:

The parties agree that the school district will do its best to ensure that none of the members of the negotiating teams involved in this case, or parents and students that contributed to the issues, potential solutions discussed and other aspects of this conflict resolution process, will not be retaliated against by school officials.

### IMPLEMENTATION

The parties agree that representatives of ( )ISD and the concerned parents who have come together to discuss the above issues and solutions will continue to meet on a scheduled basis to monitor provision of this Memorandum of Understanding and Agreement, and to discuss other issues that may be raised by either party, under conditions to be agreed by the parties.

Should there be disagreements over the interpretation or implementation of this Memorandum of Understanding and Agreement that can not be resolved by the parties themselves, either party may request CRS’s assistance in convening the involved parties to resolve their concerns.

This agreement becomes effective on January 22, 2004, and expires on January 22, 2006, unless renewed by action of both parties. The agreement may be dissolved at any time by the mutual consent of the parties involved, or may be amended by the consent of the parties involved in the discussions, which resulted in this agreement.



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## Case Work - Sample

### Texas LULAC State Education Advisory Committee Launches Action Plan to Address Dropout Rate of Latino Youth, Specifically English Language Learners.

#### COMMITTEE MEMBERS

Velma Ybarra—San Antonio  
*LULAC Education Chair*

Mary Almendarez—Houston  
*Community Relations Specialist*

Uriel Ramos—Ft. Worth  
*Educational Consultant*

Cynthia Valadez-Mata—Austin  
*Parent Advocacy Specialist*

Jill Ramirez—Austin  
*Parent Advocacy Specialist*

Claudia Sanchez—San Antonio  
*Deputy State Director for Young Adults*

Loren Campos—UT Austin  
*Young Adult*

Maricela Martinez—Austin  
*Young Adult*

Becca Garcia—Victoria  
*Parent Training Specialist*

Dr. Yolanda Salgado—Odessa  
*Professor UTPB*

Rosalia Cruz—Austin  
*Educator*

Rosina Valle—San Marcos  
*Educator*

Idolina Vasquez—Weslaco  
*Parent Advocate*

Joey Cardenas—Director  
*Texas LULAC*

#### Special Assistance Groups:

Intercultural Development Research Associates—San Antonio, Texas

Center for High School Equity--Grant—LULAC National Office

LULAC Local Council #4631-Velma Ortega President

Acknowledging the many efforts, programs, and initiatives to improve the education of all students in the State, including successful bilingual education and ESL (English as a Second Language), some colleges and universities offering courses, degree programs, and institutes that focus on the needs of English Language Learners—ELLs, the requirement to include the ELPS--English Language Proficiency Skills-- across all content, efforts by the Gates Foundation to address the dropout

crisis throughout the country, via development of collaborative Action Plans, are promising, the Education Committee recognized that the data\* continues to cite dropout rates that are unacceptable and growing for large numbers of ELLs in the State. The Committee further recognized the negative economic impact for Texas if the dropout rates continue as currently recorded.

To fix the economy, improve our neighborhoods, and increase the quality of life for families in Texas, the Committee felt we have to lower the dismal dropout rates. To do that it proposes a plan to improve funding, staff development, and instructional practices in ELL programs, ESL, and bilingual education that can positively impact the high school graduation rates for Hispanic students in Texas.

This committee also recommends that the National LULAC office fund raise and acquire no less than 1 million dollars to support MALDEF and other support groups for impending legal costs if the TEA does not respond adequately to the needs of Hispanic youth, poor children, and children of color who are not meeting high school and work/college readiness requirements in our schools.

#### MISSION: The Committee's Mission Statement

- To cultivate a culture of support for dropout prevention for all students, with a focus on English Language Learners (ELLs).
- To ensure that all teacher and administrator certification courses at every institute of higher education address the specific learning needs of English Language Learners (ELLs).
- To ensure that parents are trained as the “promotoras” or agents of change to foster long-range implementation of and adherence to the recommended improvements in this Plan. Parents can serve as the best advocates for the academic success of their children.

#### RECOMMENDATIONS

1. To revise Bilingual and ESL Education Laws in the state of Texas.
2. Reporting and Auditing Improvements.
3. Parental Involvement –Building the capacity of “Promotoras” parents who will promote LULAC’s plan of action.

*Continued on page 19.*

# Chapter 1 ~ Education



## Case Work - Samples

4. Staff Development--It is time for major changes in the way tht schools and communities prepare administrators, teachers, and support staff for serving ELLs and other special populations or minority groups.

5. Instructional Services for ELLs. First and foremost, demand immediate compliance with the Bilingual Education Law and its provisions.

**ACTION PLAN:** Recommendations for LULAC local, district, and state leadership.

1. LULAC has, and should, continue to allocate staff, funding, and organizational support to insure that this Plan is publicized in every major newspaper, nd that it be submitted to partnering organizations (MASB, ALAS, TABE, TASB, TASSP, TAEP, TSTA, et al.), and to media outlets.

2. LULAC staff and the LULAC State Education Advisory Committee present this plan to partnering organizations, monthly or as necessary, during this upcoming year.

3. LULAC, in partnership with other state, regional, and local leaders, require the TEA and ESCs to inform the general

public that 80% of ELLs in Texas who are underachieving are not “illegales” or “undocumented” students in our schools!

4. Through the open records act, require the TEA to provide a report on the number of educators, by ethnicity, race, and district, who have filed grievances for alleged or perceived retaliation in Texas school districts.

5. LULAC will submit a news story every month on the progress and status of this action plan for the next five years, with copies to other support organizations, such as TABE, MALDEF, NAACP, MASB, TASB, TASSP, TASA, TAESP, and to the media.

6. LULAC’s education committee will provide a synopsis of this plan to all media outlets and schedule presentations, as necessary, to all associations, organizations, councils, committees, college/university groups, et al, to further promote support for and implementation of this Action Plan.



*The above is but a summary of the work of the education committee. For a complete rendition of the committee’s work please visit the Texas LULAC website*

## Central Texas LULAC Councils Build New Educational Partnerships

In an effort to increase Hispanic student graduation rates, increase Hispanics in higher education, and improve parental involvement, LULAC Councils in Central Texas recently entered into new educational partnerships with the assistance of the LULAC National Civil Rights Commission. The Central Texas LULAC Civil Rights Committee organized meetings with Temple College, the Temple Independent School District (I.S.D), Rogers I.S.D., and Bartlett I.S.D. and developed partnerships to increase collaboration and

communication between these educational institutions and the local Latino communities. These new partnerships have been so successful that they have spurred the creation of LULAC Young Adult and Youth Councils in the area high schools and colleges. Central Texas LULAC Councils have engaged students and parents and taught them about financial aid, scholarships, and career days. Participation in new Minority Advisory Councils has also been key to promoting new minority staff recruitment.





# Chapter 1 ~ Education

## Case Work - Sample

### New Mexico Education Task Force Spearheads Passage of Innovative Legislation

Ralph Arellanes, member of the LULAC National Civil Rights Commission, serves as Co-Chair of the New Mexico Education Task Force that wrote and spearheaded the passage of an innovative piece of legislation, the Hispanic Education Act (HEA). This historic Act was signed into law by New Mexico Governor, Bill Richardson, in 2010. The Hispanic Education Act is aimed at addressing the dropout rate of Hispanic children in New Mexico and at closing the achievement gap.

The Act will gather statewide data on the strategies that work for the Hispanic community and those that do not work. Then the data will be compiled for reports to the Governor in order to develop programs and resources to eradicate the Hispanic dropout rate. The Act, includes three main focus areas:

- Codifies a formal Hispanic Advisory Council that will institutionalize statewide community engagement;
- Requires the Public Education Department to provide an annual status report on the state of Hispanic education;
- Creates a Hispanic Education Liaison to focus on Hispanic education policy, developing a strategic approach to take a dramatic step to close the achievement and graduation gaps, serve as a resource to districts, and liaison to the advisory council to ensure that recommendations are researched and implemented.

New Mexico LULAC was also heavily involved in lobbying for the New Mexico Department of Hispano Affairs Bill which was heavily and heatedly debated. In

2009, the bill passed both the New Mexico Senate with a 31-7 vote and the House with a 49-13 vote. However, the New Mexico Governor vetoed the bill. According to the Governor's press release dated April 10, 2009, "in



vetoing the bill, the Governor pledged to work with the Legislature during the upcoming special session to create and properly fund an Office of Hispanic Affairs. The Governor will also hire a special advisor of Hispanic Affairs in the Governor's Office who will be charged with

developing a proposal for a suitable Office of Hispanic Affairs, along with specific, strategic goals and duties for that office. The Governor will also issue an Executive Order creating an advisory Hispanic Affairs Council, made up of leaders in the Hispanic community to advise him on the structure and duties of the new office. The Governor will appoint two co-chairs of the Council: Alex Romero, executive director of the Hispano Chamber of Commerce and Pablo Martinez, state director of the LULAC New Mexico." In 2010, the bill was introduced again. The bill is designed to help address the problems in the Hispanic community pertaining to education, employment, economic development, poverty, housing, medical coverage, police brutality, parity in employment and cultural/historical accuracy.

# Employment



## Chapter 2





# Chapter 2 ~ Employment

**LULAC is committed to work for equal employment opportunities for all Hispanics. Through the years we have achieved a measure of success in increasing the number of Hispanics in the public and private sectors.**

Through partnerships, advocacy, networking and the relationships with the federal establishment and the private sector, LULAC has been able to increase job opportunities for Hispanics in the workplace.

LULAC is aware, however, that in many instances access to equal employment opportunity is thwarted, delayed or denied because of discriminatory policies and practices in both the public and private sectors.

In some cases, the discriminatory barriers may be unintentional or based on so-called neutral policies or practices; however, the effect can be discriminatory.

LULAC recognizes that removal of such practices and barriers requires more forceful action-oriented strategies and involvement on the part of its members, councils, state structures and the national office.

LULAC members at the local level must assume leadership roles in challenging not only discriminatory practices but also systemic and pronounced under representation of Hispanics.

The LULAC Civil Rights Task Force in its report outlined a number of recommendations that the LULAC National Board adopted in 1996 including:

## **AFFIRMATIVE ACTION**

It is LULAC's position that:

- a) affirmative action be preserved, with modifications, as a national policy.
- b) all levels of the organization, aggressively pursue vigilance to ensure that government contracts comply with the requirement prohibiting contractors from discriminating in employment on the basis of race, color, creed, sex, and national origin.
- c) in compliance with adopted policies and procedures, members help expose, chastise and boycott employers with an indifference towards a policy of non-discrimination and whose written or unwritten policies and practices hinder qualified applicants and employees, particularly Hispanics, from being hired and promoted on the basis of equality.
- d) all levels of the organization strive to correct, at every opportunity, the public's misconceptions and clarify the essential characteristics of the affirmative action requirements Executive Order 11246 imposes upon employers that contract with the Federal government; LULAC accepts its responsibility of educating the general public, that numerical goals which are a component of the affirmative action programs have never been designed to be, nor may they properly or lawfully be, interpreted as employment quotas or preferential treatment.

- e) the organization espouses the position that no job or position be filled by a person solely because that person happens to be of a particular race. Instead, it encourages and assists in outreach and other efforts to broaden the pools of qualified candidates to include groups previously excluded, particularly Hispanics.
  - f) councils and members continuously engage in efforts to foster partnerships between the Federal, state and local governments, with the ultimate goal to ensure that equal employment and contracting opportunities are available to minorities, women and particularly Hispanics.
- LULAC is committed to work for equal employment opportunities for all Hispanics. Through the years we have achieved a measure of success in increasing the number of Hispanics in the public and private sectors.
- g) whenever possible, the organization explore mediation approaches that may result in partnerships which may prove to be beneficial to Hispanics.
  - h) that the organization supports the filing of class action lawsuits in the courts when all else fails.

## **COMPLAINT PROCESS**

LULAC continues to monitor the performance of the Equal Employment Opportunity Commission (EEOC) with regards to identifying, eliminating and rectifying unlawful employment discrimination against Hispanics by:

- 1) Ensuring that EEOC's Outreach Programs are educating. The foregoing information on employment issues, recognizing discrimination, complaint procedures, affirmative action, etc., is provided to assure that members develop the additional expertise for new leadership roles;
- 2) Measuring the effect of EEOC's Outreach program for each field office by reviewing the number of charges filed by Hispanics in comparison to the proportion of Hispanics in the labor force.
- 3) Ensuring that all EEOC's litigation plans for each field office identify issues affecting Hispanics (i.e.- English Only, national origin harassment, accent issues, glass ceiling issues involving companies in highly populated Hispanic labor markets etc.).
- 4) Monitoring and ensuring that EEOC's litigation efforts, nationally and by field office, include Hispanics (i.e.- review data regarding lawsuits filed by statute by office, persons affected by race and national origin, relief obtained, etc.).
- 5) Monitoring and ensuring that EEOC's Administrative Findings involving unlawful employment violations include Hispanics (i.e. - review data separately by field office of all causes violations by statute, persons affected



# Chapter 2 ~ Employment



by race or national origin, etc.).

6) Insisting that EEOC offices, headquarters and field offices, have Hispanic staff at all levels of operation, including policy holders, that correspond to the proportion of Hispanics in the labor force.

7) councils and members consider requesting, whenever deemed appropriate, the services of the appropriate federal regulatory agency, Civil Rights Division of HUD, Employment Litigation Division or Civil Rights Division of the C.R.D. Department of Justice, Civil Rights Department of Education, Office of Contract Compliance Programs of the U.S. Department of Labor, EEOC, etc., to conduct program reviews of those entities which fall under their jurisdiction, i.e., cities, counties, school districts and corporations, etc., that receive federal grants or contracts from the Federal government and which appear to discriminate against minorities, especially Hispanics.

Any suspected pattern of class discrimination based on national origin involving local and state governments can also be brought to the attention of the Employment Litigation Section of the Civil Rights Division of the U.S. Department of Justice.

## WORK ENVIRONMENT

In an effort to ensure that employers provide a work environment free of national origin and sexual discrimination and/or harassment, the LULAC Civil Rights Task Force recommended the following actions, which were adopted by the national board in 1996:

- a) LULAC, at all levels of the organization, be vigilant and take necessary steps, especially when Hispanics complain, to monitor and make sure employers have in place policies and procedures that do not discriminate or have the effect of discriminating against individuals on the basis of race, ethnicity, gender, disability, religious preferences, age, etc. These policies should include but not be limited to the following examples of alleged employment discrimination;
  1. Verbal or physical expressions of racial harassment that often result in oppression and hate behavior (i.e., ethnic

slurs, taunting, ridiculing, etc.);

2. English Only policies;
3. denial or limitation of employment opportunities based on accent;
4. Sexual harassment including other terms and conditions of employment affecting recent Hispanic immigrants;
5. Glass Ceiling issues involving highly populated Hispanic labor markets; and,
6. Menially less desirable job assignments based on national origin;

## SPECIFIC EMPLOYMENT RELATED RESOURCES

The foregoing information on employment issues recognizing discrimination, complaint procedures, affirmative action, etc. is provided to assure that LULAC members develop the additional expertise for new leadership roles.

The following pages in this section of the manual will tell you about federal, city and state agencies that deal exclusively in employment by virtue of the laws that each enforces. This will include a brief description of federal, state and local employment statutes which prohibit discrimination in the workplace or cover other employment related areas.

Federal agencies that enforce laws that prohibit discrimination in the workplace include:

- U.S. Equal Employment Opportunity Commission (EEOC).
- U.S. Department of Justice, Office of Special Counsel for Immigration Related Unfair Employment Practices.
- U.S. Department of Labor, Office of Federal Contract Compliance Programs.
- Federal Agency Employee Discrimination Complaint Processing.

Other Federal Agencies that enforce employment related laws:

- U.S. Department of Labor, Wage & Hour Division.
- U.S. Department of Labor, Occupational Safety & Health Administration (OSHA).
- National Labor Relations Board.

## INTRODUCTION TO EMPLOYMENT DISCRIMINATION

The two (2) theories for proving employment discrimination under Title VII are known as **disparate treatment and disparate impact**.

In a disparate treatment case, an employer treats a person of one race, sex, religion or national origin differently from a person of another race, another sex, another religion or another national origin. Other examples are: a person who has filed a charge, been a witness in a EEOC charge or otherwise opposed an unlawful action adversely compared with one who has not and they are similarly situated. Generally, an employer's use of neutral or objective factors





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in the employment decision-making process should assure fairness.

However, when an employer's practices "are fair in form, but discriminatory in operation", they may be attacked under the disparate impact theory. Adverse impact or disparate impact involves any requirement that harms one class at a greater rate than another and has no demonstrated business value (is not reasonably necessary to the safe and efficient operation of the business). Examples include: owning a car, a typing test, passing an interview, height requirement, previous income, etc.

Generally, an employer's use of neutral or objective factors in the employment decision-making process should assure fairness.

The following are examples of some terms and conditions of employment which are covered under federal laws prohibiting discrimination in the workplace:

- ~ **Hiring**
- ~ **Discharge**
- ~ **Training**
- ~ **Classification**
- ~ **Recruitment**
- ~ **Interviews**
- ~ **Work**
- ~ **Tenure**
- ~ **Referrals**
- ~ **Discipline**
- ~ **Retirement**
- ~ **Lay-off**
- ~ **Union**
- ~ **Representation**
- ~ **Promotion**
- ~ **Compensation**
- ~ **Job Assignments**
- ~ **Transfer**
- ~ **Advertisement**
- ~ **Benefits**
- ~ **Testing**
- ~ **Maternity/Pregnancy**
- ~ **Harassment**
- ~ **Demotion**
- ~ **Sexual Harassment**
- ~ **Seniority**
- ~ **Recall/ Reinstatement**
- ~ **Segregated Departments**

The following types of employers are covered under federal laws prohibiting discrimination in employment: Private Employers; Public and Private Employment Agencies; Unions; Apprenticeship Committees; Local, County and State Government Agencies; Public and Private Elementary and Secondary Schools; Public and Private Universities and Colleges.

## 1. U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

The U.S. Equal Employment Opportunity Commission (EEOC) was established by Title VII of the Civil Rights Act of 1964 and began operating on July 2, 1965. EEOC carries out its work at its main office in Washington, D.C. and in fifty (50) offices throughout the United States.

The mission of the EEOC is to promote equal opportunity in employment through administrative and judicial enforcement of the federal civil rights laws that it administers and through outreach education and technical assistance.

EEOC administers the below listed federal civil rights

statutes which prohibit employment discrimination:

- **Title VII of the Civil Rights Act of 1964**, as amended, which prohibits discrimination against a person because of their race, color, sex, national origin or religion;
- **The Age Discrimination in Employment Act of 1967**, as amended, prohibits discrimination against individuals 40 years of age and over;
- **Equal Pay Act of 1963**, prohibits discrimination in compensation on the basis of gender when performing work that requires substantially equal skill, effort and responsibility and that is performed under similar working conditions with in the same facility location.
- **Title I of the Americans with Disabilities Act of 1990**, prohibits discrimination against individuals with permanent physical or mental disabilities.

Each of the above statutes cover both the applicant or an employee and have retaliation provisions which in effect make it a violation of the law for an employer to retaliate against an individual for filing a charge of employment discrimination, retaliate against a person who participated in a EEOC investigation (example: witness) or any person who opposes employment practices made unlawful under the statute.

## THE ROLE OF EEOC AND FAIR EMPLOYMENT PRACTICE AGENCIES

Section 706 of Title VII sets forth the requirement that EEOC defer charges to local and state Fair Employment Practices Agencies (FEPAs) and accord substantial weight to their findings and orders. Section 14 (b) of the Age Discrimination in Employment Act (ADEA) provides that proceedings should be commenced with the state FEPA as a prerequisite to private suits under the Act. There is no Equal Pay Act (EPA) provision for deferral or referral of complaints.

Section 1601.13 ( a), (b), and (e) of EEOC's regulations sets forth the filing procedures and timeliness considerations pursuant to a Title VII deferral relationship. Charges received by FEPAs and EEOC are a common workload which is divided pursuant to contracts and work sharing agreements to provide for prompt resolution of charges and avoid duplication of effort by EEOC and the FEPAs. EEOC regulations provide the authority for EEOC to enter into Title VII, ADEA and Americans with Disabilities (ADA) work sharing agreements with FEPAs.

EEOC awards annual contracts to FEPAs that are designated as 706 agencies and under funding principles approved by EEOC, meet certain standards of capability, performance, and compatibility with EEOC's charge investigation systems and methods.

A work sharing agreement is required as a condition of a charge resolution contract in that it generally provides for dual filing of charges and identifies certain categories of charges for which EEOC or the FEPA has initial

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investigation authority.

A charge of employment discrimination under Title VII, ADEA or ADA must be filed with EEOC within 180 days from the date of the alleged act of discrimination. The 180 day time period may be increased up to 300 days if the charge is also covered by local referendum or state anti-discrimination laws.

This means that if you live in a city that has a local referendum or your state has laws that prohibit discrimination in employment, you have up to 300 days in which to file your charge with EEOC.

However, if you file with your local or state agency it must be done within 180 days. If more than 180 days have passed, you then must file with EEOC within the 300 day period. Local and State FEPA's are generally known as Human Rights Commissions, Human Relations Commissions, etc.

If you live in a city or state that has no ordinance or state laws prohibiting discrimination in employment, you must file your charge with the EEOC office that covers your area of residency within 180 days from the date of the alleged act of discrimination.

## SEXUAL HARASSMENT

Sexual harassment is a form of sex discrimination that violates **Title VII of the Civil Rights Act of 1964**, as amended. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim as well as the harasser may be a woman or a man.
- The victim does not have to be of the opposite sex
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee,
- The victim does not have to be the person harassed.

It is helpful for the victim to directly inform the harasser that the conduct is unwelcome and must stop. The victim should use and follow any employer complaint mechanism or grievance system available.

Prevention is the best tool to eliminate sexual harassment in the workplace. Employers are encouraged to take steps necessary to prevent sexual harassment from occurring. They should clearly communicate to employees that sexual harassment will not be tolerated. They can do so by establishing an effective complaint or grievance process and taking immediate and appropriate action when an employee complains.

## PREGNANCY DISCRIMINATION ACT

The Pregnancy Discrimination Act is an amendment to Title VII of the Civil Rights Act of 1964. Discrimination on the basis of pregnancy, childbirth or related medical conditions constitutes unlawful sex discrimination under Title VII. Women affected by pregnancy or related conditions must be treated in the same manner as other applicants or employees with similar abilities or limitations.

An employer cannot refuse to hire a woman because of her pregnancy related condition as long as she is able to perform the major functions of her job. An employer cannot refuse to hire her because of its prejudices against pregnant workers or the prejudices of co-workers, clients or customers.

If an employee is temporarily unable to perform her job due to pregnancy, the employer must treat her the same as any other temporarily disabled employee; for example, by providing modified tasks, alternative assignments, disability leave or leave without pay.

If an employer requires its employees to submit a doctor's statement concerning their inability to work before granting leave or paying sick benefits, the employer may require employees affected by pregnancy related conditions to submit such statements. Employers must hold open a job for a pregnancy related

absence the same length of time jobs are held open for employees on sick or disability leave. An employer may not have a rule which prohibits an employee from returning to work for a predetermined length of time after childbirth. If an employee has been absent from work as a result of a pregnancy related condition and recovers, her employer may not require her to remain on leave until the baby's birth.

Any health insurance provided by an employer must cover expenses for pregnancy related conditions on the same basis as costs for other medical conditions. Pregnancy related expenses should be reimbursed exactly as those incurred for other medical conditions, whether payment is on a fixed





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basis or a percentage of reasonable and customary charge basis.

The amounts payable by the insurance provider can be limited only to the same extent as costs for other conditions. No additional, increased or larger deductible can be imposed. If a health insurance plan excludes benefit payments for pre-existing conditions when the insured's coverage becomes effective, benefits can be denied for medical costs arising from an existing pregnancy.

## **NATIONAL ORIGIN DISCRIMINATION**

Under **Title VII of the Civil Rights act of 1964** it is unlawful to discriminate against any applicant or employee because of the individual's national origin. No one can be denied equal employment opportunity because of birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group.

Equal employment opportunity cannot be denied because of marriage or association with persons of a national origin group; membership or association with specific ethnic promotion groups; attendance or participation in schools, churches, temples or mosques generally associated with a national origin group; or a surname associated with a national origin group.

A rule requiring employees to speak only English at all times on the job may violate Title VII, unless an employer shows it is necessary for conducting business. If an employer believes the English-only rule is critical for business purposes, employees have to be told when they must speak English and the consequences for violating the rule. Any negative employment decision based on breaking the English-only rule will be considered evidence of discrimination if the employer did not tell employees of the rule.

An employer must show a legitimate nondiscriminatory reason for the denial of employment opportunity because of an individual's accent or manner of speaking. The Commission's investigation will focus on the qualifications of the person and whether his or her accent or manner of speaking had a detrimental effect on job performance. Requiring employees or applicants to be fluent in English may violate Title VII if the rule is adopted to exclude individuals of a particular national origin and is not related to job performance.

Harassment on the basis of national origin is a violation of Title VII. An ethnic slur or other verbal or physical conduct because of an individual's nationality constitutes harassment if they create an intimidating, hostile or offensive working environment, unreasonably interfere with work performance or negatively affect an individual's employment opportunities.

Employers have a responsibility to maintain a workplace free of national origin harassment. Employers may be responsible for any on-the-job harassment by their agents and supervisory employees, regardless of whether the acts

were authorized or specifically forbidden by the employer.

Under certain circumstances, an employer may be responsible for the acts of non-employees who harass their employees at work.

## **JURISDICTIONAL REQUIREMENTS**

### **Number of employees**

- Title VII of the Civil Rights Act of 1964 and Title I of the Americans with Disabilities Act of 1990 requires that in order to file a charge of employment discrimination under these statutes the covered employer have 15 or more employees.
- Age Discrimination in Employment Act of 1967 requires that the covered employer have 20 or more employees.
- Equal Pay Act of 1963 requires that the covered employer have a male and a female performing work that requires substantially equal skill, effort and responsibility and that is performed under similar working conditions within the same facility address location.

### **Timeliness**

- Individuals have a 2 year statute of limitation in which to file a charge of employment discrimination under the Equal Pay Act of 1963.
- A charge of employment discrimination under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 or Title I of the Americans with Disabilities Act of 1990 must be filed with EEOC within ( Example the state of Texas: 300 days because of local and state anti-discriminatory law) or 180 days with your local or state Fair Employment Practice agency.

If there is no local or state Fair Employment Practice agency in your state, you have 180 days to file your charge with EEOC;

### **Administrative Filing**

All of the statutes enforced by EEOC, except the Equal Pay Act of 1963, require that a charge must first be filed with EEOC before individuals are able to file a private lawsuit in court against their employer.

Any person who believes that his or her job rights have been violated has the right to file a charge of discrimination with EEOC. Also, another person, group, or agency may file a charge on behalf of someone else. A person can file a charge by visiting an EEOC office, mail a letter that describes what was done to you to include dates and why you believe discrimination occurred or you can phone and describe what has happened and why you believe that action(s) constitute discrimination.

## **INTERVIEW QUESTIONS**

The following are examples of questions that you will most

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likely be asked during your EEOC interview.

It is recommended that you review each question so that you are prepared to answer each to the best of your ability. If you plan to mail EEOC a letter describing what happened to you, it is recommended that your letter should contain your response to each of the below listed question. The questions are as follows:

1. Your complete home mailing address (number, street name, apartment number, zip code, area code and telephone number);
2. Your date of birth;
3. Your social security number;
4. Your employers complete mailing address (number, street, suite, city, state, zip code and area code and telephone number);
5. Name and title of the highest ranking company official;
6. Name and title of your immediate supervisor;
7. Your employment history: date of hire, position title hired into, starting pay, department assigned to, name of supervisor, if applicable, date of promotion or transfer;
8. Your present status: job title, name of department where you work, your supervisor's name, your rate of pay, names of other employees with the same job title you have and do the very same work;
9. Tell us what happened, give us the date (s) and why you believe it is discriminatory? Example: I was fired, not promoted, demoted, laid-off, etc.;
10. Comparative data (identity of employee(s) who did the very same thing your employer states you did that lead to the 5 day suspension but your comparator was not suspended). Give us his/her name;
11. Identity of witnesses ( the person( s) must have either heard or saw what was said or done). Witnesses are key in matters related to racial slurs, ethnic slurs, fights, sexual harassment or when giving employer notice;
12. Record evidence (provide copies of any records or documents that you have and believe are related to the issue (s) you are discussing with the EEOC representative. Some examples include:
  - Performance Evaluations

- Employee Handbooks
- Letters of Commendation,
- Union Contract
- Appreciation or Achievement
- Copies of Reprimands
- Employer Policies, Rules & Regulations
- Copies of Warnings
- Records or Documents of Comparative Data

## CHARGE PROCESSING

When a charge is filed, EEOC informs the employer within ten days. Charges are given the most prompt attention when the facts seem to show that it is likely that discrimination has occurred. Other charges will receive follow-up investigation, as resources allow, if more information is needed. Charges may also be closed at any time if EEOC believes that more investigation will not show that employment laws have been broken.

Charges may be chosen for EEOC's Mediation Program if both the Charging Party and the employer are interested in this option. Mediation is an alternative to an investigation and may quickly resolve a charge. Participation in the mediation program is confidential and voluntary. Charge processing will resume if mediation is not successful.

EEOC may settle a charge at any time during the investigation, if both the charging party and the employer agree. If there is no early settlement, processing will continue. After an appropriate investigation, EEOC may decide that discriminatory occurred or may close the charge because the evidence does not show discrimination. If the charge is closed, EEOC will give the charging party a "Notice of Right To Sue".

If conciliation is not successful, EEOC may file a lawsuit against the employer. If the charging party is not satisfied with EEOC's efforts, the charging party has the right to file his or her own lawsuit against the employer within 90 days of receiving the "Notice of Right To Sue".

## AVAILABLE REMEDIES

The remedies available for job discrimination may include hiring, reinstatement, reasonable accommodation, promotion, back pay, front pay or other actions that will make an individual "whole" (condition the person would have been in if discrimination had not occurred). Remedies also may include payment of attorney's fees, expert witness fees and court costs.

Under most EEOC enforced laws, damages for intentional discrimination may be available for actual monetary losses, for future monetary losses, and for mental suffering and inconvenience. Punitive damages also may be sought if an employer knowingly and purposely broke the law.

## EEOC PHONE NUMBERS

For assistance or more information on the EEOC field office nearest you, call:

1-800-669-4000 or 1-800-669-6820 (TTY)





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For free publications, contact EEOC's Publication

Distribution Center at:

1-800-669-3362 or 1-800-800-3302 (TTY)

Information about the laws enforced by EEOC also can be found on the Internet at: [www.eeoc.gov](http://www.eeoc.gov)

Mailing address:

U.S. EEOC

1801 L Street, NW

Washington, D.C. 20507

## 2. U.S. DEPARTMENT OF JUSTICE, OFFICE OF SPECIAL COUNSEL FOR IMMIGRATION RELATED UNFAIR EMPLOYMENT PRACTICES

Since the enactment of the Immigration Control and Reform Act of 1986 (IRCA), the U.S. Equal Employment Opportunity Commission has been working with the U.S. Department of Justice, Office of Special Counsel for Immigration Related Unfair Employment Practices to ensure that employer efforts comply with IRCA do not result in discrimination on the basis of national origin.

IRCA makes it unlawful for an employer to hire individuals who are not legally authorized to work in the United States. The Act also requires employers to verify the employment authorization of all individuals hired after November 6, 1986, and imposes sanctions for violation of its provisions.

IRCA also includes a nondiscrimination provision which prohibits national origin discrimination by smaller employers not covered by Title VII (requires that employer have 15 or more employees) and discrimination on the basis of citizenship status by all employers with four (4) or more employees. The nondiscrimination provisions were included in the Act because Congress recognized that enforcement of the sanctions provisions might result in employment discrimination.

For example: in order to avoid sanctions, some employers might simply refuse to hire individuals who look or sound "foreign" or have a "foreign-sounding name" or employers may require employment authorization documents only from such individuals. In 1990, the General Accounting Office reported that the implementation of IRCA had indeed resulted in a widespread pattern of national origin discrimination.

Because the Immigration and Naturalization Service (INS) instituted several new initiatives to strengthen enforcement of IRCA and other immigration laws, the U.S.

Department of Justice, Office of Special Counsel and the U.S. Equal Employment Opportunity Commission entered into a Memorandum of Understanding (MOU). This MOU established some very clear obligations for the EEOC with the Office of Special Counsel. Specifically, it identifies charges which raise immigration related employment discrimination issues, both for the enforcement of Title VII and charges that should be referred to the Office of Special Counsel under our MOU are appropriately referred.

The MOU is intended to prevent overlap in the filing of charges of discrimination under IRCA and Title VII and to promote efficiency in the enforcement of the two statutes.

Under the MOU, the EEOC and the Office of Special Counsel are respective agents for the receipt of charges and the satisfaction of the 180 day time limit set for filing of charges. This arrangement ensures that individuals do not lose their right to file charges of discrimination because they went to the wrong agency initially.

Charges may be filed by the person affected or a person authorized in writing to file on his or her behalf or by an officer of the INS. Charges must be in writing, under oath or affirmation and must contain the relevant charge related information.

Once a charge is filed, the Office of Special Counsel will notify the employer by certified mail within ten (10) days and will commence an investigation to determine whether there is reasonable cause to believe the charge is true and whether or not a complaint should be filed with an Administrative Law Judge.

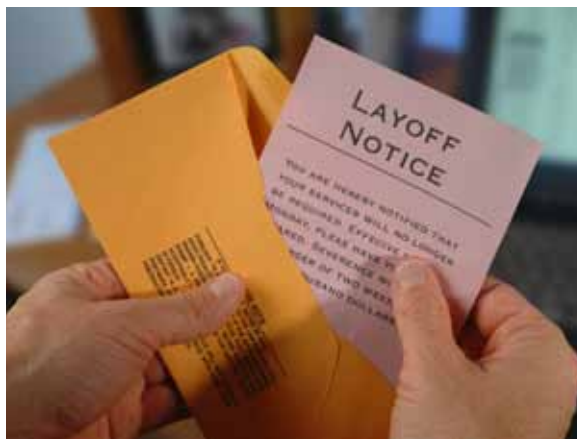
If the Office of Special Counsel does not file a complaint with an Administrative Law Judge within 120 days, the private party (other than an INS officer) may then file a complaint with an Administrative Law Judge. Hearings are before specially trained Administrative Law Judges

sitting throughout the country. Appeals are taken directly from the Administrative Law Judge to the United States Circuit Court of Appeals.

If the evidence shows that an employer has engaged in an unfair immigration related employment practice, the Administrative Law Judge shall require the employer to cease and also will terminate if the final Comptroller General's report indicates that no significant discrimination has resulted

against citizens or nationals because of the implementation of the Act.

The 1990 amendment to IRCA requires the EEOC to work with the Office of Special Counsel and other agencies to educate employers, employees and the general public about the nondiscrimination provisions of IRCA.



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If you have any questions related to IRCA, you can visit their web site at:

[www.usdoj.gov/crt/osc](http://www.usdoj.gov/crt/osc)

You can write to:

U.S. Department of Justice-Civil Rights Division,  
Office of Special Counsel for Immigration Related  
Unfair Employment Practices  
P.O. Box 27728  
Washington, D.C. 20038- 7728

If you believe you've been discriminated against at your job, call right away at:

1-800-255-7688 or 1-800-237-2515 (TDD)

For questions about Title VII call EEOC at:

1-800-669-4000 or 202-275-7518 (TDD)

### 3. U.S. DEPARTMENT OF LABOR, OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

The mission of the U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) is to ensure that employers doing business with the Federal Government abide by laws and regulations requiring equal employment opportunity and affirmative action.

OFCCP has a national network of six (6) Regional Offices, each with District and Area Offices in major metropolitan centers. OFCCP administers and enforces the following equal employment opportunity laws pertaining to Federal Government contractors:

- Executive Order 11246, as amended, prohibits discrimination in employment on the basis of race, color, gender, religion or national origin and require Federal Government contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of employment;
- Section 503 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination in employment on the basis of disability and requires Federal Government contractors to take affirmative action to employ and advance in employment qualified individuals with disabilities;
- Section 4212 of the Vietnam ERA Veterans' readjustment Assistance Act of 1974, as amended, which prohibits employment discrimination and requires Federal Government contractors to take affirmative action to employ and advance in employment qualified disabled and Vietnam era veterans.

OFCCP also shares enforcement authority under Title I of the Americans with Disabilities Act of 1990 and the Immigration Reform Control Act of 1986.

OFCCP requires a contractor, as a condition of having a federal contract, to engage in a self- analysis for the purpose of discovering any barriers to equal employment

opportunity. No other government agency conducts comparable systemic reviews of employers' employment practices to eliminate discrimination.

OFCCP also investigates complaints of discrimination.

Under Executive Order 11246, all contractors and subcontractors with a federal contract of \$ 50,000.00 or more and 50 or more employees are required to develop a written affirmative action program that is designed to ensure equal employment opportunity and set forth specific and action-oriented programs to which a contractor commits to apply every good faith effort.

OFCCP monitors compliance with these equal employment opportunity and affirmative action requirements primarily through compliance reviews, during which a OFCCP Compliance Officer examines the Federal Government contractor's affirmative action program and investigates virtually all aspects of employment. OFCCP also investigates complaints filed by applicants or employees against Federal Government contractors alleging discrimination on the basis of race, color, sex, religion, national origin, disability or veteran's status.

Individuals who are protected by the contract compliance programs may file a complaint if they believe they have been discriminated against by federal contractors or subcontractors. A complaint may also be filed by organizations or other individuals on behalf of the person or persons affected.

If a complaint filed under Executive Order 11246, as amended, involves discrimination against only one person (applicant or employee), OFCCP will normally refer it to the Equal Employment Opportunity Commission (EEOC). Such referrals are made under a Memorandum of Understanding between the two federal agencies.

Complaints that involve groups of people or indicate patterns of discrimination are generally investigated by the OFCCP to include individual or group complaints filed under the disability and veterans laws.

Complaints of discrimination under Executive Order 11246, must be filed within 180 days from the date of the alleged discrimination unless the time for filing is extended for good cause shown. Complaints which allege violations of Section 503 of the Rehabilitation Act of 1973, as amended, must be filed within 300 days unless the time for filing is extended for good cause shown. Extensions require approval by the OFCCP Deputy Assistant Secretary.

For assistance or more information on the nearest OFCCP office call:

1-866-4-USA-DOL or 1- 877- 889 -5627 (TTY)

The web site for the Office of Federal Contract Compliance Programs is: [www.dol.gov/esa](http://www.dol.gov/esa)

Mailing address:

U.S. Department of Labor-OFCCP



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Frances Perkins Building  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

## 4. FEDERAL AGENCY EMPLOYEE DISCRIMINATION COMPLAINT PROCESSING

The objective of 29 CFR (Code of Federal Regulations) Part 1614 is to promote greater administrative fairness in the investigation and consideration of federal employee EEO complaints by creating a process that is quicker and more efficient.

### STATUTES COVERED BY 1614 REGULATIONS

- Title VII of the Civil Rights Act of 1964 makes it illegal to discriminate against a federal employee or applicant based on race, color, religion, sex or national origin.
- Section 501 of the Rehabilitation Act of 1973, as amended, makes it illegal to discriminate against federal employees and applicants for employment based on disability. Federal agencies are required to make reasonable accommodations to the known physical and mental limitations of qualified employees or applicants with disabilities. Section 501 also requires affirmative action for hiring, placement and promotion of qualified individuals with disabilities.
- Equal Pay Act prohibits employers from discriminating on the basis of sex in the payment of wages where substantially equal work is performed under similar working conditions.
- Age Discrimination in Employment Act protects persons 40 years of age and older by prohibiting age discrimination in hiring, pay, promotion and other terms and conditions of employment.

### RETALIATION/ REPRISAL

A person who files a complaint or charge, participates in an investigation or charge, or opposes an employment practice made illegal by any of the above statutes is protected from retaliation.

### FILING A COMPLAINT WITH YOUR FEDERAL AGENCY EEO

The first step for an employee or applicant who feels he or she has been discriminated against by a federal agency is to contact an equal employment opportunity counselor at the agency where the alleged discrimination took place within 45 days of the discriminatory action.

Ordinarily, counseling must be completed within 30 days. The aggrieved individual may then file a complaint of with that agency. The agency must acknowledge or reject the complaint and if it does not dismiss it, the agency must, within 180 days, conduct a complete and fair investigation.

If the complaint is one that does not contain issues that are appealable to the Merit System Protection Board (MSPB), at the conclusion of the investigation, the complainant

(person who file complaint) may request either a hearing by an Equal Employment Opportunity Commission (EEOC) Administrative Judge (AJ) or an immediate final decision by the employing federal agency.

The AJ must process the request for a hearing, issue findings of fact and conclusions of law and order an appropriate remedy within 180 days.

After the final decision of the agency, the complainant may appeal to the Equal Employment Opportunity Commission (EEOC) within 30 days or may file in U.S. District Court within 90 days. Either party may request reconsideration by EEOC.

The complainant may seek judicial review.

### FILING AN APPEAL FOR A HEARING WITH THE EEOC

If a federal agency dismisses all or part of a complaint, a dissatisfied complainant may file an expedited appeal, within 30 days of notice of the dismissal, with the EEOC. The EEOC may determine that the dismissal was proper, reverse the dismissal, and remand the matter back to the federal agency for completion of the investigation.

A complainant may also appeal a final federal agency decision to the EEOC within 30 days of notice of the decision. The EEOC will examine the record and issue decisions.

If the complaint is on a matter that is appealable to the Merit Systems Protection Board (e.g., a mixed case such as a termination of a career employee), the complainant may appeal the final federal agency decision to the MSPB within 20 days of receipt or go to U.S. District Court within 30 days. The complainant may petition the EEOC for review of the MSPB decision concerning the claim of discrimination.

## 5. DEPARTMENT OF LABOR WAGE & HOUR DIVISION

The Wage & Hour Division of the Department of Labor enforces the below listed labor laws related to wage payment as follows:

- Fair Labor Standards Act (FLSA), which sets basic minimum wage and overtime pay standards. Workers who are covered by the FLSA are entitled to a minimum wage of not less than \$ 5.15 an hour. Overtime pay at a rate of not less than one and one-half times their regular rate of pay is required after 40 hours of work in a workweek. Certain exemptions apply to specific types of businesses or specific types of work;
- Davis-Bacon and Related Acts, which requires payment of prevailing wage rates and fringe benefits on federally-financed or assisted construction;
- Service Contract Act, which requires payment of prevailing wage rates and fringe benefits on contracts to provide services to the federal government;
- Contract Work Hours and Safety Standards Act, which



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sets overtime standards for most federal service contracts, federally funded construction contracts and federal supply contracts over \$ 100,000.00;

- Walsh-Healey Public Contract Act, which requires payment of minimum wage rates and overtime pay on federal contracts to manufacture or provide goods to the federal government;
- Family and Medical Leave Act (FMLA), which provides for up to 12 weeks of unpaid leave for certain medical and family situations (e.g. adoption) for either the employee or a member of the covered and eligible employee's immediate family; however, in many instances paid leave may be substituted for unpaid FMLA leave; and
- Immigration and Naturalization Act of 1990, which applies to employers seeking to hire nonimmigrant aliens as workers in specialty occupations under H-1B visas;
- Wage Garnishment Law, which limits the amount of an individual's income that may be legally garnished and prohibits firing an employee whose pay is garnished for payment of a single debt;
- Employee Polygraph Protection Act, which prohibits most private employers from using any type of lie detector test either for pre-employment screening of job applicants or for testing current employees during the course of employment.

## FAIR LABOR STANDARDS ACT

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, record keeping and child labor standards affecting full time and part time workers in the private sector and in Federal, State and Local governments.

Covered non-exempt workers are entitled to a minimum wage of not less than \$ 5.15 an hour.

Overtime pay at a rate of not less than one and one-half times their regular rates of pay is required after 40 hours of work in a work week. Wages required by FLSA are due on the regular payday for the pay period covered.

Deductions made from wages for such items as cash or merchandise shortages, employer required uniforms, and tools of the trade, are not legal to the extent that they reduce the wages of employees below the minimum rate required by FLSA or reduce the amount of overtime pay due under FLSA. The FLSA contains some exemptions from these basic standards. Some apply to specific types of

businesses; others apply to specific kinds of work.

While FLSA does set basic minimum wage and overtime pay standards and regulates the employment of minors, there are a number of employment practices which FLSA does not regulate.

For example, FLSA does not require:

- Vacation, holiday, severance, or sick pay;
- Meal or rest periods, holidays off, or vacations;
- Premium pay for weekend or holiday work;
- Pay raises or fringe benefits; and
- A discharge notice, reason for discharge, or immediate payment of final wages to terminated employees.

The FLSA does not provide wage payment or collection procedures for an employee's usual or promised wages or commission in excess of those required by the FLSA . However, some states do have laws (check with your State Employment Agency) under which such claims (sometimes including fringe benefits) may be filed.

Also, FLSA does not limit the number of hours in a day or days in a week an employee may be required or scheduled to work, including overtime hours, if the employee is at least 16 years old. All of these matters are for agreement between the employer and the employee or their authorized representatives.

## WHO IS COVERED

All employees of certain enterprises having workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person, are covered by FLSA.

A covered enterprise is the related activities performed through unified operation or common contract by any person or persons for a common business purpose and;

- Whose annual gross volume of sales made or business done is not less than \$ 500,000.00 (exclusive of excise taxes at the retail level that are separately stated); or
- Is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill who reside on the premises; a school for mentally or physically disabled or gifted children; a pre-school, an elementary or secondary school, or an

institution of higher education (whether operated for profit or not for profit); or





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- Is an activity of a public agency.

## RECORD KEEPING REQUIREMENTS

FLSA requires employers to keep records on wages, hours and other items, as specified in Department of Labor record keeping regulations. Most of the information is of the kind generally maintained by employers in ordinary business practice and in compliance with other laws and regulations. The records do not have to be kept in any particular form and time clocks need not be used.

## ENFORCEMENT

Wage & Hour's enforcement of FLSA is carried out by investigators stationed across the U.S. Wage & Hour's authorized representatives, they conduct investigations and gather data on wages, hours, and other employment conditions or practices, in order to determine compliance with the law.

Where violations are found, they also may recommend changes in employment practices to bring an employer into compliance.

It is a violation to fire or in any other manner discriminate against an employee for filing a complaint or for participating in a legal proceeding under FLSA.

Willful violations may be prosecuted criminally and the violator fined up to \$ 10,000.00. A second conviction may result in imprisonment.

Listed below are methods which FLSA provides for recovering unpaid minimum and/or overtime pay:

- Wage & Hour may supervise payment of back wages.
- The Secretary of Labor may bring suit for back wages and an equal amount as liquidated damages.
- An employee may file a private suit for back pay and an equal amount as liquidated damages, plus attorney's fees and court costs.
- The Secretary of Labor may obtain an injunction to restrain any person from violating FLSA, including the unlawful withholding of proper minimum wage and overtime pay.

An employee may not bring suit if he or she has been paid back wages under the supervision of Wage & Hour or if the Secretary of Labor has already filed suit to recover the wages. A 2 year statute of limitation applies to the recovery of back pay, except in the case of willful violations, in which case a 3 year statute applies.

## EMPLOYERS COVERED BY THE FAMILY AND MEDICAL LEAVE ACT

An employer covered by FMLA is any person engaged in commerce or in an industry or activity affecting commerce, who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.

Employer's covered by FMLA also include any person acting, directly or indirectly, in the interest of a covered employer to any employees of the employer, any successor in interest of a covered employer, and any public agency. Public agencies are covered employers without regard to the number of employees employed. Public as well as private elementary and secondary schools are also covered employers.

## EMPLOYEES COVERED BY THE FAMILY AND MEDICAL LEAVE ACT

An eligible employee is an employee of a covered employer who has been employed by the employer for at least 12 months, and has been employed for at least 1,250 hours of service during the 12 month period immediately preceding the commencement of the leave, and is employed at a work site where 50 or more employees are employed by the employer within 75 miles of that work site.

The 12 months an employee must have been employed by the employer need not be consecutive months. If an employee is maintained on the payroll for any part of a week, including any periods of paid or unpaid leave (sick, vacation) during which other benefits or compensation are provided by the employer (e.g. worker's compensation, group health plan benefits, etc.), the week counts as a week of employment.

## MAXIMUM LEAVE TIME UNDER THE FAMILY AND MEDICAL LEAVE ACT

An eligible employee's FMLA leave entitlement is limited to a total of 12 work weeks of leave during any 12-month period for anyone, or more, of the following reasons:

- 1) Birth of the employee's son or daughter, and to care for the newborn child;
- 2) The placement with the employee of a son or daughter for adoption or foster care, and to care for the newly placed child;
- 3) To care for the employee's spouse, son, daughter or parent with a serious health condition; and
- 4) Because of a serious health condition that makes the employee unable to perform one or more of the essential functions of his or her job.

An employer is permitted to choose anyone of the following methods for determining the "12 month period" in which the 12 weeks of leave entitlement occurs:

- 1) the calendar year;
- 2) any fixed 12 -month "leave year" such as a fiscal year, a year required by State law, or a year starting on an employee's "anniversary date";
- 3) the 12 -month period measured forward from the date any employee's first FMLA leave begins; or
- 4) a rolling 12 month period measured backward from the date an employee uses any FMLA leave (except that such

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measure may not extend back before August 5, 1993).

Under method 1 and 2 above, an employee could, therefore take 12 weeks of leave at the end of the year and 12 weeks at the beginning of the following year.

Under method 3, an employee could be entitled to 12 weeks of leave during the year beginning on the first date FMLA leave is taken; the next 12 month period would begin the first time FMLA leave is taken after completion of any previous 12 month period.

As regards the rolling 12 month period, each time an employee takes FMLA leave the remaining leave entitlement would be any balance of the 12 week which has not been used during the immediate preceding 12 months.

Eligible employees seeking to use FMLA leave may be required to provide:

- 30 -day advance notice of the need to take FMLA leave when the need is foreseeable;
- Notice “as soon as practicable” when the need to take FMLA leave is not foreseeable (generally means at least verbal notice to the employer within one or two business days of learning of the need to take leave);
- Sufficient information for the employer to understand that the employee needs leave for FMLA qualifying reasons (the employee need not mention FMLA when requesting leave to meet this requirement, but may only explain why the leave is needed); and,
- Where the employer was not made aware that an employee was absent for FMLA reasons and the employee wants the leave counted as FMLA leave, timely notice (generally within two business days of returning to work) that leave was taken for an FMLA qualifying reason.

FMLA makes it unlawful for an employer to interfere with, restrain, or deny the exercise of any rights provided by this law. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

Employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions; nor can FMLA leave be counted under “no fault” attendance policies.

An eligible employee who is denied FMLA leave can initiate an action (complaint) not later than 2 years after the date of the last event constituting the alleged violation for which the action is brought. The Secretary shall receive, investigate and attempts to resolve complaints of violation.

If violations cannot be satisfactorily resolved, the Department may bring action in court to compel compliance. Further, an employee is not required to file a complaint with the Wage & Hour Division prior to bringing such action.

## LAST PAYCHECK

Employers are not required by federal law to give former employees their final paycheck immediately. Some states, however, may require immediate payment. If the regular payday for the last pay period an employee worked has passed and the employee has not been paid, contact the Department of Labor (DOL) Office of Wage & Hour Division or your State Employment Agency.

Your local Telephone Directory will list the address and phone number of the State Employment Agency and of the Wage & Hour Division (if the Department of Labor has such an office in your city).

If there is no DOL agency in your city, you can contact the national office of DOL at:

1-866- 4-USA-DOL or TTY: 1-877-889-5627

Mailing address for the national office:  
U.S. Department of Labor-Wage & Hour  
Frances Perkins Building  
200 Constitution Avenue, NW  
Washington, DC 20210  
Web site is: [www.dol.gov](http://www.dol.gov)

## 6. DEPARTMENT OF LABOR OCCUPATIONAL SAFETY & HEALTH (OSHA)

The mission of the Occupational Safety & Health Administration (OSHA) is to save lives, prevent injuries and protect the health of America’s workers. To accomplish this, federal and state governments must work in partnership with the more than 100 million working men and women and their six and a half million employers who are covered by the Occupational Safety & Health Administration Act of 1970.

OSHA and its state partners have approximately 2,100 inspectors, plus complaint discrimination investigators, engineers, physicians, educators, standards writers, and other technical and support personnel spread over more than 200 offices throughout the country. This staff establishes protective standards, enforces those standards and reaches out to employers and employees through technical assistance and consultation programs.

The Occupational Safety & Health Act requires employers to provide a safe and healthful workplace free of recognized hazards and to follow OSHA standards. Employers’ responsibilities also include providing training, medical examinations and record keeping.

OSHA issues standards or rules to protect workers against many hazards on the job. These standards limit the amount of hazardous chemicals workers can be exposed to, require the use of certain safety practices and equipment, and requires employers to monitor hazards and maintain records of workplace injuries and illnesses.

Employers can be cited and fined if they do not comply



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with OSHA standards. It is also possible for an employer to be cited under OSHA's General Duty Clause, which requires employers to keep their workplaces free of serious recognized hazards. This clause is generally cited when no OSHA standard applies to the hazard.

OSHA requires workers to comply with all safety and health standards that only apply to their actions on the job. Employees should:

- Read the OSHA poster; Follow the employer's safety and health rules and wear or use all required gear and equipment;
- Follow safe work practices for your job, as directed by your employer;
- Report hazardous conditions to a supervisor or safety committee; and
- Report hazardous conditions to OSHA, if employers do not fix them.

If you believe working conditions are unsafe or unhealthful, it is recommended that you bring the conditions to your employer's attention, if possible.

Your employer may want to contact OSHA or your state consultation service in order to gather information about how to improve working conditions.

You may file a complaint with OSHA, if you believe there may be a violation of an OSHA standard or a serious safety or health hazard at work. You may request that your name not be revealed to your employer. You can file a complaint on: [www.osha.gov](http://www.osha.gov), in writing or by telephone with the nearest OSHA Area Office. You may also call our office and speak with an OSHA compliance officer about a hazard, violation, or the process for filing a complaint.

The OSHA Act and other laws protect workers who complain to their employers, union, OSHA or other government agencies about unsafe or unhealthful conditions in the workplace or environmental problems.

You cannot be transferred, denied a raise, have your hours reduced, be fired, or punished in any other way because you have exercised any right afforded to you under the OSHA Act. Help is available from OSHA for Whistleblowers. But complaints about discrimination must be filed as soon as possible within 30 days of the alleged reprisal for most complaints.

Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act.

Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations, will not ordinarily be regarded as discriminatory action prohibited by section 11 (c).

This situation should be distinguished from refusals to work.

There is no right afforded by the Act which would entitle employees to walk off the job because of potential unsafe

conditions at the workplace.

Hazardous conditions which may be volatile of the Act will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the work place pursuant to section 8 (f) of the Act, or to seek the assistance of other public agencies which have responsibility in the field of safety and health.

Under such circumstances, therefore, an employer would not ordinarily be in violation of the Act by taking action to discipline an employee for refusing to perform normal job duties because of alleged safety or health hazards.

**However, occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from hazardous conditions at the workplace.** If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination.

The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is **insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels.**

In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

If there is an emergency or the hazard is immediately life-threatening, call your local OSHA

Regional Office or 1-800-321-OSHA.

Mailing address for the national office is:

Occupational Safety & Health Administration

200 Constitution Avenue, NW

Washington, DC 20210

Web site address is: [www.osha.gov](http://www.osha.gov) OSHA publishes a variety of publications on a range of subjects. The agency also offers free software advisors to help employers comply with OSHA standards. Refer to OSHA Publications for a complete listing of agency printed materials or to order publications online.

## 7. NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board (NLRB) is an independent Federal agency created in 1935 to enforce the National Labor Relations Act, the primary law governing relations between unions and employers in the private sector.

The statute guarantees the right of employees to organize

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and to bargain collectively with their employers or to refrain from all such activity.

Generally applying to all employees involved in interstate commerce other than airlines, railroads, agriculture and government- the Act implements the national labor policy of assuring free choice and encouraging collective bargaining as a means of maintaining industrial peace.

In its statutory assignment, the NLRB has two (2) principal functions:

- 1) to determine, through secret ballot elections, the free democratic choice by employees whether they wish to be represented by a union in dealing with their employers and if so, by which union and
- 2) to prevent and remedy unlawful acts, called unfair labor practices by either employers or unions. NLRB does not act on its own motion in either function. It processes only those charges of unfair labor practices and petitions for employee elections that are filed with the NLRB in one of its 51 Regional, Sub-regional, or Resident Offices.

NLRB has two (2) major, separate components. The Board itself has Five (5) Members and primarily acts as a quasi-judicial body in deciding cases on the basis of formal records in administrative proceedings. Board Members are appointed by the President to 5 year terms, with Senate consent, the term of one member expiring each year.

The General Counsel, appointed by the President to a 4-year term with Senate consent, is independent from the Board and is responsible for the investigation and prosecution of unfair labor practice cases and for the general supervision of the NLRB field offices in the processing of cases.

Each Regional office of the NLRB is headed by a Regional Director who is responsible for making the initial determination in cases arising within the geographical area served by the region.

When an unfair labor practice (ULP) charge is filed, the appropriate field office conducts an investigation to determine whether there is reasonable cause to believe the Act has been violated. If the Regional Director determines that the charge lacks merit, it will dismiss the charge unless the charging party decides to withdraw the charge. A dismissal by a NLRB Regional Director may be appealed to the General Counsel's office in Washington, D.C.

If the Regional Director finds reasonable cause to believe a violation of the law has been committed, the region seeks a voluntary settlement to remedy the alleged violations. If these settlement efforts fail, a formal complaint is issued and the case goes to hearing before an NLRB Administrative

Law Judge. The Judge issues a written decision that may be appealed to the five- Member Board in Washington for a final agency determination.

The Board's decision is subject to review in a U.S. Court of Appeals. Depending upon the nature of the case, the General Counsel's goal is to complete the investigation and, where further proceedings are warranted, issue complaints if settlement is not reached within 7 to 15 weeks from the filing of the charge. Of the total ULP charges filed each year (about 30,000 ), approximately one-third are found to have merit of which 90% are settled.

Section 10 (j) of the Act empowers the NLRB to petition a federal district court for an injunction to temporarily prevent ULPs by employers or unions and to restore the status quo, pending the full review of the case by the Board. In enacting this provision, Congress was concerned that delays inherent in the administrative processing of ULPs, would frustrate the Act's remedial objectives. Under NLRB procedures, after deciding to issue an ULP complaint, the General Counsel may request authorization from the Board to seek injunctive relief.

The Board votes on the General Counsel's request and, if a majority votes to authorize injunctive proceedings, the General Counsel, through his Regional staff, files the case with an appropriate federal District Court.

In addition, Section 10 (I) of the Act requires the Board to seek a temporary federal court injunction against certain forms of union misconduct, primarily involving "secondary

boycotts "and" recognized picketing". Finally, under Section 10(e), the Board may ask a federal court of appeals to enjoin conduct that the Board has found to be unlawful.



## **Some things to expect when a petition is filed with NLRB:**

- The parties will receive a copy of the petition;
- Investigate any issues which are necessary to resolve before an election can be conducted;
- While some petitions may be dismissed- when it is determined that an election is appropriate, they will attempt to get the parties to agree to a voluntary election;
- Where an election is appropriate, they will attempt to schedule it within 6 to 8 weeks after the petition was filed;
- If parties do not agree to an election, they will issue a Notice of Hearing to resolve necessary issues;
- Parties present relevant evidence relating to the issues



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- which need to be resolved before the election;
- NLRB Hearing Officer will issue a written decision within 45 days from date of hearing;
- From time of regional decision after hearing issues, parties should expect that an election will be conducted, if appropriate, within 25 to 30 days;
- When an election is appropriate, NLRB will conduct a secret-ballot election in such a way that it will allow eligible employees the opportunity to cast their ballot;
- They will investigate and/or conduct a hearing on any determinative challenged ballots or election objections and issue a written report. Parties may be asked to produce witnesses, evidence and legal arguments;
- From time that challenges and/or objections are filed, if no hearing is held, the parties should expect a regional report or supplemental decision normally within 35 days; and:
- Following the election and the resolution of any determinative challenged ballots and/or objections, NLRB will certify that a union is, or is not, the collective-bargaining representative of the employees in the voting unit.

Mailing address for NLRB is:  
National Labor Relations Board  
1099 14th Street, NW  
Washington, D.C. 20570-0001

Web site address is: [www.nlr.gov/facts](http://www.nlr.gov/facts)

The Director of Information can be reached at:

(202) 273-1991 or via fax:  
(202) 273-1789

If NLRB has an office in your city, the telephone directory (see Federal Government blue pages) for a local office telephone listing.

## 8. EMPLOYMENT AT-WILL STATE LAWS

Are you one of the 60 million workers subject to Employment - At - Will? Imagine that you are injured in a work related accident and you need a few days to recover. You file for Worker's Compensation Benefits and figure that when your back in shape you can return to work.

The next thing you know you're fired! What do you do? You hire a lawyer, believing that in America an employer should not be able to fire you for exercising your legal right to file a workers compensation claim. As the court issues its decision, you are in disbelief.

The Court rules that you have no legal standing and cannot sue for the employer's retaliatory firing.

If you think you are exempt from the whims of your company or boss, think again. Most Americans do not realize that unless you work for the government or belong to a union, under the laws of nearly all the states you are considered an "at-will-employee" and it is perfectly legal for your employer to fire you for no reason at all!!

According to the American Civil Liberties Union, two million "at-will-employees" are fired every year. Of those two million workers, an estimated 200,000 are fired for no reason. How can that be? Hard working, on time, conscientious employees fired for no reason?

Of course there are exceptions. You may not be fired because of your race, color, sex, national origin, religion, age, disability or for trying to organize a union in your workplace. In addition, some states provide moderate protections such as wrongful termination due to whistleblowing. However, the only way to truly protect yourself is to join a union and work under a legally recognized contract.

State laws are in a constant state of flux. Before relying on the text of any state Right to Work statute, you should check the most current edition of your state laws.

The National Institute for Labor Relations Research can provide you with a copy of the most recent edition of your state laws.

Mailing address for the Institute is:

NILRR  
5211 Port Royal Road, Suite 510  
Springfield, Virginia 22151  
Telephone is (703) 321-9606  
or via fax: (703) 321-7342  
Web site is: <http://www.nilrr.org/rtw.htm>

The Institute currently shows the following states as Right-to-Work (at-will): Alabama, Arizona, Arkansas, Florida, Georgia, Guam, Idaho, Iowa, Kansas, Louisiana, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming.

## 9. STATE EMPLOYEE JOB RELATED INJURY

### COMPENSATION PROGRAMS

The information which follows is brief but yet covers the topic of work related injuries and as an example follows the State of Texas Worker's Compensation Program.



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It is significant to note that all private employees work related injury benefit programs are administered by a state agency. Further, is the matter that each state has its own rules and regulations governing such things as eligibility requirements, coverage period, maximum monetary benefits, etc..

Your local state employment agency can direct you to the location site address and phone number to include the name of your state agency that handles claims related to on the job injuries in your respect state of residence. Worker's Compensation is a state regulated insurance program that pays medical bills and replaces part of lost wages if an employee has a compensable work related injury, disease or illness and their employer has worker's compensation insurance or is certified to self-insure.

**Example:** The Texas Worker's Compensation Commission (TWCC) is a state agency that monitors and regulates the delivery of benefits to injured employees and eligible family members of employees whose death results from a compensable injury. The Commission also helps resolve disagreements about claims and provides workplace health and safety training and education services. TWCC provides the below listed four (4) types of benefits:

- **Medical Benefits:** Employer's insurance company pays for reasonable and necessary medical care to treat a work related injury directly to the doctor or health professional who provides treatment and are available for the remainder of the employee's life without any specific time limit;
- **Income Benefits:** Replaces part of wages lost because of a work related injury or provides payment for permanent impairment. Average weekly wage is the average amount of weekly wages earned during each of 13 weeks immediately before the compensable injury and the amount is based on the employee's average wages.
- **Disability** occurs when a work related injury causes an employee to loose the ability to earn the same wage as before the injury. Disability refers to an ability to earn income, not to a physical handicap.
- **Impairment** is the permanent physical damage to an employee's body from a work related injury. An impairment rating is a percentage and degree that a Doctor assigns to an injured employee based on a physical examination of the permanent physical damage caused by the compensable injury to the body as a whole.



- **Maximum Medical Improvement** is the earliest of: the point in time that an injury has improved as much as it is going to improve, or 104 weeks from the date the employee became eligible to receive income benefits.
- **Death Benefits:** Replaces part of wages lost for eligible members of an employee whose death results from a compensatory injury. Beneficiary is a person eligible to receive benefits as a result of a specifically defined family relationship with a deceased employee. Burial benefits help pay funeral expenses of employees whose death results from a compassable injury.
- **Burial Benefits:** Pays a certain amount of the employee's funeral expenses to the person who paid the expense.

## **Employee responsibilities and rights under the State of Texas Worker's Compensation Program are as follows:**

- You have the responsibility to tell or write your employer or any supervisor within 30 days of the date you were injured and /or of the date you first knew your illness might be work related.
- *Note: most companies have policies that give employees less than 30 days to report an injury or illness. It is recommended that you review your employer's policy concerning the time period and give notice as per policy even though the State of Texas program gives an employee 30 days. It is further recommended that employees provide written vs. oral notice of injury or illness to appropriate company officials.*
- You have the right to the initial choice of doctor, you may not change doctor except with the consent of the Texas Worker's Compensation Commission (except for emergency treatment)
- You may receive benefits, regardless of who caused or helped cause your injury, you may not receive benefits if your injury occurred while you were intoxicated, you injured intentionally or while unlawfully attempting

to injure someone else, were injured by another person for personal reasons, were injured participating in an off-work activity, were injured by an act of god or your injury occurred during horseplay.

Please refer to blue pages of your local telephone book under state agencies for the address and phone number of the agency in your state that administers your state's work related employee injury program.

The toll free number for the state

of Texas Worker's Compensation Benefit Program is:

1-800-252-7031

Visit the web site at: [www.twcc.state.tx.us](http://www.twcc.state.tx.us)



## Case Work - Sample

# Employment Case

It is September of 2001 and the employer in question is based in Texas. The employer is a union shop that operates a three (3) shift work schedule and employs some 3,000 employees. Ninety percent (90%) of the workforce is Hispanic and approximately seven (7%) percent is white, two (2%) Asian and one (1%) Black. Male employees outnumber females but the majority of the female employees are Hispanic.

What happens now is that 30 Hispanic union members organize a strike and stage a walk-out. The reason for the walk-out is that both the employer and the union have established a pattern of not been very responsive to issues/concerns raised by Hispanic bargaining unit employees as concerns pay, unsafe working conditions, unfair labor practice violations, substandard medical services and a host of discriminatory terms and conditions of employment. The

Collective Bargaining Agreement (CBA) mediated, adopted and signed by employee union officials and the employer's upper management staff contained a no strike provision that meant that the initial thirty (30) employees that walk-out violated the CBA and as such had no reinstatement rights. Within a couple of days following the initial walk-out, the total count of employees who decided to strike and join the walk-out grew to 1,975, the majority of whom were Hispanic. The employer countered the actions of the initial 30 employees by filing 1 million dollar lawsuits against each of the 30 employees. Additionally, all of the employees who decided to strike and walk-out also violated the CBA and as such had no rights to reinstatement.

A LULAC Council President and a local member of the Labor Council for Latin American Advancement (LCLAA) called the Dallas, Texas office of the U.S. Equal Employment Opportunity Commission (EEOC) and spoke with Ed Elizondo, Outreach Program Manager and LULAC council member concerning the employee strike/walk-out situation and to request EEOC's direction and assistance. Ed went on-site and as result of numerous meetings was able to identify a role for

EEOC with respect to Title VII matters, health and safety matters for the U.S. Department of Labor and the U.S. Department of Justice, Community Relations Service (DOJ/CRS) for conflict resolution mediation services. Ed called the Dallas, Texas office of DOJ/CRS to speak with Richard Sambrano, Senior Conciliation Specialist/LULAC member to discuss the situation, solicit CRS's assistance and find out if he believed mediation with upper management company officials was an option. Richard determined that it was something to consider

and indicated he would join me on-site to further develop this approach.

Richard arrived on-site and contacted the company CEO via phone to introduce himself and describe DOJ/CRS mediation services as a means to address and resolve the issues and concerns that lead to the strike and walk-out of employees. Richard was very successful in getting the CEO to



agree to begin a series of mediation sessions with on-site company upper management officials. Next, Richard and Ed convened numerous meetings with Hispanic community leaders, company employees who walked-out to include local company management officials for the purpose of obtaining needed information that would lead to the production of an agenda of issues/concerns for the planned mediation session. Richard then contacted Mr. Rick Dovalina, LULAC National President/Private Practice Attorney to determine if he would be available to head and represent the employees who walked-out in the mediation sessions with company officials. Mr. Dovalina agreed and that led to the beginning of the mediation process.

A significant accomplishment was achieved by the National LULAC President, in court, when he was able to get the employer to withdraw the 30- \$1 million dollar lawsuits filed against each employee that initially walked-out. This led to a number of mediation sessions that also produced very good results to include the filing of eight(8) Title VII employment discrimination charges of sexual harassment which resulted in the employer agreeing to settle with EEOC by providing





## Case Work - Sample

# Employment Case

appropriate monetary awards for each complainant. In the final mediation session the employer agreed to offer reinstatement to all employees, except the first 30, with the condition of a 60 day probationary period, no reinstatement of earned seniority and no back pay. Remember that all employees who walked-out in effect violated the union contract and had absolutely no rights to reinstatement. Some employees accepted and others did not. It was not an easy decision to make for those who stood to lose many years of plant seniority and have to start all over. Regarding the initial 30 employees, the employer was initially opposed to reinstating them, but at the end agreed, with the condition that a group of upper management officials would interview each

and make individual decisions with respect to their reinstatement.

This community crisis was quite an experience for all who either had major or minor roles and involvement. It again documented that a coordinated team approach to include participation by available community leaders for the most part is highly desired because, in this situation, it quickly delivered the desired results and appropriate remedial actions for the many Hispanic employees who were harmed by the employer's discriminatory terms and conditions of employment and related policies and practices.

## San Antonio LULAC Tackles Employment Issues



**Gabriel Rosales**

The Civil Rights issues that District XV has been addressing for many years are issues of discrimination at the workplace, housing problems, to include evictions, rental and homebuyer discrimination. The abuse of immigrants is also being addressed. Many times immigrants are hired, but when it comes time to pay

day, some employees do not want to pay them. We have helped them to file with the Department of Labor, Wage and Hour Division. Police Brutality is also an issue in San Antonio. For this reason, LULAC in San Antonio belongs to a coalition of many organizations which was formed to address Police Brutality and to change the Citizens Review Board to reflex the community.





# Law Enforcement

## Chapter 3





# Chapter 3 ~ Law Enforcement

## **LULAC affirms its commitment to the elimination of discrimination, especially toward Hispanics, in all forms within enforcement agencies.**

There is a strong perception in the Hispanic community that Hispanics are frequently subjected to illegal arrests, arrests on weak suspicion, illegal detention and corporal handling by the police.

Compared to Anglos, Hispanics are jailed more than bailed. Hispanics also believe that, beyond Anglo proportions, they are convicted with little evidence and sentenced to more severe punishments and longer incarceration. Instances of violence by police and the arrest of Hispanics with less evidence than is required to arrest Anglos have been sufficiently numerous to cause alarm among private agencies and government bodies whose functions are to keep watch over the rights of citizens.

The brutality and illegal arrests are not the pattern but only the exception. That some Anglos have grievance similar to those of Hispanics; that the poor of any ethnic group suffer disadvantage and are less able to engage counsel, provide bail and pay fines, do not mitigate the situation. The contrary is true, for the percentage of poor and uneducated within the Anglo majority is more than double within the Hispanic minority. This, even if there were no race national origin biases in administration of justice, the social and economic class system would itself carry a burden of blame for the lack of equal protection and uniformity of treatment.

Studies have shown that permissive law enforcement and police brutality are the two basic reasons for minority group resentment of the police. Studies have also revealed that police have been charged with failure to promote adequate protection and services in the Barrios, and with abuse of authority and physical or verbal misconduct in relation to Hispanics and other minorities.

These same studies have concluded that police misconduct such as brutality, abuse of authority, ethnic slurs, or discourteous behavior, especially when such actions go unpunished, not only constitute a serious threat to community support of the police but also undermine the citizens' respect for law enforcement agencies and for the law itself.

LULAC is of the opinion that, in rather striking ways, the administration of justice clearly appears to fail in affording quality of treatment to Hispanics and other minorities, so fundamental to a democratic society. LULAC further believes that the status "Hispanic" entails greater risk of involvement with law-enforcement processes than does the status of "Anglo."

LULAC, therefore, affirms its commitment to the elimination of discrimination in all forms within law enforcement agencies to ensure that Hispanics and others do not continue to be victims of police abuse. There is no choice for us but to address all forms of police abuse and break down some of the barriers to good relations between

Hispanics and law enforcement agencies.

### **PROCEDURE**

Adoption by law enforcement agencies of policies and plans to reduce discrimination and police abuse is a must. LULAC must pursue whatever remedy is most appropriate to address administration of justice issues, whether it be through dialogue with law enforcement officials, mediation conducted by third parties, investigations conducted by state or federal agencies, and at last recourse, by filing for remedy in federal court.

LULAC affirms its commitment to the elimination of discrimination, especially toward Hispanics, in all forms within enforcement agencies.

The law enforcement issues offer LULAC an excellent opportunity to continue to get involved in an area that is so uniquely within its domain.

#### **A. Proof in Police Brutality:**

1. The most important aspect of proof is WITNESSES.
2. Witnesses should be interviewed as soon after the incident as possible.
3. The affidavit of each eye-witness should be secured.
4. All affidavits must be notarized.

#### **B. What To Do With Proof:**

1. A complaint and possibly a petition signed by individual members of the community or representatives of other interested community organizations, affidavits, pictures, and other proof should be sent to the proper local authorities, such as:
  - a. District Attorney, State Attorney, Local County Prosecutor
  - b. Chief of Police, Commissioner of Public Safety or FBI Office
  - c. Mayor, Governor, or U.S. Attorney

#### **C. Demand For An Investigation:**

The affidavits, pictures and other proof should be accompanied by a letter in which the demand is made for an investigation by the proper authority.

#### **D. Demand For Action:**

The demand for an investigation should be accompanied by a demand for suspension of the police officer during the investigation and for appropriate action against the guilty officer. When police brutality against Hispanics is a problem in your community, ask authorities to call the Justice Department's Civil Rights division:

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The number is 202-514-2151.

That is the division that investigates allegations of police abuse.

## E. Keep Records:

Each LULAC office should keep a file of every incident of police brutality within its jurisdiction so it can prove that a police officer or law enforcement agency has a bad record. Even if no action is taken, such records should be kept.

All records of minor police infractions should be kept as well. If possible, newspaper records should be cataloged. Past abuses may be discovered through newspaper library catalogs and listings on the subject.

## F. Civil Action:

Either the person who has been a victim of police brutality or, if dead, his relatives may institute a civil action for damages against appropriate parties under the Federal Civil Rights Act to recover for injuries or wrongful death.

## G. Scope:

It is necessary that we confront both kinds of police misconduct: (1) harassment or abuse of discretion; and, (2) incidents which result in physical injury.

## H. Recommendations:

“An ounce of prevention is worth a pound of cure.” In that light consider the following:

1. Present a plan for a civilian review board to the local police administrator and top local political officials.
2. Organize community-police problem identification sessions.
3. If necessary, set up a non-official police community relations review board and make recommendations for improvement of police-community relations.
4. Investigate reports of police carrying illegal weapons which may unduly maim a victim.
5. Hold workshops and investigate the practicality of implementing programs whereby police carry “limited-injury” weapons such as mace, which may be used instead



of firearms in situations where a billy club would not be used.

## OTHER POLICE ISSUES:

### A. Identification of Issues/Concerns/Perceptions:

The following issues, concerns and perceptions are common in many law enforcement agencies where Hispanics are a large segment of the community population:

- a) Under representation of Hispanics at all levels of law enforcement agencies' professional staff;
- b) Verbal abuse;
- c) Targeting of minorities, especially Hispanics;
- d) Stopping minorities, especially Hispanics, without probable cause;
- e) Entering and searching without warrants;
- f) Harassment;
- g) Intimidation;
- h) Refusal to provide medical attention while under their custody;

### B. Perceptions Inventory:

The following instrument “Perceptions Inventory of Administration of Justice Issues” can be used to validate what people are thinking and to develop a true list of issues for your community.

Based on your experience in the community and dialogue with community groups and individuals, respond to the statements below. Your responses are expected to reflect your judgement about the Hispanic community's perception of disparity of treatment in the administration of justice (police issues) and the level of confidence in systems for redress of grievances.

Simply, in your best judgement, would the Hispanic community strongly agree, or strongly disagree, with the following statements?

Any statement with which you strongly disagree, should be a concern for which potential remedies need to be sought.

Circle your best response; 1 indicates you strongly agree with the statement, and 5 that you strongly disagree.

1. The police department is as concerned about starting crime watch programs in the Hispanic neighborhoods as in non-Hispanic neighborhoods.  
1    2    3    4    5
2. The police department would respond to a request from the Hispanic neighborhood to start a crime watch program in a timely fashion.  
1    2    3    4    5
3. A Hispanic citizen's complaint against a police officer will receive the same attention as a complaint from a non-Hispanic.  
1    2    3    4    5
4. The police department would, if requested by Hispanics, work to insure a uniform policy for responding to citizen's

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complaints.

- 1    2    3    4    5
5. Police officers operate in a Hispanic neighborhood with the same regard for individual civil rights as when they are in a non-Hispanic neighborhood.  
1    2    3    4    5
6. The chief of police expects police officers to respect the civil rights of every individual.  
1    2    3    4    5
7. A non-minority suspect fleeing the scene of a crime is as likely to be shot by the police as a Hispanic suspect.  
1    2    3    4    5
8. The police department's internal investigation of a shooting by a police officer will arrive at a fair decision.  
1    2    3    4    5
9. A non-minority (Hispanic) suspect is as likely to be injured during an arrest as a minority suspect.  
1    2    3    4    5
10. Minority (Hispanic) complaints about injuries during an arrest are taken seriously by the local police administration.  
1    2    3    4    5
11. Qualified Hispanics have an as equal opportunity to be hired and promoted by the police department as non-minorities.  
1    2    3    4    5
12. The police department adheres to an Affirmative Action Program that would seek to remedy an imbalance of Hispanic/non-minority hiring or promotion practices.  
1    2    3    4    5
13. There is an adequate number of Hispanic police officers on the police department to represent the ratio of Hispanic in this community.  
1    2    3    4    5

For each of the statements for which you circled either a 4 or 5, you and your group should develop a concise Issue/Concern/Perception statement for which a remedy should be sought. Take a look at the Concerns/Issues/Perceptions on the sample memorandum of agreement and understanding on page 61 for assistance. Also review the list of common Issues/Concerns/Perceptions under III-A (Identification of Issues/Concerns/Perceptions) on page 56.

Those have been successfully used for discussion (mediation) purposes with police departments.

For each Concern/Issue/Perception statement develop a list of potential solutions. Those potential solutions can then be used as talking points with the police chief, sheriff or other law enforcement officials during discussions (negotiations) as part of the mediation process. For help, look at the (draft) memorandum of agreement and understanding agreed upon solutions on pages 62.

## C. Conflict Resolution options:

### 1) Resolution of issues/concerns/perceptions directly:

All efforts possible should be undertaken to resolve these issues, concerns or perceptions through direct dialogue with the officials responsible for the law enforcement function (i.e., chief of police, sheriff, city manager, mayor, border patrol chief, INS district director, etc.)

### 2) Mediation facilitated by a third party.

Local mediation services may be available in local communities by non-profit conflict resolution agencies. If such are not available, consider contacting the Community Relations Service, U.S.

Department of Justice in your region to request assistance.

That agency has the power of mediation to produce a mutually desirable outcome in even the most difficult circumstances. The agency brings opposing parties together to hear each other's point of view and find the common ground. Since the parties may have never engaged in such a dialogue, the act of coming together may itself help ease tensions and reduce misunderstanding.

But the most compelling reason to attempt conflict resolution through mediation is that, if a lasting solution is found, everyone benefits including aggrieved Hispanics, the police, and the entire community. Moreover, if it fails, neither the law enforcement agency nor the involved Hispanics will have lost their right to pursue other courses of action open to them.

### 3) Assistance from the State Attorney General's Office:

The Attorney General of each state is the chief law enforcer for the respective state. The Attorney General's Office investigates complaints of police abuse, as do the State Troopers.

### 4) Assistance from the Office of Civil Rights,

U.S. Department of Justice:

Telephone number 202-514-2151.

This is the federal agency with responsibility for investigating police misconduct. The office is in Washington, D.C., and usually uses the Federal Bureau of Investigations



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(FBI) to conduct its investigations.

## 5) Lawsuits in court:

An individual whose civil rights have been violated has a right for redress no matter what other options may have been employed to resolve an issue.

That individual should consult a civil rights attorney for assistance.

Civil rights attorneys usually take cases on a contingency basis, meaning that he or she will get paid only if he prevails in a case. However, some civil rights attorneys ask for funds to conduct depositions and for extra-ordinary costs.

## LULAC SUGGESTED ACTIVITIES

To Address Administration of Justice Issues:

1. Provide community leadership by helping to identify problems/issues/concerns by holding meetings of the membership and other interested community individuals at which discussions are held.
2. Appoint monitoring committee to assess situation, obtain statements, interview citizens, witnesses, concerned individuals, victims, etc. and obtain data from police department, obtain EEO-4 report (which provides employment statistics) and assess equal employment posture of the police department.
3. Use the Perceptions Inventory in this chapter, page 57 to help you make determinations regarding the issues/problems/concerns.
4. Have monitoring committee develop a list of issues/problems/concerns based on statements from citizens, witnesses, concerned individuals, victims, etc., and the results of the perceptions inventory and the discussions with members and other concerned individuals.
5. Reduce the list of issues/problems/concerns into well-defined statements of the issues/problems/concerns using the word "perception" so that you are not put in a position to have to prove anything. (For assistance, see sample Issues/Problems/Concerns statements in this chapter.)
6. Form a coalition with other organizations where practical for emphasizing community-wide efforts.
7. Attempt resolution of problems by meeting with the police chief, city manager, and city council as necessary.
8. Involve LULAC District, State Directors, National Vice Presidents as necessary.
9. Hold press conferences if your meeting with police department and city officials does not produce results or if they refuse to meet with you.
10. Contact the Community Relations Service (CRS), U.S. Department of Justice in your region for assistance. In Texas, New Mexico, Oklahoma, Arkansas and Louisiana the number is 214-655-8175.
11. File complaint with the respective state attorney general's office. In Texas the number is 512-463-2100.
12. File a complaint with the Office of Civil Rights, U.S. Department of Justice. The number is 202-514-3204.
13. Consult the Employment Chapter for further information regarding employment issues at the police department.
14. Review the sample memorandum of understanding and/or agreement in this chapter, pages 61 of this manual, for a good indicator of what issues and/or agreements may apply to your situation.
15. Review the Ground Rules for Mediation in the Mediation Chapter of this manual.
16. Have confidence in yourself and do not give up.





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## SAMPLE MOU

MEMORANDUM OF AGREEMENT  
AND UNDERSTANDING  
Between  
THE XXXXXXXX POLICE DEPARTMENT  
and  
The LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC)  
THE XXXXXXXX MEXICAN SOCIETY  
THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT  
OF COLORED PEOPLE

During a July 10, 2003 meeting between the XXXXXXXX Police Department and representatives of the LULAC Council, the XXXXXXXXXX Mexican Society and the XXXXXXXXXX NAACP Chapter, mediated by the Community Relations Service, U.S. Department of Justice, the following issues/concerns and solutions were discussed and agreed upon by the parties:

### CONCERNS/ISSUES/PERCEPTIONS

1. The perception by some citizens, particularly Hispanics, that the local police often use excessive force while enforcing laws, especially when arresting Hispanics;
2. The perception by some citizens, particularly Hispanics, that the local police stop and search citizens, especially Hispanics, without probable cause;
3. The perception by some citizens, particularly Hispanics, that the local police treat minorities, especially Hispanics, with less respect and dignity than they do non-minorities;
4. The perception that the police violate citizens' civil rights, especially those of Hispanic youth, by stopping them, putting them on their knees with their hands behind their heads, and taking pictures of them even though they may have not violated any law;
5. The perception by some citizens that the XXXXXXXX Police Department maintains that most gang members in the community are Hispanic;
6. The perception that none of the members of the XXXXXXXX Police Department understand or speak Spanish;
7. The perception by Hispanics that the local police lack in understanding of the Hispanic culture and therefore violate their rights when performing law enforcement functions; and,
8. The perception that the XXXXXXXX Police Department does not have bilingual or Hispanic officers on the force.

SAMPLE MOU Cont'



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## SAMPLE MOU Cont'

### AGREED UPON SOLUTIONS

The following are the agreed upon solutions that resulted from the July 10, 2003 meeting:

The Police Department agrees to:

1. Give consideration to the establishment of a police/residents advisory committee that will promote cooperation and understanding between the XXXXXXXX police Department and all sectors of the community.
  - a. If the decision is to establish the committee, the Chief of Police may request the assistance of the Community Relations Service (CRS) for assistance in developing a structure.
  - b. LULAC, the Mexican Society and the NAACP agree to assist the Chief of Police with names of potential committee persons.
2. Requesting the Community Relations Service, U.S. Department of Justice, to obtain municipal/civil liability and civil rights training for all members of the XXXXXXXX Police Department.
  - a. The Police Chief agrees to invite other law enforcement agencies in the area to participate in the training.
  - b. LULAC, the Mexican Society and the NAACP agrees to participate in a modified version of the municipal/civil liability and civil rights training.
3. Request the assistance of the Community Relations Service (CRS), to assist in the review and update, if necessary, its Use of Force policies and procedures;
4. Requesting the assistance of the Community Relations Service (CRS) in the view and update, if necessary, the department's citizen complaint mechanism in both English and Spanish;
5. Continue to provide cultural awareness training opportunities to all members of the police force;
6. Initiate, with the assistance of LULAC, the Mexican Society and the NAACP, a minority recruitment plan that will enhance the potential for recruiting minorities, especially Hispanics; and,
7. Explore providing Spanish language training opportunities for those members of the department that need it.

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## SAMPLE MOU Cont'

### IMPLEMENTATION

The parties agree that the XXXXXXXX Police Department and the representatives of the XXXXXXXX

LULAC Council, the Mexican Society and NAACP that came together to discuss the above issues and will continue to meet on a quaterly basis to monitor implementation of the provisions of this Memorandum of Agreement and Understanding and to discuss other issues that may be raised from time to time by either party. Should there be disagreements over this Memorandum of Agreement and Understanding's interpretation or implementation that cannot be resolved by the parties themselves, either party may request CRS's assistance in convening the involved parties to resolve their concerns.

This Memorandum of Agreement and understanding becomes effective \_\_\_\_\_ and expires on \_\_\_\_\_ but may be dissolved by the mutual consent of all the parties.

The parties involved recognize that although this agreement was entered on a voluntary basis, it is important that a good faith effort be made in carrying out its provisions. Amendments to this agreement will be made only upon the mutual consent of the XXXXXXXX Police Department, LULAC, the Mexican Society and the NAACP.

Police Department

\_\_\_\_\_

Chief of Police

\_\_\_\_\_

Community Organizations' Representatives

\_\_\_\_\_

Witnessed by

\_\_\_\_\_

Conciliation Specialist (mediator)  
Community Relations Service,  
U.S. Department of Justice.

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## SAMPLE MOU Cont'

### POSSIBLE POLICE/ADVISORY COMMITTEE BY-LAWS

#### ARTICLE I: NAME

The name of the committee is the Police/Citizens Advisory Committee of the XXXXXXXX Police Department.

#### ARTICLE II: PREAMBLE AND PURPOSE

To promote cooperation and understanding between the XXXXXXXX Police Department and all sectors of the XXXXXXXX community.

#### ARTICLE III: ACTIVITIES

- A. Assess and advise the Police Chief on conditions in the community.
- B. Propose methods of improvement of conditions in the community.
- C. Encourage fair and equitable implementation of policies.
- D. Seek involvement and participation of the community in general in the Police Department's police community relations activities.
- E. Promote understanding, harmony and communication among all sectors of the community and the Police Department.
- F. Assist in policy review and assessment to help assure that the community and the Police Department's needs are reasonably compatible and mutually advantageous.

#### ARTICLE IV: MEMBERSHIPS

- A. Membership shall consist of \_\_\_\_\_ people living in the City of XXXXXXXX.
- B. There shall be \_\_\_\_\_ kinds of members:
  - 1.
  - 2.
  - 3.
  - 4.

#### ARTICLE V: OFFICERS

- A. Officers
  - 1. Chairperson
  - 2. Vice-chairperson
- B. Nominations shall be made at the \_\_\_\_\_ meeting. Election by secret ballot and installation of officers shall be conducted at the \_\_\_\_\_ meeting. Terms begin at installation.



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## **SAMPLE MOU Cont'**

### C. Duties of Officers

1. The Chairperson shall:
  - a. Preside over all meetings.
  - b. Establish an agenda for all meetings.
  - c. Receive Police/Citizens Advisory Committee Communications and ensure that action is taken on them.
  - d. Keep a record of all communications and their results.
  - e. Send the call for all meetings.
  - f. Serve as liaison between meetings.
  - g. Serve as official spokesperson for the committee.
  - h. Establish subcommittees.
2. The Vice-chairperson shall:
  - a. Assume duties of chairperson in his absence.
  - b. Assume any duties delegated by the chairperson.
3. The Recording Secretary shall:
  - a. Keep a record of all the minutes of the meetings.
  - b. Determine that a quorum is present and record the names of those present.

### D. Term of Office

1. Officers shall serve for one year.
2. No officer shall serve more than two consecutive years in the same office.

## ARTICLE VI: POSSIBLE SUB-COMMITTEES

The Police/Citizens Advisory Committee shall be organized into the following sub-committees in an effort to develop public support:

- A. Public Relations Committee
- B. Crime Committee
- C. Youth Committee
- D. Human Relations Committee

OTHER ARTICLES AS SEEN FIT:

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## **SAMPLE RESIDENTS COMPLAINT MECHANISM**

Your XXXXXXXX Police Department is dedicated to providing the best police service possible to all of XXXXXXXX residents. Your police officers are carefully selected and given the best training possible in order to provide this service. However, you may have occasion to lodge a complaint about the actions of a member of the XXXXXXXX Police Department. In order to be responsive to you, we are providing the following information about how complaints are made, how they are investigated and their results.

### **I. How Are Complaints Made?**

When a resident lodges a complaint against a member of the XXXXXXXX Police Department, the complaint goes to the Assistant Chief of Police, located at XXXXXXXXXXXX. His duty is to review and investigate your complaint. His office is open from 8:00 a.m. to 5:00 p.m. each weekday. If the Assistant Chief's office is closed, you may lodge a complaint with any supervisory officer of the Police Department. Your complaint will be forwarded to the Assistant Chief for investigation.

TEXAS STATE LAW requires that all complaints against police officers must be in writing and signed by the person making the complaint. Just as residents who are arrested must be notified of the charges against them, the police officer must be given a copy of the complaint before any disciplinary action may be taken. Complaints must be made within 30 days of the incident complained about, except in special cases such as criminal misconduct or when good cause can be shown by the person complaining.

Complaints must be made by the person who claims to be aggrieved. Other persons may give statements as witnesses. The Assistant Chief of Police will conduct a thorough investigation of your complaint, and you will be advised of the result and action taken. Traffic tickets issued or differences of opinion between police officers and a resident over the issuance of a traffic ticket, or regarding guilt or innocence of a person arrested, will not be investigated, unless there is specific allegation of misconduct against the officer.

### **II. False Complaints.**

Sometimes people make false complaints against police officers. Residents should be aware that this is a violation of the Texas Penal Code. Section 37.02 provides punishment for an individual adjudged guilty of committing an offense if, with intent to deceive and with knowledge of the statements meaning:

He makes a false statement under oath or swears to the truth of a false statement previously made; and, the statement is required or authorized by law to be made under oath.

A person convicted under this Section can be punished by a fine up to \$2,000.00 confinement in jail up to one year, or by both the fine and imprisonment. This information is not intended to intimidate the resident or prevent valid complaints, but provided to avoid revenge against officers.

#### **What Happens When A Complaint Is Found To Be True?**

When the investigation of a complaint reveals that the charges are true and should be sustained against a police officer, the Chief of Police notifies the officer and may take one of the following actions, depending on the nature of the violation:



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## **SAMPLE RESIDENTS COMPLAINT MECHANISM Continued**

1. Reprimand the employee.
2. Suspend the employee without pay for up to 30 days.
3. Demote the employee.
4. Discharge the employee.

### **What Happens If Complaint Is Not True?**

Police officers must be accorded certain rights, the same as with all citizens, and complaints must be supported by sufficient evidence. If there is not sufficient evidence to sustain the complaint, the officer is notified and continues on duty. If he was removed from duty during the investigation he will be paid for that period.

### **Officers Can Appeal The Decision.**

Just as a resident charged with a criminal offense can appeal a court's decision, a police officer can appeal the action taken against him. The City of XXXX has established procedures for officers to follow in their appeals, just as the Police Department has established procedures for insuring that complaints by citizens against officers are thoroughly and honestly investigated.

### **III. What If You Are Not Satisfied With The Decision?**

If you are not satisfied with the results of the investigation by the Assistant Chief of Police, you may appeal to:

1. The office of the Chief of Police, located at XXXXXXXX Street in the Police Building.
2. The office of the City Manager, located in City Hall, XXXXX Street.
3. The office of the County Attorney, located at the County Court House, if criminal charges are to be filed.
4. The office of the District Attorney, located at the County Court House, if criminal charges are to be filed.
5. The XXXXX office of the Federal Bureau of Investigation, located in the Federal Building, if civil rights violation charges are to be filed.

The XXXXXXXX Police Department is vitally interested in the welfare of all XXXXXXXX residents and in taking action where its employees have proved derelict in their duties or are guilty of wrongdoing. If it becomes necessary for you to make a complaint, you can be assured that it will be given a fair and thorough investigation.

By the same token, if you have occasion to see a police officer doing outstanding work, tell him or us about it. Your XXX police officers are individuals who are dedicated to serving you and our community.

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## MUESTRA DE MECANISMO DE QUEJA CIUDADANA

### QUEJAS CONTRA OFICIALES DE POLICIA

El departamento de Policía esta dedicado a ofrecer el mejor servicio posible a todas las personas de la ciudad de XXXXXXXX. Sus oficiales de policía son escogidos cuidadosamente y se les da el mejor entrenamiento posible para ofrecer este servicio.

Sin embargo, puede ser que usted tenga motivo de presentar una queja tocante a las acciones de un miembro del departamento. Para darle mejor respuestas, le ofrecemos esta información sobre como presentar una queja, como es investigada y sus resultados.

### ¿COMO SE HACE UNA QUEJA?

Cuando un ciudadano presenta una queja contra un miembro del Departamento de Policía de XXXXXXXX, la queja pasa al jefe del departamento localizado en el XXXXXXXX.

Sus oficinas abren de las 8:00 a.m. hasta las 5:00 p.m. cada día de trabajo. Investigadores especiales son designados para revisar e investigar su queja.

La ley del estado de Texas requiere que toda queja contra oficiales de policía debe estar escrita y firmada por la persona afectada.

Asi como ciudadanos que son arrestados deben ser notificados de los cargos en contra de ellos; el oficial de policía debe darle una copia de la queja antes de que cualquier acción de diciplina sea tomada. Las quejas deben ser hechas dentro de los primeros 30 días del incidente, excepto en casos especiales (tales como mala conducta criminal cuando hay motivo y pueda ser probado por la persona afectada). Las quejas deben ser presentadas por la persona quien reclama haber sido maltratada. Sin embargo otras personas pueden dar declaraciones como testigos.

### QUEJAS FALSAS

A veces gente hace quejas falsas contra oficiales de policía. Los ciudadanos deben estar enterados que esto es una violación del Código Penal de Texas. La sección 37.02 surte castigo para el individuo que sea juzgado culpable de cometer una ofensa con intento de engañar y con conocimiento del significado de la declaración.

Si el individuo hace una declaración bajo juramento, o jura la verdad de una declaración falsa hecha anteriormente, y la declaración es requerida o autorizada por ley para ser hecha bajo juramento. Una persona declarada culpable bajo esta sección puede ser castigada con una multa de hasta \$ 2,000 encarcelada hasta por un año o la multa y el encarcelamiento juntos.



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## MUESTRA DE MECANISMO DE QUEJA CIUDADANA

### Continuación

#### ¿QUE PASA CUANDO UNA QUEJA SE ESTABLECE COMO VERDAD?

Cuando la investigación de una queja revela que los cargos son veraderos y serán sostenidos contra un oficial de policía, el jefe de policía le avisa al oficial y puede tomar una de las siguientes acciones, dependiendo de la seriedad de la violación:

- 1) reprender al oficial;
- 2) suspender al oficial sin pago hasta 30 días;
- 3) reducir al oficial de su puesto;
- 4) destituir al oficial.

#### LOS OFICIALES PUEDEN APELAR LA DESICION

Así como un ciudadano acusado de una ofensa criminal puede apelar la desición de la corte, un oficial de policía puede apelar la acción tomada contra Él. La ciudad de XXX ha establecido procedimientos para que oficiales continuen con sus apelaciones, así como el Departamento de Policía ha establecido procedimientos para asegurar que quejas de ciudadanos contra oficiales sean investigadas completamente y honrradamente.

#### HATE CRIME: THE VIOLENCE OF INTOLERANCE

The Community Relations Service (CRS), a component of the U.S. Department of Justice, is a specialized Federal conciliation service available to State and local officials to help resolve and prevent racial and ethnic conflict.

#### VIOLENCE AND CIVIL DISORDERS

When governors, mayors, police chiefs, and school superintendents need help to defuse racial crises, they turn to CRS. CRS helps local officials and residents tailor locally defined resolutions when conflict and violence threaten community stability and well-being. CRS conciliators assist in identifying the sources of violence and conflict and utilizing specialized crisis management and violence reduction techniques which work best for each community.

CRS has no law enforcement authority and does not impose solutions, investigate or prosecute cases, or assign blame or fault. CRS conciliators are required by law to conduct their activities in confidence, without publicity, and are prohibited from disclosing confidential information.

In 2002-2003, CRS was involved in over 150 hate crime cases that caused or intensified community racial and ethnic tensions. As authorized by the Civil Rights Act of 1964, CRS became involved only in those cases in which the criminal offender was motivated by the victim's race, color, or national origin.

#### HATE CRIME

Hate crime is the violence of intolerance and bigotry,

intended to hurt and intimidate someone because of their race, ethnicity, national origin, religious, sexual orientation, or disability. The purveyors of hate use explosives, arson, weapons, vandalism, physical violence, and verbal threats of violence to instill fear in their victims, leaving them vulnerable to more attacks and feeling alienated, helpless, suspicious and fearful. Others may become frustrated and angry if they believe the local government and other groups in the community will not protect them. When perpetrators of hate are not prosecuted as criminals and their acts are not publicly condemned, their crimes can weaken even those communities with the healthiest race relations.

Of all crimes, hate crimes are most likely to create or exacerbate tensions, which can trigger larger community-wide racial conflict, civil disturbances, and even riots. Hate crimes put cities and towns at-risk of serious social and economic consequences.

The immediate costs of racial conflicts and civil disturbances are police, fire, and medical personnel overtime, injury or death, business and residential property loss, and damage to vehicles and equipment.

Long-term recovery is hindered by a decline in property values, which results in lower tax revenues, scarcity of funds for rebuilding, and increased insurance rates. Businesses and residents abandon these neighborhoods, leaving empty buildings to attract crime, and the quality of schools decline due to the loss of tax revenue. A municipality may have no choice but to cut services or raise taxes or leave the area in its post-riot condition until market forces of supply and demand rebuild the area.

#### CRS BEST PRACTICES:

#### TO PREVENT HATE CRIMES FROM ESCALATING RACIAL AND ETHNIC TENSIONS INTO CONFLICT OR CIVIL DISTURBANCES

From years of experience with hundreds of hate crime cases that have caused or intensified community-wide racial and ethnic tensions, CRS recommends certain "best practices" to prevent hate crimes and restore harmony in the community.

Hate Crime Ordinances are a Deterrent A core responsibility of government is to protect the civil rights of its citizens and to advance its inherent obligation to ensure good race and ethnic relations. This tenet cannot be abrogated and such a commitment requires no special funding.

A government can confirm its commitment to the safety and well-being of its citizens by establishing an ordinance against hate crime activity or enhancing the punishment for hate crime. It can also encourage compliance with existing equal opportunity statutes.

A local government may establish an ordinance against hate activity modeled on existing hate crime law in effect in that State. Punishment is enhanced by promulgating



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guide lines or amending existing guidelines to provide varying offense levels for use in sentencing. There should be reasonable consistency with other guidelines, avoidance of duplicative punishments for the same offense, and consideration of any mitigating circumstances.

Compliance with existing statutes can be achieved by training law enforcement officers to enforce existing statutes, imposing fines or penalties when ordinances are violated, reviewing licenses or privileges, reviewing tax exempt status, and providing incentives or awards.

A local government may also establish boards or commissions to review and analyze hate crime activity, create public service announcements, and recommend measures to counter hate activity. In September 1994, Congress also enacted a Federal hate crime penalty enhancement statute Public Law (103-322 §28003), which would increase the penalties for Federal crimes where the victim was selected “because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person.”

## Local Actions to Improve Communication

When left unresolved simmering racial and ethnic friction can be triggered by a hate crime into a community-wide conflict or civil disturbance.

Communication and interaction between majority and minority groups is often a key factor in preventing tensions or restoring harmony.

A Human Rights Commission (HRC) can facilitate and coordinate discussions, training, and events for the benefit of everyone. An HRC can create a forum for talking about racial and ethnic relations and encourage citizens to discuss their differences, commonalities, hopes and dreams. Forums could focus on the common features of community life, including economic development, education, transportation, environment, cultural and recreational opportunities, leadership, community attitudes, and racial and ethnic diversity.

The Commission can use multicultural training and

special events to promote harmony and stability.

Also, see *A Policymaker’s Guide to Hate Crimes*, published by the Bureau of Justice Assistance (BJA), U.S. Department of Justice.

Telephone: (800) 688-4252, or visit their home page at [www.ojp.usdoj.gov/BJA](http://www.ojp.usdoj.gov/BJA)

## Coalitions Create a Positive Climate

Racial and ethnic tensions increase during periods of economic downswings. Hate crimes may occur when unemployed or underemployed workers vent anger on available scapegoats from the minority groups.

Coalitions of representatives from political, business, civic, religious, and community organizations help create a positive climate in the community and encourage constructive dialogue. Coalitions can recommend initiatives to help racial and ethnic communities affected by the loss of jobs, including programs and plans to help local government ensure an equitable disbursement of public and private funds, resources, and services.

## Inclusion Increases Confidence in Government

Hate crimes can often be prevented by policies designed to promote good racial and ethnic relations. Local governments can assure that everyone has access to full participation in the municipality’s decision-making processes, including equal opportunity for minorities to be represented on appointed boards and commissions. Local governments might institute a policy of inclusion for appointments on boards and commissions. The policy could require listing all appointive positions, and notifying all racial and ethnic groups of open seats through the minority Media.

## Schools and Police Must Work Together

Racial and ethnic tensions may increase in schools when there are rapid demographic or socio-economic changes. Tensions may result from the perception of unequal educational opportunities or disparate practices in hiring faculty and staff within the school district.

Preventing and dealing with hate crimes and hate-based gang activity in schools are the responsibility of school and police officials, who should work together to develop a plan to handle hate crimes and defuse racial tensions. Hate crimes can be school-related, community-related, or a combination of both. Officials should consider prevention and response roles, identify potential trouble sites, and plan for phased police intervention.

Tension can be eased by regular communication with parents, students, media, and other community organizations. Mediation and conflict resolution classes develop the capacity of young people to peacefully settle disputes and conflicts.

For more information on how to prevent and counter





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hate crime in schools, contact the Office for Juvenile Justice and Delinquency Prevention (OJJDP), U.S. Department of Justice. See also OJJDP's A National Hate Crime Prevention.

Curriculum for Middle Schools. Telephone (800) 638-8736, or visit their home page at [www.ncjrs.org/ojjhome.htm](http://www.ncjrs.org/ojjhome.htm).

## Rumors Fuel Racial Tensions and Conflict

Law enforcement officers believe rumors aggravate more than two-thirds of all civil disturbances. When racial or ethnic tensions may become heightened by exaggerated rumors, a temporary rumor control and verification center is an effective mechanism to ensure accurate information.

A temporary rumor control and verification center typically is operated 24 hours a day during the crisis period by a local government agency. It is staffed by professionals and trained volunteers. The media and others should publicize the telephone number.

The Media Can Be a Helpful Ally The influence of the print and broadcast media on preventing and investigating hate crimes cannot be overstated. The media is critical in shaping public attitudes about the crime, its perpetrators, and the law enforcement response.

The media can play an important role in preventing hate crimes from increasing community tensions. Local officials should designate an informed single-point-of-contact for hate crime information. Accurate, thorough, and responsible reporting significantly improves the likelihood that stability and harmony will be restored. The media can promote public understanding of mediation and conflict resolution processes, and help alleviate fear, suspicion, and anger.

## Community Policing Should Be Well Planned

During the transition by a local law enforcement agency from traditional policing to community-oriented policing, retention of the agency's Community Affairs/Relations Office should be carefully considered.

During the transition to community-oriented policing, some law enforcement agencies may choose to close their community relations once, encouraging their community policing officers on the beat to learn who the key community leaders are in their patrol sectors. In this case, the department must make certain it does not lose institutional knowledge about community leaders, the mutual benefit of a working relationship, and the means to learn about and work with up-and-coming leaders.

The experience gained by officers permanently assigned to monitor and work on community relations matters should be used in this transition period. If the office is to be disbanded, community leaders who have worked with the officers in the past should be consulted on the proposed changes during the planning process.

## Hate Crimes Must Be Investigated and Reported

Findings on the exact number of hate crimes and trends are difficult to establish and interpretations about hate crimes vary among individuals, law enforcement agencies, public and private organizations, and community groups.

A municipality should assure that its law enforcement agencies adopt the model policy supported by the International Association of Chiefs of Police for investigating and reporting hate crimes, you may contact them at (703) 836-6767.

This model policy uses the standard reporting form and uniform definition of hate crime developed by the FBI after passage of The Hate Crime Statistics Act (HCSA), 28 U.S.C. 534, enacted April 1990, as amended by the Church Arson Prevention Act of June 1996 (The HCSA also requires the collection of data on crimes based on religion, sexual orientation, ethnicity, and disability).

The FBI offers training for law enforcement officers and administrators on developing data collection procedures. **For more information, call the FBI at 1-888-UCR-NIBR.**

CRS and the FBI recommend a two-tier procedure for accurately collecting and reporting hate crime case information, it includes:

1. the officer on the scene of an alleged bias crime making an initial determination that bias motivation is "suspected": and
2. a second officer or unit with more expertise in bias matters making the final determination of whether a hate crime has actually occurred.

For more information, see the FBI's Training Guide for Hate Crime Data Collection and Hate Crime Data Collection Guidelines, you may contact them at (304) 625-4995.

See also Hate/Bias Crimes Train-the-Trainer Program, conducted by the National Center for State, Local and International Law Enforcement Training.

Federal Law Enforcement Training Center, Department of Homeland Security, you may contact them at (912) 280-5208

## Hate Crimes and Multi-jurisdictional Task Forces

Multijurisdictional or regional task forces are an effective means of sharing information and combining resources to counter hate crime activity.

Some local governments have institutionalized sharing of expertise and agency resources through memorandums of understanding. For example, creating a coalition of public and private agencies and community organizations will give cities in the county or region a complete and thorough range of resources and information to promote racial and ethnic relations and counter hate crimes. This network or consortium can also work with coalitions created especially to investigate and prosecute hate crimes.

Such a coalition might include the district attorney, the

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city attorney, law enforcement agencies, and civil rights, community, and educational organizations. This partnership links Prosecutory and law enforcement victim assistance and victim compensation services. See also OVC's National Bias Crimes Training:

For Law Enforcement and Victim Assistance Professionals. Telephone (202) 307-5983, or visit their home page at [www.ojp.usdoj.gov/ovc/](http://www.ojp.usdoj.gov/ovc/)

On November 10, 1997, at the White House Conference on Hate Crime, the President declared "Starting today, every United States Attorney in our country will establish or expand working groups to develop enforcement practices, and educate the public about hate crimes.

This national hate crimes network will marshal the resources of Federal, state and local enforcement, community groups, educators, and antiviolence advocates, to give us another powerful tool in the struggle against hate crimes." For more information on local efforts in you area, call the hate crime coordinator in your U.S. Attorney's office.

## CRS SERVICES THAT DEFUSE HATE CRIME ACTIVITIES

When hate crimes threaten racial and ethnic relations or escalate community-wide tensions, CRS offers five types of services. To determine the best service(s), CRS conciliators meet with elected officials and community leaders, analyzing a variety of indicators, including causes, potential for violence or continued violence, extent of dialogue, communication and interest in working cooperatively to restore harmony and stability. The five services are:

### 1) Mediation and Conciliation.

Mediation and conciliation are two techniques used by CRS to help resolve community-wide tensions and conflicts arising from hate crimes. CRS conciliators provide representatives of community groups and local government leaders with an impartial forum to help restore stability and harmony through orderly dialogue and clarification of the issues. CRS establishes with the parties the ground rules for discussion and facilitates the meetings.

### 2) Technical Assistance.

CRS can assist local officials and community leaders with developing and implementing polices, practices, and procedures to respond to hate crimes and garner the support of residents and organizations to ease tensions and help end conflicts.

### 3) Training.

CRS can conduct training sessions and workshops to teach patrol officers and residents how to recognize a hate crime, gain support of the community early in the investigation, and begin the identification of victims and witnesses to the crime. CRS can teach community leaders and volunteers how to prevent the likelihood of more hate

crimes, and how to assist and share information in the investigation by law enforcement agencies. Volunteers can serve in such valuable roles as rumor control, initiating community watch patrols, and raising public consciousness about types of hate crimes and those who perpetratesuch offenses.

### 4) Public Education and Awareness.

CRS can also conduct hate crime prevention and education programs in schools, colleges, and the community. These programs break down barriers, build bridges of trust across racial and ethnic lines, develop mutual respect, and reduce fear.

In 2002-2003, CRS services were requested by more than 150 school districts and over 50 colleges. CRS helped to address conflicts and violence, reduce tensions, develop plans to avoid potential incidents, and conduct training programs for students, teachers, administrators, and parents.

CRS offers six school-based programs. An example is Student Problem Identification and Resolution (SPIR), a conflict resolution program designed to identify and defuse racial tensions involving students at the junior and senior levels. SPIR assists school administrators in addressing racial and ethnic tensions through a carefully structured process that involves students, teachers, administrators, and parents.

A further development of this program, called SPIRIT, involves local law enforcement agencies as key partners in the design of an action plan. CRS now trains officers to conduct the SPIRIT program as a part of a process to strengthen cooperation among law enforcement and school officials.

### 5) Event Contingency Planning.

CRS, at the request of either local officials or demonstration organizers, can assist in contingency planning to ensure that marches, demonstrations, and similar events occur without exacerbating racial and ethnic tensions and minimizing the prospect of any confrontations. CRS can also train community residents to plan and





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monitor local-level events. CRS assistance is often requested when demonstrations and marches are scheduled. For example, CRS has helped scores of municipalities with KKK rallies and counter-demonstrations.

## PUBLICATIONS AND RESOURCES

American Jewish Committee  
Skinheads: Who They Are And What to Do When They Come to Town and Bigotry on Campus: A Planned Response  
165 East 56 St.  
New York, NY, 10022  
(212) 751-4000

Anti-Defamation League  
1997 Hate Crimes Laws  
823 United Nations Plaza  
New York, NY 10017  
(800) 343-5540

Center for Democratic Renewal  
When Hate Groups Come to Town, (\$18.95)  
P.O. Box 50469  
Atlanta, GA 30302  
(404) 221-0025

Japanese American Citizens League  
Walk with Pride:  
Taking Steps to Address Anti-Asian Violence  
1765 Sutter Street  
San Francisco, CA 94115  
(415) 921-5225

Klanwatch  
The Intelligence Report  
Southern Poverty Law Center  
400 Washington Avenue  
Montgomery, AL 36104  
(334) 956-8200

LA County Commission on Human Relations  
Hate Crime in Los Angeles County in 1996  
320 West Temple Street  
Los Angeles, CA 90012  
(213) 974-7601

National Asian Pacific American Legal Consortium  
Audit of Violence Against Asian Americans  
1001 Connecticut Avenue, NW,  
Washington, DC 20036  
(202) 296-2300

National Conference for Community and Justice Provides training and technical assistance to end racism and religious bigotry  
NCCI  
70 West 36th Street,  
New York, NY 10003  
(212) 967-3111

People for the American Way  
Democracy's Next Generation II: A Study of American Youth on Race  
2000 M St. NW,  
Washington, DC 20036  
(202) 467-4999  
U.S. Department of Justice  
Hateful Acts Hurt Kids  
[www.usdoj.gov/kidspage](http://www.usdoj.gov/kidspage)

U.S. Department of Justice  
Federal Bureau of Investigation  
Hate Crimes Report  
[www.fbi.gov/ucr/hatecm.htm](http://www.fbi.gov/ucr/hatecm.htm)

U.S. Department of Justice  
Community Relations Service  
Community Dialogue Guide:  
Conducting a Discussion on Race  
(202) 305-2935

U.S. Department of Justice  
Office of Juvenile Justice and Delinquency Prevention, Healing the Hate. A National Bias Crime Prevention Curriculum for Middle Schools  
(800) 638-8736

U.S. Department of Justice &  
U.S. Department of Education  
Preventing Youth Hate Crime  
[www.usdoj.gov/kidspage](http://www.usdoj.gov/kidspage)  
See; "Information for parents and teachers."

Customer Service Standards Community Relations Service Our goal is to provide sensitive and effective conflict prevention and resolution services CRS will meet the following Standards:

- We will clearly explain the process that CRS uses to address racial and ethnic conflicts and our role in that process.
- We will provide opportunities for all parties involved to contribute to and work toward a solution to the racial or ethnic conflict.

If you are a participant in a CRS training session or conference, you will receive timely and useful information and materials that will assist you in preventing or

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minimizing racial and ethnic tensions. We will be prepared to provide on-site services in major racial or ethnic crisis situations within 24 hours from the time when your community notifies CRS or CRS becomes aware of the crisis.

In non-crisis situations we will contact you to discuss our services within three days of when your community notifies CRS or when CRS becomes aware of the situation.

## CRS HEADQUARTERS, REGIONAL AND FIELD OFFICES

Headquarters Office  
600 E Street, NW, Suite 6000  
Washington, D.C. 20530  
(202) 305-2935 or Fax (202) 305-3009  
Regional Offices and States Within Each Region

### REGION I - New England

408 Atlantic Ave., Suite 222  
Boston, MA 02110  
(617) 424-5715 or Fax (617) 424-5727  
Servicing: CT, MA, ME, NH, RI, VT

### REGION II - Northeast

26 Federal Plaza, Room 36-118  
New York, NY 10278  
(212) 264-0700 or Fax (212) 264-2143  
Servicing: NJ, NY, PR, VI

### REGION III - Mid-Atlantic

2nd and Chestnut Streets, Room 208  
Philadelphia, PA 19106  
(215) 597-2344 or Fax (215) 597-9148  
Servicing: DC, DE, MD, PA, VA, WV

### REGION IV - Southeast

75 Piedmont Avenue, NE, Room 900  
Atlanta, GA 30303  
(404) 331-6883 or Fax (404) 331-4471  
Servicing: AL, FL, GA, KY, MS, NC, SC, TN

### REGION IV - Miami Field Office

51 SW First Avenue, Room 624  
Miami, FL 33130  
(305) 536-5206 or Fax (305) 536-7363

### REGION V - Mid-West

55 West Monroe Street, Suite 420  
Chicago, IL 60603  
(312) 353-4391 or Fax (312) 353-4390  
Servicing: IL, IN, MI, MN, OH, WI  
Detroit Field Office - Region V  
211 West Fort Street, Suite 1404  
Detroit, MI 48226  
(313) 226-4010 or Fax (313) 226-2568

### REGION VI - Southwest

1420 West Mockingbird Lane, Suite 250  
Dallas, TX 75247  
(214) 655-8175 or Fax (214) 655-8184  
Servicing: AR, LA, NM, OK, TX  
Houston Field Office - Region VI  
515 Rusk Avenue, Room 12605  
Houston, TX 77002  
(713) 718-4861 or Fax (713) 718-4862

### REGION VII - Central

1100 Main Street, Suite 1320  
Kansas City, MO 64106  
(816) 426-7434 or Fax (816) 426-7441  
Servicing: IA, KS, MO, NE

### REGION VIII - Rocky Mountain

1244 Speer Blvd., Room 650  
Denver, CO 80204-3584  
(303) 844-2973 or Fax (303) 844-2907  
Servicing: CO, MT, ND, SD, UT, WY

### REGION IX - Western

Los Angeles  
888 South Figueroa Street, Suite 1880  
Los Angeles, CA 90017  
(213) 894-2941 or Fax (213) 894-2880  
San Francisco Field Office- Region IX  
120 Howard Street, Suite 790  
San Francisco, CA 94105  
(415) 744-6565 or Fax (415) 744-6590  
Servicing: AZ, CA, GU, HI, NV

### REGION X - Northwest

915 Second Avenue, Room 1808  
Seattle, WA 98174  
(206) 220-6700 or Fax (206) 220-6706  
Servicing: AK, ID, OR, WA  
CRS World Wide Internet;  
[www.usdoj.gov/crs/crs.htm](http://www.usdoj.gov/crs/crs.htm)



## Case Work - Sample

# LULAC of Florida Enters Into Cooperative Agreements With Collier and Charlotte Counties Sheriffs' Offices

LULAC of Florida, under the direction of State and National LULAC Civil Rights Commissioner Victor Valdes, in 2008 and 2009, in recognition that the cooperation between LULAC and the two sheriffs' offices – Charlotte County and Collier County is of great benefit to the community, and that said contribution will enhance the safety of all citizens in the counties, in a memorandum of agreement and understanding expressed their common interest in developing bilateral relations as outlined below:

1. LULAC agrees to further development of a cross-training curriculum in conjunction with the sheriff departments to train law enforcement and the community to recognize human trafficking and how to report incidents.

2. LULAC supports the sheriff departments and the State of Florida's efforts to train law enforcement in cultural diversity/ interacting with culturally diverse populations.

3. LULAC agrees to work with the sheriff departments in combating Human Trafficking and providing support to the victims during the investigation process.

4. LULAC will assist the sheriff departments to comply with the Vienna Convention Accord when foreign nationals are arrested/detained.

The LULAC will report any discovered problems to the sheriffs and assist as appropriate in consulate notifications.

5. LULAC desires to review cases where an allegation of police misconduct has been made and the internal

investigation by the sheriffs has been completed. The LULAC recognizes that the Citizen Review Panel meetings are an appropriate opportunity for reviews.

6. LULAC denounces violence of all kinds directed towards law enforcement and encourages further law enforcement and community relations development to aid in minimizing the need for the use of force in

performing law enforcement duties. The sheriffs concur in formulating strategies to minimize use of force.

This agreement is intended to not only build upon the collaborative linkages between LULAC and the sheriffs on the specific

issues covered in this Agreement, but also to establish strategies that promote cooperative agreements with other projects involving the community. Candidate areas of concern may include child abuse/exploitation prevention, gang prevention and suppression, domestic

violence prevention and safe driving program.

The agreements were signed by the sheriffs, Victor Valdes, Robert and Edna Canino, Rodolfo Pumariega, all LULAC officials.





## Case Work - Sample

# Irving Council/Police Chief Enter Into Agreement

LULAC National President, Rosa Rosales; LULAC National Civil Rights Commission Chair, Richard Sambrano; Texas LULAC Civil Rights Commission Chair, Ed Elizondo; Irving LULAC Council President, Jorge Rivera, and his board met with Irving Police Chief on October 12, 2009 to discuss common interests including, the Criminal Alien Program (CAP) and a recent incident involving a response by the Irving Police to a call for assistance in the aftermath of a robbery of a residence



Photo by Luis Nuno Briones

The Criminal Alien Program (CAP) focuses on identifying criminal aliens who are incarcerated within federal, state and local facilities thereby ensuring that they are not released into the community by securing a final order of removal prior to the termination of their sentence.

The Irving Police Department has been operating the Criminal Alien Program for approximately four years. However, it had sparked protests, divided the community along racial lines, prompted allegations of racial profiling, caused the Mexican Consul to advise immigrants to stay away from the city, gave the city a black eye in the eyes of Hispanics nationwide, caused some to perceive that residents' civil rights were being violated by officers as they implemented the program, outraged many residents and visitors to the city who were stopped and

asked to produce documents to prove that they were citizens and prompted excessive use of force.

The discussions with the Chief resulted in agreement that the police department would: continue to voluntarily provide quality cultural awareness training for its officers; review the United States Department of Justice's racial profiling training and curriculum and incorporate the pertinent aspects into the overall course;

devote significant resources designed to improve community relations - two activities of interest with the Latino community will be the Hispanic citizens

Police Academy, and the Police Athletic League; meet quarterly with LULAC and a diverse group of interested community members to discuss issues relevant to the department's relationship with the community; and, will vigorously investigate any allegations of racial



Photo by Luis Nuno Briones

profiling and take appropriate disciplinary measures if any officer is found to engage in such conduct.

LULAC indicated to the Chief that while it supports city officials and the police department's efforts to reduce crime, it would rather the Criminal Alien Program be done away with. While the Chief could not commit to do away with it, as it is the city council's jurisdiction he promised to ensure that it is run professionally.







# Housing

## Chapter 4





# Chapter 4 ~ Housing

## POLICY

LULAC is unalterably opposed to racial discrimination in any form in Housing based on race, color or national origin.

Racial Housing issues with which we must deal often make the going rough. As a volunteer organization, we must be able to diagnose the ills of a community, coalesce with other minority organizations, devise a plan, select alternative solutions and follow through toward a defined goal.

LULAC's housing policy will not remain stagnant.

It will continually evolve though our principles will remain fairly constant. Policy is determined by the Annual Convention, ratified by the National Board of Directors, and implemented by the National Housing Committee, Regional Vice Presidents/State Offices and local councils.

### A. The National Office will:

- 1) Assist Councils, State and Regional Offices with articular problems in accordance with availability of technical resources;
- 2) Help design programs;
- 3) Plan housing conferences and/or work shops;
- 4) Bring a professional approach to highly complex issues;
- 5) Help organize a plan of attack; and,
- 6) Interpret policy.

### B. Council Housing Committee

#### 1. Duties:

The duties of the Housing Committee shall be to:

- Study housing conditions in the local community
- Receive and seek to resolve complaints of discrimination;
- Oppose all restrictive practices, public and/or private, that may affect Hispanics; and,
- Disseminate information and render such other assistance which may eliminate discrimination in Housing.

#### 2. Committee Appointments:

- a) In selecting the Committee, the Council President and Housing Chairman should choose persons on the basis of the housing program of the Council and the expertise needed to do the job. Do not hesitate to look beyond the Council's present members. This could be a source of new members and supporters of LULAC.
- b) Try to secure a balance between professionals and community residents on the Committee. Do not overlook real estate firms, human relations agencies, planning bodies, public housing and redevelopment agencies, bankers, builders, etc. Community residents might include tenants, home owners, church leaders, neighborhood business owners and leaders of other community organizations.

- c) The financial, professional and political resources of the majority community can become an asset to your Committee. Be sure that the persons appointed are made familiar with Council policies and are willing to support them.

### 3) Committee structures.

The Council President, with approval of the Executive Committee will appoint the Chairman of the Housing Committee. All members of the Committee shall be appointed by the President of the Council in consultation with the Chairman:

- a) It is recommended that at least three members be appointed to the Committee.
- b) In some small communities, small subcommittees may be needed to give special attention to:
  - Public Housing and Tenants;
  - Community Development Programs;
  - Lending Policies and Practices;
  - Planning & Zoning Boards; and,
  - Housing Discrimination (Sales, Rental, Marketing, Fair Housing Laws).
- c) Councils located in very large cities should expect to encounter the more sophisticated and complex programs in housing and community development. These programs will require constant monitoring by specialized sub-committees.
- d) A Committee member should be appointed as Secretary to keep records, inform members of meetings, prepare correspondence for the Committee and reports for the Chairman. In some cases, the Council Secretary will perform these services for the Housing Committee.
- e) The Housing Committee should make a monthly report to the Executive Committee. The report should cover current activities, programs planned, and requests to the Council to initiate programs requiring their approval. Copies of annual and special reports should also be sent to the National Office.

### 4. Committee Activities:

- a) Sponsor a neighborhood or citywide housing conference or work shop. Invite federal, state and local housing officials to speak. Focus on local conditions such as substandard housing, discrimination, tenant problems, etc. The National LULAC Civil Rights Committee through the National, Regional and State Offices will help you with programs and speakers.
- b) Stock and review materials from U.S. Housing and Urban Development; study and publicize minority organizations' housing resolutions; have members become acquainted with new programs and brief the Councils.

# Chapter 4 ~ Housing



- c) Establish a procedure to receive and process complaints in all areas of housing. Inform residents of this service. Follow through on all complaints.
- d) Initiate affirmative action programs; survey areas of need. Look around to see what problems there are. Establish a speakers bureau. Seek invitations from both Hispanic and white groups, especially churches, to discuss housing issues.
- e) Invite local housing officials and industry leaders to speak to your Committee and/or Council. Keep your meetings courteous and cordial. Pick their brains. Develop supporters of your program.
- f) Plan weekend visits to suburban areas, new projects and model homes. Tour slum areas and talk to residents; hear the problems. Invite them to join the Committee and work for better housing.
- g) Visit your city and regional planning agencies. Insist upon minority appointments to their boards and staff. Have them explain their housing plans for the area, especially the dispersal of low income housing. Press for Housing Advisory Committees and Equal Opportunity Plans.
- h) Schedule visits to HUD/FHA and Farmers Home Officials. Secure their literature and distribute to residents.
- i) To combat discriminatory acts, recruit testers to check the practices of owners and landlords.
- j) Where necessary to end racial injustices and where all other efforts have been exhausted, the Council should support direct action efforts such sit-ins, rent strikes, and peaceful demonstrations. It should pack meetings and hold press conferences.



Photo by Luis Nuño Briones

be carried out with volunteers and within their financial resources. The National LULAC Civil Rights Committee will assist you in designing special programs to fit the needs of your community and the capabilities of local chapters.

There are basic programs which any Council may engage in. Some of these are described below. You may want to use these ideas and initiate your own program, or write HUD for information and materials.

## a) Monitoring:

Each Council is encouraged to be a “watchdog” over local housing programs to assure that they are operated without discrimination. A planned program to monitor activities, evaluate their effectiveness and to keep your Council and community informed fulfills a basic need.

Monitoring activities should include: sales and rental practices of brokers and builders, lending policies of banks and savings and loans, relocation and code enforcement programs. Compliance with Affirmative Action Programs and equal opportunity regulations must be more than “paper” commitments.

Appoint subcommittees to investigate, make reports and recommend follow-up action

where noncompliance or racial injustice exists.

## b) Housing Information:

Conduct a series of neighborhood clinics. Invite free speakers to discuss tenants’ rights, relocation benefits, rehabilitation programs, home-buying techniques, financing, legal information, etc.

## 5). Program Recommendations and/or Suggestions:

LULAC is a membership organization composed of volunteers. Our strength lies in the dedicated, voluntary service of our members. Councils are not expected to possess the professional expertise.

The National Civil Rights Committee will provide program and technical assistance, help in preparing complaints, advice on monitoring programs and resolving difficult issues.

Councils are encouraged to consider programs which may



# Chapter 4 ~ Housing

## Case Work - Sample

### Housing Discrimination:

The U.S. Department of Housing and Urban Development administers the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended). The Act prohibits discrimination in the sale, rental, and financing of dwellings, and other housing-related transactions because of race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18) and handicap (disability).

An individual who believes that he/she is or has been discriminated against in violation of the Fair Housing Act has the right to file a housing discrimination complaint with the U.S. Department of Housing and Urban Development (HUD).

The Act has a statute of limitation that gives an individual one (1) year from the date of the alleged act of discrimination to file a complaint.

A person's written housing discrimination complaint describing the alleged act(s) of discrimination is to be mailed to HUD as follows:

Office of Fair Housing and Equal Opportunity  
Department of Housing and Urban Development  
Room 5204, 451 Seventh St. SW  
Washington, D.C. 20410-2000

A person can also call the 1.800.669.9777 toll free number with any question they may have or to find out where their closet HUD Fair Housing Hub is located

A person can also file electronically by going to [www.hud.gov](http://www.hud.gov): print out the complaint form, complete it and mail it to the above Office of Fair Housing and Equal Opportunity mailing address or to the Fair Housing Hub mailing address closest to where the alleged discrimination occurred (provided via above noted toll-free number).

#### INFORMATION NEEDED BY HUD REGARDING YOUR COMPLAINT:

The following is what your written housing complaint to HUD should contain:

1. What happened to you? – How were you discriminated against? For example: were you refused an opportunity to rent or buy? Denied a loan? Told that housing was not available when in fact it was? Treated differently from others seeking housing? State briefly what happened.
2. Why do you think you are a victim of housing discrimination? – Is it because of your race, color, national origin, sex, religion, familial status (families with children under 18) or disability? For example: were you denied housing because of your race? Or turned down for an apartment because you have children? Briefly explain why you think your housing rights were denied and circle the factors listed above that you believe apply.
3. Who do you believe discriminated against you? For example: was it a landlord, owner, bank, real estate agent, broker, company, or organization? Identify who you believe discriminated against you.
4. Where did the alleged act of discrimination occur? For example: Was it at a rental unit? Was it a single family home? Was it Public or Assisted Housing? Was it a Mobile Home? Did it occur at a bank or other lending institution? Provide the complete mailing address to include city, state and zip code.
5. When did the last act of discrimination occur? Enter the date: \_\_\_\_\_. Is the alleged discrimination continuing or ongoing? Yes: \_\_\_\_ No: \_\_\_\_

\_\_\_\_\_  
Print your name

\_\_\_\_\_  
Your Signature

\_\_\_\_\_  
Today's date



# Voting Rights

## Chapter 5



*Photo by Luis Nuño Briones*



# Chapter 5 ~ Voting Rights

**The right to vote is central to full political participation of all citizens of this Nation. It grants to all citizens the power to elect those persons who make decisions affecting their lives.**

Although it is a precious right, it has not been exercised freely by Hispanics, due to continued efforts of State and local officials and private citizens to deny them that right.

The 15th Amendment prohibits the denial of voting rights on the basis of race, color, or previous condition of servitude. Nevertheless, pervasive racial discrimination has continued to thwart the guarantees of the 15th Amendment.

## THE VOTING RIGHTS ACT AND ITS EFFECTS

The Voting Rights Act contains general provisions that are permanent and affect the entire nation: It also has special provisions that are temporary and only affect jurisdictions that meet certain criteria specified in the act.

These provisions prohibit voting qualifications or procedures that would deny or abridge a person's right to vote because of race, color or inclusion in a minority language group.

The general provisions also make it a crime for a public official to refuse to allow a qualified person to vote or for any person to use threats or intimidation to prevent someone from voting or helping another to vote. (Section 203)

Another permanent provision with nationwide application that has helped to remove obstacles to voting is section 201 of the act, prohibiting the use of tests or devices in voting. This permanent ban on tests or devices refers to any requirement that persons, as a prerequisite to voting or registering, be required to:

- 1) demonstrate the ability to read, write or understand, or interpret any matter;
- 2) demonstrate any educational achievement or knowledge of any particular subject;
- 3) possess good moral character; or
- 4) prove (their) qualifications by the voucher of registered voters or member of any other class.

## FEDERAL OBSERVERS AND EXAMINERS

Federal examiners may be authorized by the Attorney General if he/she receives 20 meritorious written complaints from citizens in a jurisdiction claiming that the right to vote has been denied on account of race, color or inclusion in a minority language group. In addition, the voting section may assign attorneys to monitor election complaints that are received.

Under the act, duties of Federal examiners include

interviewing and listing people eligible to vote and, at least once a month, transmitting a list of eligible voters to the appropriate state or local election voting list. Each qualified voter listed by a Federal examiner is issued a certificate of eligibility to vote.

Additionally, examiners are available during an election and within 48 hours after the polls close to receive complaints that qualified voters have been denied their right to vote.

The use of Federal observers is another way in which the special provisions of the act attempt to deal with obstacles to voting that may be imposed at the local level. The Attorney General may request the The right to vote is central to full political participation of all citizens of this

Nation. It grants to all citizens the power to elect those persons who make decisions affecting their lives.

U. S. Office of Personnel Management to appoint Federal observers for elections in those jurisdictions designated for examiners. Observers are usually civil servants who work with attorneys from the Department of Justice.

They are assigned to polling places and observe whether persons who are eligible to vote are allowed to vote. They may also observe whether votes cast by eligible voters are being properly counted.



## FAIR REPRESENTATION AND CANDIDACY

Since passage of the Voting Rights Act, the number of Hispanic elected officials has increased substantially. However, serious under representation of Hispanics in elected positions persists. Under representation of Hispanics in elected office can also be attributed to election systems, voting rules, and methods of redistricting, as well as to practices that minority candidates may confront such as harassment, intimidation and lack of access to voters.

## METHOD OF ELECTION DISTRICTING

Both the method through which office holders are elected and the exact boundaries of the jurisdictions they represent can affect the opportunities of Hispanics to be elected. For example, a jurisdiction may use an at large method of election. There are three primary methods as systems by which voters can elect candidates at-large; single-member districts or, a mixed system.

In certain circumstances, the consequences for Hispanic

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representation of these different voting methods can be significant. If, for example, the town contains a majority of white voters, who consistently refuse to vote for Hispanic candidates (that is, there is racial block voting), an at-large election system has the effect of denying Hispanic voters the opportunity to elect an Hispanic to office.

When political officials are elected by districts, the opportunities for Hispanic representation depend greatly on the way district lines are drawn.

Jurisdictions have diluted Hispanic voting strength through practices such as dividing a geographical concentration of Hispanics among several districts, or overpopulating one district with Hispanics under circumstances in which more than one district could have had substantial Hispanic populations.

Although the districts may technically comply with the one person, one-vote principle (that is, equalizing population among districts), the way the districts are drawn may raise questions as to the jurisdictions' intent, especially if they are neither compact nor contiguous.

Changing the boundaries of the jurisdiction also can affect the opportunities for Hispanic representation. For example, by annexing predominantly white areas, a jurisdiction can increase its proportion of white voters. The consolidation of two jurisdictions also can have this effect. In the context of an at-large system and a high degree of racial block voting, these types of changes would reduce the opportunities for Hispanic representation in the enlarged jurisdiction, since the Hispanic percentage of the total population would increase.

## PUBLIC SCHOOLS

The Legislature has found that:

- 1) in school districts with the largest number of students, the at-large elections of all members of the board of trustees increases the number of constituents represented by each trustee and hinders communication between the trustee and the constituents, and therefore makes the representation of those constituents less effective;
- 2) in the school districts with the largest number of students, the at-large election of all members of the board of trustees may work to dilute the voting power of identifiable ethnic groups;
- 3) in structuring solutions to the dilution of ethnic group voting power, the federal courts have decided that preference should be given to some form of single-member district representation; and,
- 4) the need for increasing the effectiveness of political representation, preserving the voting power of all ethnic groups, complying with the preference for single-member district representation, and assuring the participation of all people in the political process creates an emergency.

## SINGLE-MEMBER TRUSTEE DISTRICT ELECTIONS CODE

- a) This section applies to any independent school district;
- b) The board of trustees of a school district, on its own motion, may order that trustees of the district are to be elected from single-member trustee districts or that not fewer than 70 percent of the members of the board of trustees are to be elected from single-member trustee districts with the remaining trustees to be elected from the district at large.

### Before entering the order, the board must:

- a) hold a public hearing at which registered voters of the district are given an opportunity to comment on whether or not they favor the election of trustees in the manner proposed by the board; and,
- b) publish notice of the hearing in a newspaper that has general circulation in the district, not later than the seventh day before the day of the hearing.
- c) An order of the board adopted under Subsection (b) of this section must be entered not later than the 120th day before the day of the first election at which all or some of the trustees are elected from single-member trustee districts.
- d) If at least 15 percent or 15,000 of the registered voters of the school district, whichever is less, sign and present to the board of trustees a petition requesting submission to the voters of the proposition that trustees of the district be elected from single-member trustee districts or that not fewer than 70 percent of the members of the board of trustees be elected from single-member trustee districts with the remaining trustees to be elected from the district at large, the board shall order that the appropriate proposition be placed on the ballot at the first regular election of trustees, held more than 120 days after the day the petition is submitted to the board. The proposition must specify the number of trustees to be elected from single-member districts. Beginning with the first regular election of trustees held after an election at which a majority of the registered voters voting approve the proposition, trustees of the district shall be elected in the manner prescribed by the approved proposition.
- e) If the board orders that all or some of the trustees shall be elected from single-member trustee districts, or if a majority of the registered voters voting at an election approved a proposition that all or some of the trustees of the district be elected from single-member trustee districts, the board shall divide the school district into the appropriate number of trustee districts, based on the members of the board that are to be elected from single-member trustee districts, and shall number each trustee district. The trustee districts must be



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compact and contiguous and must be as nearly as practicable of equal population according to the last preceding federal census. In a district with 150, 000 or more students in average daily attendance, the boundary of a trustee district may not cross a county election precinct boundary except at a point at which the boundary of the school district crosses the county election precinct boundary. Trustee districts must be drawn not later than the 90th day before the day of the first election of trustees from single-member districts.

- f) Residents of each trustee district are entitled to elect one trustee to the board. A trustee elected to represent a trustee district at the first election of trustees must be a resident of the district he represents not later than:
  - 1) the 90th day after the day election returns are canvassed; or
  - 2) the 60th day after the day of a final judgment in an election contest filed concerning that trustee district. After the first election of trustees from single-member trustee declares he is a candidate for trustee representing a single member district he must be a resident of the district he seeks to represent. A trustee vacates the office if he fails to move into the trustee district he represents within the time provided by this section or ceases to reside in the district he represents. A candidate for trustee representing the district at large must be a resident of the district, and a trustee representing the district at large vacates the office if he ceases to reside in the district.
- g) Any vacancy on the board shall be filled by appointment by the remaining members of the board. The appointed person serves for the unexpired term. A person appointed to fill a vacancy in a trustee district must be a resident of that trustee district. A person appointed to fill a vacancy in the representation of the district at large must be a resident of the district at large.
- h) At the first election at which some or all of the members elected from trustee districts, and after all positions on the board of trustees then elected shall draw terms as provided by law.
- i) Not later than the 90th day before the day of the first regular school board election at which trustees may officially recognize and act on the last preceding federal census, the board shall redivide the district into the appropriate number of trustee districts if the census data indicates that the population of the least populous district by more than 10 percent. Redivision of the district under subsection (e) of this section.
- j) This section does not apply to an independent school district that elects trustees from single-member trustee districts in accordance with Section 23.023 of this code or other general special law.

## **TRANSITION TO SINGLE-MEMBER DISTRICT: OPTION TO CONTINUE IN OFFICE**

- a) For a school district that adopts redistricting plan under Section 23.024 of this code providing for five members of the board to be elected from single-member trustee districts and two members to be elected at large, the board of trustees may provide in the plan for the trustees then in office to serve at large for the remainder of their terms in accordance with this section.
- b) The trustee district at-large positions provided by the district's plan shall be filled as the staggered terms of incumbent trustees expire. Not later than the 90th day before the first election from trustee districts, the board shall determine by lot the order in which the positions will be filled.
- c) the trustees of a district to which this section applies may also provide for members serving at the time of a redistricting to serve for the remainder of the terms.

## **APPLICATION TO GET ON BALLOT**

- a) Applications of candidates for a place on the ballot must be filed not later than 5 p.m. of the 45th day before the day of the elections. An application may not be filed earlier than the 30th day before the date of the filing deadline. No candidate shall have his name printed on said ballot unless there has been compliance with the provisions of this section.
- b) Candidates for office of trustee of an independent school district must file their applications with the secretary of the school board of trustees.
- c) In those districts in which the positions on the board of trustees are authorized to be designated by number, as provided in Section 23.11 of this code, each applicant shall also state the number of the position for which he is filing as candidate. No candidate shall be eligible to have his name placed on the official ballot under more than one position to be filled at such election.
- d) In those districts in which positions on the board of trustees are not authorized to be designated by a number, it shall not be necessary for an applicant to state which other candidate, if any, he is opposing.

## **VOTING RIGHTS MODELS**

### **Introduction**

The following three voting rights models represent the types of conciliation services the Community Relations Service (CRS) (214/655- 8175 in Texas) can offer communities having a dispute over voting rights that are jurisdictional to the Agency. The first addresses a situation where there is a dispute because the minority community is demanding that election district officials redistrict because the existing district(s) does not fairly and accurately represent their community population. The Second model



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addresses a situation where the election district and minority community has agreed to redistrict but need technical assistance by CRS to facilitate the redistricting process. The Third model addresses a situation where election district officials have rejected Models One & Two and finds itself a party to litigation filed by parties who believe their voting rights have been violated and further believe they have been unfairly disenfranchised.

## Model I

A community is put on notice, by an individual on his or her own motion or a group of individuals on their own motion, who want to redistrict an election district or unit because of its size (reduce or increase), because the population demographics have changed, or because they want to institute a single-member election district or districts configuration where it does not presently exist.

## Techniques

- 1) Recommend the governing body establish a community-based committee with representation from all racial groups in the community.
- 2) Assist in the identification of community leaders who may be of assistance.
- 3) Encourage the governing body to contact the Voting Rights Section of the Justice Department (202/514-6018) for legal advice on the redistricting process. The governing body also needs to be aware that they will probably be instructed, in the near future by the Voting Rights Section, that any changes to the present voting configuration must be approved by the Voting Rights Section before implementation.
- 4) Assist the parties in agreeing to redistrict. (This is different from conciliating the redistricting!) The process will be agreed upon by the parties or a committee representing each. CRS will only conciliate the agreement to redistrict thus avoiding the confrontation that sometimes occurs because only one side agrees to redistrict. This also allows the Agency to maintain its position of neutralizer in the process.

## Model II

The community has agreed to redistrict but lacks the expertise to accomplish the task. CRS can assist by offering the following technical assistance:

- 1) Assist the community in the development of a citizen's committee that will review demographic data, determine possible areas that need to be realigned in terms of population, hold public hearings, provide a list of professional demographers (none of which would be

recommended by CRS), Determine the contact at the Department of Justice Voting Rights Section (DOJ/VRS), and be available to assist in the resolution of any racial disputes arising from the redistricting process. CRS should never participate in the drawing of district lines or the correctness of the lines. This could create a possible conflict since there is never a guarantee that the DOJ/VRS will approve a redistricting process. But it is important to remember that DOJ/VRS has the ultimate final approval of any redistricting proposal and CRS does not conciliate on behalf of the community with DOJ/VRS.

## Model III

There is litigation and the community has a court order in hand, the parties want to resolve the problem, and there is legal authority on each side. The role of CRS is to get them to agree on a plan without assessing blame. Counsel on both sides usually have a plan, and the role of CRS is to assist the parties to compromise or develop an optional plan acceptable to both.

In this situation, population numbers become the basis of the suit. The litigants are usually in agreement on at least one issue and that is that there ought to be some form of minority representation. Population numbers dictate how the configuration will finally end up. For example, if the minority community is thirty percent

of the population, you can be assured that they will demand thirty percent of the election unit seats.

## SINGLE MEMBER VS. MULTI-MEMBER OR AT LARGE DISTRICTS

Most people want single-member districts, whether in cities or counties. The single most frequently given reason is the desire for residents of a distinct voting district to have a representative of their own. Some people oppose single-member districts because they believe it allows for narrow special interest government which is not inclined to represent the community as a whole.

Most minorities do not subscribe to this opinion however, feeling that the whole can almost never adequately address the problems of specific neighborhoods and racial groups. Many minority citizens further feel that an at-large system tends to produce elected officials from one segment of the community who are unwilling to listen to people who do not contribute to their election success.

Regardless of the nuances of the debate over single versus multi- or at-large districts, the single-member district system is far more popular, and, more importantly, provides the basis for the one-man one-vote election district litigation





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foundation of the 1965 Voting Rights Act.

Contemporary voting rights transcend what we normally define as elected officials, i.e. councilmen, supervisors, legislators, to include elected boards (school boards, hospital boards, community college boards, airport authority boards, etc.), and judicial officials (judges, justices of the peace, constables, etc.).

The first step is to get the parties to agree that the demographic population numbers are correct. That sounds obvious, but conflicting parties don't always agree they are. If they don't agree, the Conciliator's role is to determine the accuracy of the figures. Even though population figures are provided by the Census Bureau, the parties should be advised that even if their count is flawed it is still regarded as the accurate count unless judged otherwise by a judicial process or act of congress.

The next step is to get the parties to agree on the population size of the governing unit they want covered under the one-man one-vote formula. It is important here that the Conciliator has knowledge of both Federal as well as state election law. In some states there is a requirement that the size of a governing unit be of a certain size. Under no circumstances should CRS be in the business of making the Department a party to changing a state law.

If at this stage the parties agree on a community of equal representation for both, they need to choose a person/ persons to serve on or to develop a committee to draw council districts. The CRS Conciliator should provide no comments on the person or persons selected but should ensure they are given proper instructions on what they need to do. Once there is agreement on district lines, there may be opposition voiced by the local official responsible for conducting voting activities and voter information.

In some communities this individual may be the county clerk, clerk of elections, acting registrar, registrar of votes, etc.

Their possible displeasure usually involves the administrative costs involved in the conduct of an election. Their concerns almost never involve the equality of the process.

Once agreement is reached on district lines, an ordinance or law must be passed establishing new districts. New precinct numbers must be assigned and funds allocated for voting machines, ballots, precinct judges, and polling places.

Finally, the new district system configuration including the enabling legislation (ordinance or law), new precinct numbers and supporting demographic data must be sent to DOJ CRT/VRS for their approval. The approval process will take approximately 60-90 days if accepted.

If the plan is not accepted, DOJ CRT/VRS will inform the community of what their objections are in writing.



## Case Work - Sample

# Irving LULAC Council Founder Succeeds in Single Member Suit Against City Council

A federal judge ruled in July 2009 that Irving's at-large City Council system violated the Voting Rights Act and ordered that elections be replaced with single-member districts.

The ruling by U.S. District Judge Jorge Solis echoes the decision two decades ago that forced the city of Dallas to adopt single-member districts in a law suit organized by the likes of Dallas Attorney Domingo Garcia.

The action this week was a result of a lawsuit filed in November 2007 by former school board candidate Manuel Benavidez who founded the Irving LULAC council but filed as an individual. He sued both the school board and City Council, alleging that the at-large system of eight council members and mayor denies representation for Hispanics. They made up nearly 40 percent of the city's population – the largest group in Irving.

"That voting scheme is intentionally pernicious," said William Brewer, an attorney for Benavidez. "That's obviously designed to make sure that minorities don't have a meaningful opportunity to elect somebody to the City Council."

Benavidez said he shook with emotion when he was notified about the ruling.

"It's a big moment; to be looking at the way things are going to go and to have the court saying – you have a point," he said. "This is to give a voice to the citizens of Irving so this way they will have a government that really represents the people."

David Ely, a demographics expert for Benavidez, said he found six possible districts where eligible voters were mainly Hispanic. He derived the finding from the 2000 census, a 2006 census sample of residents and his own population growth estimates.

Benavidez attorneys maintained the city could create single-member districts that would mostly elect at least two Hispanic members. There were no Hispanics on the City Council or school board.

Rene Castilla, who lost City Council races twice in Irving, said this was a big victory. "It proves what I've said all along. At-large election systems are inherently discriminatory," he said.

Castilla said that the changes will allow Hispanics to have more of a say in issues that impact them, such as the city's Criminal Alien Program and housing.

Accountability: "It really puts the responsibility for representation in the neighborhoods where it belongs, and it takes accountability right to the people," Castilla said. "It doesn't allow the City Council to operate like a corporate board and lets it be a board that represents the community."

Longtime community activist Anthony Bond, who often sparred with city leaders over the voting system, said that after Benavidez called him to tell him about the ruling he felt "incredible joy."

"They forced Manuel to go to court to force them to do the right thing in giving people equal representation on the council," he said.



Photo by Luis Nuno Briones

Manuel Benavidez

LULAC Members and Supporters after City of Irving Council Meeting



Photo by Luis Nuno Briones

City of Irving Council Meeting





# Lending Disparaties

## Chapter 6





# Chapter 6 ▾ *Lending Disparities*

## Hispanics have played a significant role in driving the growth of homeownership in the U.S.

### Homeownership

Census 2000 figures showed that the Hispanic homeownership rate - the percentage of households owning their own home - was 46 %. This is up from 42%.

For the record, 68.2% of the nation's families own a home, housing is an American success story. It has added life to the economy, creating jobs and consumer confidence even during the midst of a recession. It has laid the foundation for healthy communities and strong neighborhoods. It has provided all the comforts of home, while providing typical working families with their one sure guarantee of accumulating family wealth.

Unfortunately, there is another housing story that needs to be told. Amid good times for housing, America is facing a silent housing affordability crisis of epidemic proportions. Millions of families are being deprived of the opportunity to partake of the American dream. These are the facts:

More than 14 million American households are spending more than half their income on housing or live in substandard units. Their ranks surged 67% between 1997 and 2001. Almost 28 million households spend "more on housing than the federal government considers affordable and appropriate," according to the Millennial Housing Commission, a bipartisan panel created by Congress to assess the nation's housing needs.

The homeownership rates for Hispanics is 49%, trailing far behind the 74% of non-minority households who own homes. Our country is losing almost half a million low-income rental units a year.

Data shows that the homeownership rate for Hispanics' is 48.8 percent, a 1.3 % increase over last year. Homeownership rates increased nationwide by .5 % from 67.5 % in 2000 to 68 % in 2001.

While homeownership rates may vary, the figures will vary from quarter to quarter, the most consistent data is year to year. These figures demonstrate the need for policies that vigorously promote new homeownership opportunities for undeserved communities. Some good news: the homeownership rate increase for Hispanics is higher than the increase for White Americans.

Hispanics have played a significant role in driving the growth of homeownership in the U.S. The Census Bureau reported an increase from 47.5 % to 48.8 % for Hispanic households. The homeownership rates for white Americans increased from 71.2% to 71.8%.

Hispanics have played a significant role in driving the growth of homeownership in the U.S. The 2000 Census reports that more than 35 million Hispanics reside in the U.S., an increase of nearly 58% since 1990. Recent Census

figures show the Hispanic community is the fastest growing demographic group in the country.

Similarly, the Joint Center for Housing Studies at Harvard University recently found that the number of Hispanic households rose 19 % during the last five years. During the next 20 years, the center predicts an increase of nearly 23 % in the number of families in the U.S., with nearly two-thirds of the growth fueled by minority households.

Not surprisingly, the gain in Hispanic population in the U.S. has been accompanied by a rise in homeownership to a historic high of 46 % in 2000, up from 42 % in 1990. Three out of every five first-time home buyers are expected to be minorities during the balance of this decade. Despite that encouraging statistic, the rate of Hispanic homeownership is still well below the national average. It is clear that much remains to be done to close the gap.

Recognizing the important connection between the health of the residential real estate market and the well being of the national economy, the Bush Administration has made increasing homeownership particularly among minorities - a focal point of its governance. In keeping with that direction, President George W. Bush last year announced initiatives aimed directly at making homeownership among minorities a national priority.

The "American Dream Down Payment Fund" was established to provide funding to help 40,000 families to become homeowners annually. On the supply side, the proposed single-family housing tax credit will encourage the construction of affordable single-family housing. The credits are projected to create an opportunity for 200,000 families to purchase new homes during the first five years of the program.

From a real estate perspective, there is much that can be done to close the ownership gap as well. In addition to being well versed in addressing concerns common to every homebuyer, real estate professionals who wish to serve the Hispanic community successfully must be responsive to cultural diversity and be prepared to respond to its distinctive needs.

As part of a nationwide effort to help millions of diverse home buyers in the U.S. realize the dream of homeownership, Candant Corporation, on behalf of its franchised real state brokerage networks is working closely with other industry leaders.

In 1999, Candant and the National Association of Realtors (NAR) co launched "At Home with Diversity," a certification course offered by NAR to raise awareness of cultural and social differences and their potential impact on the real state transaction.

Most recently, Candant entered into a strategic alliance

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wit the National Association of Hispanic Real Estate Professionals (NAHREP) to jointly undertake initiatives that focus on developing viable solutions to the challenges that face all real estate professionals as they strive to better serve the Hispanic population.

Similarly, the ERA network is celebrating the commitment of its affiliates to diverse communities with “Building Business Through Diversity Award.” The accolade recognizes the office’s role as an ethnic-conscious and progressive company within the community. ERA affiliates may also participate in a specialized training course that explores the relationship between culture and the real estate business.

## **There is much that Realtors can do to help Hispanics achieve the dream of homeownership:**

- Develop Marketing that Recognizes Cultural Diversity - Addressing the needs of Hispanic home buyers must be reflected in a coordinated marketing effort.
- The ERA Hispanic Marketing program acknowledges the importance of Hispanic home buyers through a national marketing campaign that better equips sales professionals to assist Hispanic clients.
- National television commercials, a special series of print ads and other marketing materials should be tailored specifically to a Spanish-speaking audience.
- Encourage Bilingual Recruiting and Training - Real estate companies must actively encourage the recruiting, retention and training of Realtors who are fluent in both English and Spanish. Training programs in Spanish offer bilingual Realtors a path for professional improvement. AccelERation, a comprehensive course of study for ERA sales associates, is now available in Spanish.
- Offer Financing Options that Recognize Diverse Needs - Embracing diversity in the real estate marketplace must extend to home financing. ERA Mortgage offers more than 100 different mortgage products to help home buyers find a financing program that suits their needs.
- Educate Potential Home buyers - Many Hispanics who visit a real state web site or real estate office are purchasing a home for the first time. Sales associates must be prepared to assume the role of educator, offering clear answers to the innumerable questions that lead to homeownership. Diversity is one of America’s greatest strengths. Diversity can also be one of the greatest sources of continued growth and success for both real estate professionals and the Hispanic Community they serve.
- Minority groups have long encountered various forms of discrimination in their search for homes. While indications show that mechanisms such as fair housing laws are reducing some forms of unequal treatment, other signs point to a continuing problem of

discrimination.

- The current rate of homeownership reflects the mixed message of housing discrimination today. Although the minority homeownership rate is at its highest point in history, it still falls far below the homeownership rate of non-minority homeowners. Despite great improvements, there is reason to believe that differential treatment exists.

Recent research increases our understanding of housing discrimination for both home buyers and renters, and seeks to report any changes in disparate treatment for home seekers. “Discrimination in Metropolitan Housing Markets: National Results from Phase I of HDS2000” is one such research project conducted for HUD. HDS2000 provides a comprehensive analysis of indicators of discrimination in 23 housing markets.

The report shows that while the incidence of discrimination for Hispanics has declined since 1989, it still exists at levels higher than those faced by white home seekers. Additionally, the report identifies some disturbing discriminatory trends, including geographic steering for home buyers and difficulty in obtaining financing information.

The report, “Risk or Race? Racial Disparities and the Subprime Refinance Market” looks at racial disparities in the subprime refinance market. The study finds that high concentrations of subprime lending and racial disparities in subprime ending exist in all regions of the nation, and that the disparities actually increase as income increases. In conjunction with the study, the Center for Community Change has made available a new database on subprime lending.

With their national scopes and detailed analyzes of metropolitan areas, these two reports highlight trends in rental markets and subprime lending and also discuss as to where additional research, education, and support is needed to combat existing discriminatory practices.

## **Despite Gains, Hispanic Home Seekers Still Face Barriers**

“Discrimination in Metropolitan Housing Markets” is based on the latest national Housing Discrimination Study (HDS2000), the third in a series of studies commissioned by HUD that measure patterns of discrimination in urban housing markets.

The report details Phase I of HDS2000, in which 4,600 paired tests were conducted to measure adverse treatment for Hispanics in home rental and sales markets.

The paired test method yields comparable information about how people are treated when searching for a home. In these tests, two individuals - one minority and one white - each respond to housing advertisements with identical credentials in order to directly observe differences in treatment by sales and rental agents. By implementing



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methodologies similar to those used in 1989, the report assesses change in levels of adverse treatment over time.

The results indicate that the incidence of discrimination has generally declined since 1989 (the levels remained the same only for Hispanic renters). Yet despite the decline, discrimination is still a pervasive problem for Hispanic home seekers. Incidences of adverse treatment were encountered nationwide, and although some metropolitan areas fared better or worse than others, most were within the national average.

Based on 14 treatment indicators, the summary findings show that discrimination still exists for Hispanic home seekers in the rental and sales markets.

## Key findings include:

- Non-Hispanic whites were favored in more than half of the rental tests (52.7 percent), while Hispanics were favored in only 37.6 percent of tests. A consistency measure that reflects the extent to which the non-minority group was favored across the indicators also shows that non-Hispanic whites were more likely to be favored.
- In sales tests, Hispanic and non-Hispanic whites both had high levels of preferential treatment, but the difference was not statistically significant. However, the measure of consistency was significant, showing that non-Hispanic whites were more likely to be favored in tests than were Hispanics.
- Whites received preferable treatment in 53.1 percent of sales tests. Despite the fact that, in many cases, treatment favoring minority home seekers has increased since 1989, the results show that non-minorities were still more likely to receive preferential treatment.

## **Steering and Financing Discrimination are Increasing**

Although HDS2000 found that most indicators of discrimination have decreased since 1989, two areas that increased significantly are geographic steering and reduced financing assistance.

HDS2000 results also found that “Differences in the assistance with financing that real estate agents provide represents the primary source of adverse treatment facing Hispanic home buyers.”

Non-Hispanic whites were significantly more likely to receive favorable treatment across the category of financing assistance. For example, agents were less likely to offer help with financing, recommend lenders, or discuss down payment requirements with Hispanic testers than with non-Hispanic whites.

This is a decline over 1989 figures when Hispanics received favorable financing assistance treatment in 32 % of cases. In 2000, Hispanics were favored in only 24.2 % of the tests.

## **More Evidence of Barriers to Financing**

Borrowers who do not meet credit standards in the prime market often look to the subprime market for loans. When this is done responsibly, subprime lending offer opportunities to expand lending markets to undeserved populations. Yet, research shows that foreclosure rates for subprime loans are high, indicating that many subprime borrowers are entering into loans they cannot afford.

The “Risk or Race” national study analyzes subprime lending patterns in all 331 MSA’s and ranks MSA’s by a variety of measures. The study ranks several U.S. cities with the highest levels of disparity between minority and white homeseekers.

Furthermore, high concentrations of subprime lending and racial disparities in subprime lending exist in all regions of the nation. Each region contains metropolitan areas where the level of subprime lending is above the national average of 25.31 % for Hispanics. Disparities exist in all regions of the country.

The study also finds that high concentrations of subprime lending and racial disparities occur in metropolitan areas of all sizes. Of the 17 metropolitan areas found to have concentrations of subprime lending more than 1.5 times the national norm, 12 have populations below 500,000, while 4 have populations of more than 1 million.

## **Homeowner’s Insurance**

A more recent barrier to homeowner financing has been introduced through the use of “insurance credit scoring”, the practice of determining insurance eligibility and premium rates based on a credit score calculated from an insured’s personal credit history. An applicant may qualify for the home loan based on their credit history but be denied insurance for that home based on the same credit history.

A January 2003 study by the Office of the Insurance Commissioner in Washington State revealed that insurance credit scoring has possible negative effects on ethnic minorities and low-income individuals. Almost every state has introduced legislation to ban the practice of insurance scoring but have so far been unsuccessful as the insurance industry is determined to see that this practice continues.

The Center for Economic Justice has also determined that the FCRA does not preempt states from banning insurers’ use of credit scoring.

## **Small Business**

The number of Hispanic-owned businesses in the United States in 1997 was 1.2 million. These firms employed almost 1.4 million people and generated \$186.3 billion in revenues. Hispanic-owned firms made up 6 % of the nation’s 20.8 million non-farm businesses.

The number of firms in 1997 whose owners were of



# Chapter 6 ▾ Lending Disparities



Mexican descent was 472,000. Among Hispanic groups, those of Mexican descent owned by far the highest number of Hispanic firms.

The percentage of minority-owned firms in 1997 owned by Hispanics was 39 %, more than any other minority group.

The percentage increase between 1992 and 1997 in the number of Hispanic firms was 30%, excluding C corporations, for which prior comparable data are not available. C corporations are incorporated businesses, excluding sub-chapter S corporations, whose shareholders elect to be taxed as individuals rather than as corporations.

The percentage of Hispanic-owned firms owned by women in 1997 was 28 %.

## Small Business Access and Alternatives to Health Care

A report recently released by SBA's Office of Advocacy examined 19 health care plans in two states and determined that administrative expenses for insurers of small group health plans ranged from 33% to 37% of claims versus 5% to 11% for larger companies' self-insured plans. The report also revealed that sales, underwriting and operating expenses were all higher for small group health plans studied as opposed to those designed for their larger counterparts.

This lack of readily available quality health insurance has forced many small business owners to stop offering insurance coverage altogether. A recent study by the Kaiser Family Foundation showed that only 49% of small firms (those with fewer than 100 employees) offer coverage, due in large part to surging health premiums. By contrast, 98% of all large firms offer health benefits.

This disparity grows even greater at small low-wage firms (firms where more than 50 percent of all employees earn less than \$9.50 an hour). Only 24% of all low-wage small firms offer health benefits as opposed to 95% of all low-wage large firms.

Hispanics are now the largest minority group in the United States. They are also the least insured ethnic group. Approximately one-third of all Hispanics do not have any insurance at all, and another 15% to 20% are underinsured. Millions of Hispanics work for small businesses that are unable to provide them with the health insurance coverage they need.

## Diverse Face of Business Ownership

According to a 2001 study by the Small Business Administration (SBA), minorities now own 15 percent of

this country's small businesses — twice as many as in 1982. This study really shows there is a great potential for people of color to joining the mainstream of the American business community. Among the report's significant findings:

- The minority-owned businesses most likely to survive are those in the service industries. The likeliest reason for this is the start-up costs tend to be lower than those of goods-producing industries.
- Hispanics are underrepresented in the small-business population. Hispanics make up approximately 12 percent of the population but own less than 6 percent of US businesses.
- Businesses owned by minorities are most prevalent in urban areas and southern states. In some of these areas, people of color own 20 percent of businesses.
- Hispanics: The Hispanic population is growing rapidly, as are the number of Hispanic -owned businesses. Hispanics are well-represented in most industries; however, certain ethnic groups within the Hispanic population, particularly Puerto Ricans and Mexicans, need more investment in business development and growth.

While a lot of progress has been made in the past 20 years, there is still far to go. Minorities make up nearly 31 percent of the total US population, yet own 15 percent of all US businesses. But given the steady growth of these groups, both in terms of the overall population and small business ownership, it is a pretty safe bet that one day in the not-so-distant future, we won't be talking about minority-owned businesses any more.



## Partnering with Hispanic Entrepreneurs

Many U.S. corporations have formed outreach programs to locate Hispanic-owned vendors and give them an opportunity of landing large contracts. These large companies see the benefits of doing business with an ever-increasing number of Hispanic-owned enterprises, which generate an estimated \$400 million in annual revenues.

Conversely, Hispanic entrepreneurs have found success by forming strong alliances with corporate America via such programs.

The following 25 companies have established key partnerships with Hispanic entrepreneurs, and have ongoing efforts to diversify their list of suppliers.

- 7-Eleven
- AFLAC
- American Express
- AOL Time Warner, Inc.



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- AT&T
- Bank of America
- Continental Airlines
- Daimler Chrysler
- Farmers Insurance
- Ford Motor Co.
- General Motors
- Honda
- IBM
- Johnson & Johnson
- Nordstrom
- Pfizer
- Philip Morris Companies, Inc.
- Pitney Bowes
- Prudential Insurance
- State Farm Insurance
- TIAA-CREF
- Toyota
- Tri-Con Global
- United Parcel Service
- Verizon

## **New Business Wanted**

Banks are attracted to Hispanic small business borrowers: American Hispanics show a great deal of loyalty towards brands and companies that serve them well. When Hispanics find a product or service that they have confidence in, they tend to stick with it. As a result, bank's outreach efforts to the community always benefit them in the long term.

But if American banks are reaching out to Hispanic entrepreneurs, some say they haven't felt the effects.

Most banks are not targeting Hispanic small business owners. The rejection rate on loan applications for Hispanic entrepreneurs is about 50 percent, twice as high as their non-Hispanic white counterparts. According to 1998 Federal Reserve data—a fact that industry observers say underscores lost opportunities for banks as well as a need for Latin immigrants to do a better job educating themselves about U.S. banking.

To overcome both sides' challenges, the two must do their part. Hispanic business owners must “learn the ropes” of the American lending process, and banks have to go beyond just translating marketing materials and applications from English to Spanish.

For banks to reach the Hispanic community requires real initiative. You can translate materials into Spanish, but if a Hispanic customer walks into a bank and no one's there to speak their language, then it does no good.

## **Identity Theft**

The Federal Trade Commission has released its annual report detailing consumer complaints about identity theft and listing the top 10 fraud complaint categories reported

by consumers. As in 2000 and 2001, identity theft topped the list, accounting for 43 percent of the complaints lodged in the FTC's Consumer Sentinel database. The number of fraud complaints jumped from 220,000 in 2001 to 380,000 in 2002, and the dollar loss consumers attributed to the fraud they reported grew from \$160 million in 2001 to \$343 million in 2002.

The FTC provides a clearinghouse for consumers, a portal through which consumers can enter complaints and receive assistance and guidance.

Consumers can file fraud complaints online at <http://www.ftc.gov/>. Identity theft victims or people seeking tips to avoid being a victim, can log on at [www.consumer.gov/idtheft](http://www.consumer.gov/idtheft)

## **FTC tips for consumers who want to protect themselves from fraud:**

Protect your personal information. It's a valuable commodity. Only share your credit card or other personal information when you're buying from a company you know and trust.

Know who you're dealing with. Walk away from any company that doesn't clearly state its name, physical address, and telephone number. A web site alone or a mail box drop should raise suspicions.

Don't rely on oral promises. Get all promises in writing and review them carefully before you make any payments or sign any contracts. Read and understand the fine print in any written agreement.

Don't pay “up-front” for a loan or credit. Remember that legitimate lenders never “guarantee” a loan or a credit card before you apply, especially if you have bad credit, no credit, or a former bankruptcy.

## **Credit**

The “credit score” is increasingly being used to determine the financial fate of consumers. This three-digit number influences everything - from small business loans to mortgages and jobs, utilities to insurance.

- Individual credit scores calculated by the three national credit reporting agencies (Equifax, Experian, and Trans Union) varied by an average of 41 points but differed by as much as 50 points for 29 percent of the files reviewed.

## **The Center for Economic Justice in a 1999 National Consumer Credit Survey estimated that:**

- 30% of these groups have “bad” credit records
- 13% of these groups have “indeterminate” credit records
- 57% of these groups have “good” credit records

## **Credit problems persist across income groups:**

- 36 % of consumers with incomes under \$25,000 had “bad” credit records

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- 33 % of consumers with incomes of \$25,000 to \$44,999 had “bad” credit records
- 25 % of consumers with incomes of \$45,000 to \$64,999 had “bad” credit records
- 22 % of consumers with incomes of \$65,000 and \$75,000 had “bad” credit records

## **For Hispanics the estimate is:**

- 34% of Hispanics have “bad” credit records
- 15% of Hispanics have “indeterminate” credit records
- 51% of Hispanics have “good” credit records

Hispanics are perceived to be a group that is “credit poor” and “cash rich.”

## **A 1997 report by the Office of the Comptroller of the Currency found that:**

- 80% of the overall population had deposit accounts at banks or brokerages:
  - 58% of Hispanic households
  - 71% of African-American
  - 93% of white households



# Financial Services tips

By Western Union

Each of us has a different personal experience with financial services. What we have brought from home may be an experience with unstable financial institutions, a perception about who uses banks and who doesn't, or a culture where we always use cash whether for our business dealings or for saving. In the United States, our experience reflects a combination of old habits and other factors, such as perceptions about our access to use a bank account, the security of our hard-earned money, and the availability of credit for our personal lives and small businesses.

The perceptions created from those experiences impact our trust and willingness to access the services that are most useful to our lives. With many types of valuable financial services to choose from, this provides information from Western Union's financial literacy programs to help support safe and successful participation to fulfill your financial needs for banking, savings, remittances, bill payments and pre-paid cards.

## Why Have a Bank Account?

There are a few reasons to consider opening a checking or savings account with a bank or credit union:

- It keeps your money in a secure place, protecting it from theft or fire.
- If your financial institution is a member, the Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Association (NCUA) protect an individual's account from loss even if the financial institution fails. (\*Up to \$100,00-\$250,000)
- Earn interest on the money in your account, create a financial asset, and establish a record to help get loans in the future.
- There are usually processes in place to get your money from your account should you leave the United States. Ask about it when you open an account.
- Recognizing the importance of the Latino community, many institutions now explain their services in Spanish. Don't be discouraged if one bank doesn't, as others in the area generally will.



## Services to Ask About

Comparison shop by asking about services which are most important to you:

- Hours of operation and convenient location of branches and ATMs (automated teller machines) which can cash your checks or give you immediate access to your money
- Identification required to open an account
- The minimum balance you must maintain in order for the account to be free

- Costs – such as monthly fees for an account; initial deposit required to open an account, cost of checks, cost to use the ATM, etc.
- Fees – such as those associated with courtesy overdraft protection or bounce coverage
- Other value-added services – such as free notary public

Low price does not always mean best choice. Look into the services you are getting for your money. Do they meet your needs or will you have to spend extra to get those services?

## Remember to Pay Yourself First

Think about the cash in your wallet. Where does it go? What do you spend it on? At the end of the week, do you have any left over? What do you do when you want to buy "big ticket items?"

It helps to make a written list of your living expenses, remittance plans for family, goals for saving, and any emergency items for which you might need to save. One of the best ways to build wealth through savings is to "pay yourself first." While savings accounts generally provide low interest rates, they are easy to maintain and typically have deposit insurance.

Each month, when you pay your bills, set aside a small sum for your savings. Make sure to set aside money for taxes also, if you don't work for a company that directly deducts and pays taxes from your paycheck. Decide on an amount that you can afford to set aside each month, and add up what it will total after 6 months, one year, and two years to know what your savings can afford.

Borrowing money, especially for emergencies, can cost a lot and the borrowing cost for many things has increased in recent years. Setting aside money for "big ticket items" and emergencies means you can avoid borrowing, which can reduce your total cost. In addition to saving for personal items, consider what else might be needed and check out the price before you need it:

- Citizenship or documentation fees
- Immigration Services
- Small business licenses
- ESL classes
- Child care and education
- Transportation to visit family
- Medical services

It's a smart thing to do, because every time you pay yourself first, you are developing a saving habit that leaves you with more money to spend later on for things that are really important to you.



# Financial Services tips

By Western Union

## What is a Pre-paid Card?

Many people are rejected after filling out a credit card application because credit is poor or hasn't been established. Or maybe, you prefer to only spend what you have. In many cases, it is easier and safer – or required -- to have a major credit card to make reservations for lodging and airline flights, and for online purchases.

Think about a prepaid card like a virtual bank account and ATM/debit card together. You can get a card to load money onto, use to make payments in person and online, withdraw money from an ATM even if you don't have a bank account, use to send remittances conveniently by phone or online, and even have your payroll check directly loaded. Western Union offers cards with all of these features, consumer-friendly fees, and acceptance wherever Visa is accepted for payments.

Depending on the card that you chose, you can load money onto a prepaid card by going to a participating Agent location, accepted retailer or financial institution. A prepaid card is a tool to help you carry money safely and conveniently, and a great way to safely conduct transactions for personal and business use. Just like with a bank account, ask what the fees and features are first so you can comparison shop. This information is usually provided on a company's Website or in brochures where cards are provided, such as at an Agent location.



## What are Bill Payment Services?

The typical way to pay bills is to write a check or money order, then mail the payment or drop off at a customer service office. Now, many individuals with bank accounts are conducting online banking – receiving paychecks via direct deposit and then paying bills through online payment.

Bill payment services are a tool that many families use to pay bills on time. You can pay in cash at participating remittance Agent locations such as Western Union, online or by phone, and avoid the need to write checks or mail in payments. With bill payment services, bills can be paid instantly. You don't have to stand in the customer service line at the local utility, cable or telephone company. Using them is a way to avoid late fees, service charges and negative reporting to a credit bureau.

Multiple bill payments (such as house payments, car loans, insurance payments, as well as travel, catalog or Internet payments) can also be made from one location, often a grocery or convenience store.

Money transfers can be sent online, from an Agent location (often a store or business that also provides other services) or by phone. Depending on the service used, the money can be received virtually immediately, the next day or within 3 or more business days.

To send a money transfer from the United States, important things to consider when choosing a remittance provider are:

- Credibility of service
- Convenience of money pick-up locations
- A customer service phone number to resolve issues if needed
- Value of service provided relative to the fees charged
- Receipt (Money Transfer Control Number) to track the money
- Transparency of information provided on your receipt, for example: the amount of money being sent, the amount in local currency that will be received, the exchange rate, the fee for the sender, and confirmation that a fee will not be charged to the recipient. This is customary information provided by major remittance providers.

To complete a money transfer, the sender needs to provide his/her name and address and the receiver's name and address. Depending on the amount of money being sent the sender should also plan on having some form of government issued I.D. A Driver's license, State ID, Matricula Consular, current passport or tourist card are some examples.

It is legal to send money no matter who you are, unless it's for criminal or terrorist purposes.

Unfortunately, money transfers have also become the method of payment preferred by some scam artists. The key to avoiding fraud is to be skeptical and:

- Never send money to someone you don't know.
- Don't use money transfer services to pay for things like online auction purchases. Legitimate companies will usually accept more than one form of payment.
- Never send money to pay for taxes or fees on foreign lottery winnings.
- Remember that legitimate companies that make loans do not require payment of money upfront to get money.
- Most legitimate employers will not require advance payment for things like uniforms.
- If a deal sounds too good to be true, it probably is.

## Avoiding Losses from Immigration Fraud

## How Remittances Work



# Financial Services tips

By Western Union

As immigration reform is considered in the United States, and legislation changes are taking place in many states around the country it is more important than ever to understand the immigration process. While there are many immigration service providers who are honest and who provide good services to people wanting to become legal residents and citizens of the United States, there are also individuals who prey on innocent consumers with 'special offers', causing thousands of dollars to be lost or putting an immigrant's situation at risk.

Sometimes, immigrants believe they cannot afford the services of a good attorney, that the services are difficult to get, or that there are providers who can get significant discounts or access because of special relationships that they claim to have with the U.S. Citizenship and Immigration Service.

Here are some tips to keep in mind:

- Beware of those who claim they can work around established procedures or get the immigrant to the front of the line for a guest worker, residency or other permit for a price.
- There is no such thing as a private person or organization having a special connection with the U.S. Citizenship and Immigration Services, and no such thing as reserving a better place in line for a fee.
- Ask to see the credentials to understand if a person is legitimately qualified to counsel on immigration matters.
- Get a written contract in English and Spanish if it is your better language, and make sure the contract includes all services to be provided and how much they will cost.
- Get a receipt for your payments, and do not pay in cash.
- It is safer to put your trust in a reputable entity with a track record. If it sounds too good to be true, it is.

## Building Your Credit Score

Credit is a numerical score that is generally determined by five major factors:

- Payment history
- Amounts owed
- New credit
- Length of credit history
- Types of credit used

A reporting agency will evaluate how you make your payments on credit cards, store accounts, car loans, finance companies and mortgages; how much is owed on the credit card, mortgage loans and retail accounts you have, any accounts in collection or past due, and how long past due;

and public records, such as bankruptcy, judgments, liens, wage attachments or child support.

The credit report does not tell potential lenders your ethnicity, sex, marital status, salary or interest rates being charged on credit cards or other accounts.

What are sources of establishing credit? They include:

- Bank cards (such as Visa, MasterCard, etc.)
- Retailer cards such as for a department store or gas station
- Student loans through the federal government
- Home mortgage
- Checking and savings accounts
- Utilities and telephone in your name





# Direct Action

## Chapter 7





# Chapter 7 ▾ Direct Action

**The National LULAC Office does not support adult and Youth Councils of LULAC in boycotts against local stores, except where such boycotts have been defined carefully and cleared in writing in advance with National Officers and especially with the General Counsel of National LULAC.**

**Before making any threats and pledging any campaigns, the local group should:**

1. Consult the Legal Counsel or a responsible local lawyer,
2. Advise the lawyer to examine pertinent state laws and court decisions on the subject,
3. Direct that the proposal and the opinion of the lawyer be referred to the LULAC General Counsel.

A favorite device is the Coalition consisting of several organizations, most of which have good goals but no assets.

LULAC Adult and Youth Councils shall not become part of coalitions which are formed to press boycotts or direct action campaigns unless specific prior authorization is obtained from the National Office.

It is obvious from this policy statement that LULAC has not ruled against participation in direct action campaigns and boycotts. Certainly LULAC should be aware of the pitfalls and the dangers of becoming involved in questionable activity.

**DO:**

- 1) Notify the LULAC State Offices, Regional Vice President and General Counsel before using the name of LULAC to institute a boycott.
- 2) Carefully persuade consumers to voluntarily decide to boycott.
- 3) Station watchers, pickets and legal observers at boycott sites.
4. Encourage people to join the common cause through public address and private solicitation.
5. Provide transportation to alternative businesses providing comparable goods and services.
6. Provide literature that thoroughly explains why the boycott is called.
7. Be creative, such as a reverse boycott (i.e. Large numbers of protesters shopping at a business can tie it up; especially when every- thing purchased is returned).

**DON'T:**

1. Engage in unauthorized boycotts using LULAC's name.
2. Use demeaning and obscene language or refer to any person.
3. Engage in physical force and violence against customers, prospective customers or proprietors.
4. Vilify, intimidate, threaten, ostracize or degrade those who cross the picket line.
5. Agree with anyone to use illegal force against any person or property.
6. Organize a boycott to further private economic interests.

7. Authorize, ratify or even discuss illegal conduct at meetings or anywhere else.
8. Make speeches likely to invite lawless action.

**MARCHES & DEMONSTRATIONS**

**SELF POLICING AND MARSHALS**

**SELECTION:** the Marshal must be a person dedicated to the cause and be ready and able to respond to orders and/ or commands from his leader and, at the same time, must be able to respond to the people for whom he is responsible. He must be able to give or take direction immediately.

**DUTIES:** Marshals assist in the arrangements, agreements, and direction of all aspects having to do with the planned activity. Specifically, as a marshal you:

1. Assemble the group.
2. Arrange the group in the desired order of the activity. Place or direct participants in their proper places.
3. Disseminate information to the participants, particularly as that information regards to:
  - a. The route of the march.
  - b. The time of the march.
  - c. Stops along the route of the march, if any.
  - d. Type of ceremony during stops, if any.
  - e. Availability of transportation, if any.
  - f. Handling of the injured or sick.
  - g. Handling of those who attempt to cause trouble or disrupt the activity.

**SMALL GROUP MARSHALS:**

Small Group Marshals are assigned to small groups and are to remain with their respective groups until all activity





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has ended and all participants have departed the area. During the march, Small Group Marshals walk opposite the group to which they are assigned.

## OVERALL MARSHALS:

Overall Marshals move up and down the line of the march, thus providing a protection for the march in that the overall marshals are alert to:

1. Observe activities by persons designed to interrupt the march.
2. Pass instructions from the march leaders to the Small-Group Marshals.
3. Warn march leaders to visible impending danger.
4. Notify police of any activity of bystanders which is a threat to the march.
5. Arrange for medical treatment for any of the participants who become ill or are injured during the march.

## MARCH GUIDELINES

1. Obtain suggested permits.
2. Carry only cardboard signs with very thin sticks.
3. Keep moving at all times. Under no conditions bunch up or stop.
4. Do not impede traffic. Provide spaces for passage of ordinary pedestrians, cars, etc.
5. Do not block driveways, passageways, fire exits or police station entrances .
6. Maintain proper control of language.
7. If on sidewalks, march only two abreast.
8. If on street, march 4 to 8 abreast.
9. Appoint one marshal (monitor) for every 12 marchers. Give each Marshal an identifying symbol or armband fashioned out of cloth or handkerchiefs or ribbon.
10. Treat police as neutrals-do not attempt to persuade them to your position. Individuals should not engage in rhetoric or conversation with on-duty police officers not assigned to the demonstration.

## RESPONSIBILITIES

1. Be relaxed.
2. Do not challenge counter demonstrators. Comply with police and march only in designated areas.
3. Marshals insist that no marcher touch, hit, strike, curse or verbally abuse any counter-demonstrator.
4. Appoint a spokesperson to establish verbal, face to face contact with the police chief or his designee. The spokesperson should offer assistance, and ask to leave one person to be the contact person and on hand to contact march leaders if a police action or reaction is imminent or can be averted.
5. Do not permit other marchers to gather around conflict point. Immediately look for a way out rather than a way to intensify the situation.
6. The original organizers of the demonstration have

certain goals; marshals should encourage all marchers to cooperate with primary goals.

7. In case of fainting, sunstroke or medical problems, do not move the person; look for first aid help .
8. Be friendly. This applies to marshals as well as marchers.
9. For further guidance refer to the CRS “Planning for Safe Marches and Demonstrations” in this Chapter.

## THE CHIEF’S COUNSEL

### Legal Implications In Handling Demonstrations

By Maurice A. Cawn

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Some twenty years ago, law enforcement encountered mass civil rights demonstrations which required police administrators to seriously reconsider some procedural techniques of their field operations bureau. Many of these problems were due to inadequate understanding of the exercise of freedom of speech and assembly.

Demonstrators are on the march again, but today’s proponents are more politically radical than were the protesters of the 1960s. While twenty years ago, the public may have experienced discomfort at the status quo being shaken, the same observers today express more concern about today’s “political” demonstrations with their potential for violence.

In light of the increasing responsibility placed upon the police officer, it is no wonder that today’s officer is frustrated by the law’s demand that he protect the unpopular speaker who generally represents a minority and often radical view which may be repugnant to the basic values of the community.

Few areas of the law are as nebulous as that of the First Amendments freedom of speech and assembly, as the “rules” must generally be adjudicated on a case-by-case basis. Any other approach borders on censorship an anthem to a free society.

How then can you, as police administrators, prepare your men to recognize “fighting words” (Chaplinsky v. New Hampshire 315 US 568) which create a “clear and present danger” (Feiner v. New York 340 US 315), which is expression which can and must be dealt with as violations of the law? In addition, the field officer is confronted with procedure problems such as how to conduct group arrests. This problem must be answered in practical terms.

A primary implication, then, is the need to educate our officers in the law of the First Amendment, even when such law is not clearly outlined in a statute form with which our personnel are familiar. This education must encompass not only the character of the freedoms invoked but also the restrictions on their exercise. It is a serious disservice to simply say that our hands are tied. Defining the problem in



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operational language is a difficult but necessary task.

Your personnel and the community must be educated to the fact that generally a speaker-demonstrator cannot be held legally responsible for the hostile reaction of a crowd unless his conduct was intended and plainly likely to provoke violent retaliation. Unfortunately, this intent can often only be proved after some violence actually occurs. It is a common but unpopular fact that very often the police officer is in a reactive position. This is especially so in an area such as this where the subject under study is speech, not conduct.

### **This education of our officers is essential for at least three reasons:**

1. To insure the legitimate exercise of the First Amendment.
2. To provide protection for our citizenry against unlawful demonstrations.
3. To avoid civil liability for violating the civil rights of demonstrators.

### **Other implications of mass demonstrations with which you should be concerned include:**

Know the existence and scope of any pertinent state and local laws. Does your jurisdiction have a disorderly conduct statute which would pass Constitutional muster? Or would it fail for vagueness and over breadth? Do you have a parade ordinance which can effectively control time, place, and manner of demonstration? Courts generally uphold these neutral restrictions which have a reasonable relation to the public safety function, which are applied in an impartial manner, and which do not attempt to regulate the content of the expression.

While a well-written ordinance will not solve all the potential problems to be faced, any permit application would at least provide useful information regarding the personnel responsible for monitoring and escorting the parade. The ordinance, as reflected in the permit application, puts the potential demonstrator on notice of any pertinent regulations or prohibitions.

If charges are ultimately brought, it is an advantage to show that the violator had notice of the state of the law. If the demonstration is spontaneous rather than via a parade, what city ordinances and state law can be utilized to justify police "interference"? Even if the demonstrators flaunt the law, the existence of such statutes authorizes legitimate law enforcement action and should insulate the officer against claims of harassment.

Avoid being polarized into an "us" vs. "them" status. The police agency must establish a liaison with those segments of the community with which it will work closely in the event of civil demonstration. Continuing liaison with the office of the district attorney is a must. An understanding of the group's philosophy and concerns can prevent those gaps in communication which the radicals could capitalize on in

strained times.

Your prosecutors can assist in outlining the legal parameters of First Amendment activity and clarify those issues which often defy definition. Thus your personnel are better prepared in the event that your jurisdiction becomes the public forum. Proper preparation reduces the likelihood of court dismissals which could encourage suit for malicious prosecution.

While there often exists some degree of mutual hostility between the police and the news media, it is imperative that responsible lines of communication exist. You may be assured that there will be media coverage of a large-scale demonstration. The First Amendment may be a shield for radical demonstrators, but is the "raison d'être" for the media.

I strongly suggest that you establish department procedures for furnishing accurate information to the media during troubled times. If you withhold details, the social dissidents will manufacture them for the press. Caution, naturally, is required in releasing statements which tend to besmirch the name of a political demonstrator. "Waiting" or releasing statements lacking a proper basis in fact is not only unprofessional but could create liability for slander suits or at least arguments of prejudicial publicity.

Apprise the officer of his liability coverage. One significant difference about today's demonstrator is that he is better versed in Constitutional law than his predecessor. In many instances, the modern radical group has at least one attorney minutes away from its public activity. The members of the group, well-versed in the case law and statutes of the jurisdiction, exude a confidence which manifests itself in the ever-present challenge to the officer.

Are your officers aware of those enforcement activities which present the greatest potential for lawsuit? Is good faith a defense to suit? Will the administration support him in the event of a suit? Avoid believing that because you have not been asked these questions that they do not exist in the minds of your men.

Recent decisions of the United States Supreme Court, *Monell v. Department of Social Services* 436 US 658 (1978) and *Owen v. City of Independence* 63 L. ED 2d 673 (1980) have broadened the vulnerability of city government to suit for even unintentional violation of one's Constitutional rights. Every major city has some measure of liability coverage for its personnel-professional liability insurance or a contingency fund. Protection instills confidence, and it insures a better effort by your personnel in a most difficult task.

### **In closing, I wish to reiterate three suggestions:**

1. Thorough preparation avoids costly mistakes in the future.
2. Effective liaison insures community support when needed.

# Chapter 7 ▾ Direct Action



3. The ability to adapt to changing demands is the greatest attribute of the true professional.

## PLANNING FOR SAFE MARCHES AND DEMONSTRATIONS

Planning for a safe march or demonstration can be a daunting process and should begin as early as possible.

## GENERAL INFORMATION

The Community Relations Service (CRS) has more than 35 years of experience in helping individuals and groups with special events. CRS can facilitate meetings with law enforcement, city officials, and demonstration organizers to assure information is shared and plans are in place for a safe march or demonstration. These meetings may review requirements such as permits, routes, demonstration marshals, equipment, water, toilet facilities, medical assistance, counter demonstrators, and contingency planning.

The following guidelines can help plan your march or demonstration.

## PERMITS

Communication with law enforcement and city officials is critical and can determine whether factors such as safety sanitation, and traffic control require a permit to carry out the planned march or demonstration. The need for permits and fees varies depending on the jurisdiction of jurisdictions.

## ROUTES

Early planning of the route will help with decisions such as: involvement of all law enforcement jurisdictions; parking for participants; shuttle bus service; final staging areas; location of first-aid stations, restroom facilities, and water; consideration of distance and terrain; and map distribution for those assisting in conducting the march. A map should clearly mark the parking, route, emergency facilities, toilets, and water.

## DEMONSTRATION MARSHALS

The use of demonstration marshals is similar to creating your own “volunteer self-police force” for your event. Selection of marshals should take place at least a month prior to your event so adequate training and instruction can be given. Demonstration marshals assist in the safe conduct of the participants in the planned activity. At times they may also prevent counter demonstrators or people who may seek to disrupt your event from being able to mix with legitimate participants.

Demonstration marshals will be knowledgeable of timing; routes; location of first aid stations, water, and toilets; and are trained to know what to do if trouble occurs. Demonstration marshals should be easily identified by special identification.

For more information on demonstration marshals, please contact the nearest CRS Regional Office for a copy of our brochure, “So You’re a Demonstration Marshal.”

## EQUIPMENT

When planning your demonstration or march, consider the staging area and ending point of the event. If you schedule speakers or plan ceremony, you may need a stage or loud speaker system. Each Jurisdiction has its own regulations on public use of loudspeaker systems. Issue special identification to be carried or worn by those who have access to the stage. Make sure that security personnel have access to the stage.

## WEATHER

A major consideration when planning your demonstration is how the weather will affect the participants. For example, warm weather and/or a long march would require plenty of water to avoid dehydration of the participants. In cold weather, shorten the time of the demonstration to avoid dangerous exposure to the elements.

## CIVIL DISOBEDIENCE

Based on CRS’ experience in public disorders, spontaneous civil disobedience may escalate tensions between local law enforcement and the participants. If law enforcement is not prepared, lack of personnel may lead to over reactions or loss of control by law enforcement and demonstration organizers. The result could be serious physical injury and create tension between police and citizens.

Mass arrest situations should be avoided because of the high likelihood of physical injury. It is best to identify those who will engage in civil disobedience in advance, and notify police how many of these may participate.

If this is a planned arrest situation, those who participate should have identification and bail money to facilitate law enforcement processing.

Encourage nonviolent behavior by the participants during mass arrest situations.

## CONTINGENCY PLANNING

The goal of contingency planning is to be prepared for an emergency. Consider the possibility of an emergency and what you will do if one occurs. A contingency plan must have each step planned in advance to ensure that arrangements are in place for an effective response.

## HOW TO CONTACT CRS

CRS is available to help you develop sound plans and facilitate meetings with law enforcement on the planning and carrying out of the event. Contact the Regional Office in your area as early as possible to ensure your demonstration or march is a success.



# Chapter 7 - Direct Action

## HEADQUARTERS OFFICE

### Director's Office

600 E. Street, NW, Suite 6000  
Washington, D.C. 20530  
(202) 305-2935 or (202) 305-3009 (FAX)

## REGIONAL OFFICES

### New England Regional Office

408 Atlantic Ave., Suite 222  
Boston, MA 02110  
(617) 424-5715  
(617) 424-5727 (FAX)  
Servicing: CT, MA, ME, NH, RI,VT,

### Northeast Regional Office

26 Federal Plaza, Room 36-118  
New York, NY 10278  
(212) 264-0700  
(212) 264-2143 (FAX)  
Servicing: NJ, NY, PR,VI,

### Mid-Atlantic Regional Office

2nd and Chestnut, Streets, Room 208  
Philadelphia, PA 19106  
(215) 597-2344  
(215) 597-9148 (FAX)  
Servicing: DC, DE,MD, PA,VA,WV

### Midwest Regional Office

55 West Monroe Street, Suite 420  
Chicago, IL 60603  
(312) 353-4391  
(312) 353-4390 (FAX)  
Servicing: IL, IN, MI, MN, OH,WI

### Southwest Regional Office

1420 West Mockingbird Lane, Suite 250  
Dallas, TX 75247  
(214) 655-8175  
(214) 655-8184 (FAX)  
Servicing: AR, LA, NM, OK,TX

### Central Regional Office

1100 Main Street, Suite 1320  
Kansas City, MO 64106  
(816) 426-7434  
(816) 426-7441 (FAX)  
Servicing: IA, KS, MO, NE

### Rocky Mountain Regional Office

1244 Speer Blvd., Room 650  
Denver, CO 80204-3584  
(303) 844-2973

(303) 844-2907 (FAX)

Servicing: CO, MT, ND, SD, UT, WY

### Western Regional Office

888 South Figueroa, Suite 1880  
Los Angeles, CA 90017  
(213) 894-29??  
(213) 894-288? (FAX)  
Servicing: AZ, CA, GU, HI, NV

### Southeast Region Office

75 Pierbermont Avenue, NW, Room 900  
Atlanta, GA 30303  
(404) 331-6883  
(404) 331-4471 (FAX)  
Servicing: AI, FL, GA, KY, MS, NC, SC,TN

### Northwest Regional Office

915 Second Avenue, Room 1808  
Seattle, WA 98174  
(206) 220-6700  
(206) 220-6706 (FAX)  
Servicing: AK, ID, OR,WA

## INSTRUCTIONS FOR VOLUNTEER

### SELF-MARSHALS

Self Marshals are asked to adhere to these instructions to maximize safety and security for participants in this event.

1. Marshals should be on time and stay at assigned position(s).
2. Marshals should adhere to restrictions on authorized access to police command post and stage facilities.
3. Marshals should not accept gifts or other benefits that might influence their ability to carry out their duties.
4. Marshals have important responsibilities and should focus on their duties. You are helping to make the event to success by your work. Do not become involved in event-related contracts such as being a food or souvenir vendor.
5. Marshals should be polite, consistent, and supportive of participants. Do not be partial or use your for personal advantage, such as to help a friend to the front of the line.
6. Marshals should follow instructions in handling complaints, injuries, property damage, disorderly conduct, and crowd control problems.
7. Marshals should monitor perimeters of demonstrators for disruptive groups or individuals and report any questionable behavior through the chain of command.
8. Marshals should always be able to communicate with their assigned captains.
9. Marshals should get help from a captain before a situation gets out of control.
10. A marshal's job is to help everyone have successful event.



## Case Work

# LULAC Law Students Hunger Strike for Immigrants

To honor the contributions of Latinos to American society and to advocate for comprehensive immigration reform, the LULAC Law Students #4900 at Texas Southern University Thurgood Marshall School of Law exercised their first amendment rights to freedom of speech and assembly by conducting a peaceful demonstration in the form of an on-campus hunger fast for five consecutive days during Latino Heritage Month 2007.

As symbolic speech, they set up tents for overnight stay next to their law school in Houston, Texas. Chapter #4900 is composed of progressive law student activists who advocate for Latino civil rights and social justice using legal and grassroots mechanisms.

The LULAC Law Students kicked off their hunger strike with a successful press conference which garnered national media attention.

Throughout the week, countless students and community members showed support by attending the round-the-clock event.

A myriad of persons visited the students including: a Latina artist who enlisted the help of hunger strikers to make hundreds of crosses to honor persons who died crossing the United States-Mexico border; a nun from Mexico who blessed the students; a poet from

San Antonio performed a historical tribute to ancestors.

The event concluded with a grand feast of homemade food donated by the community as gratitude for the hunger fast.

LULAC Law Students who organized and participated in the fast include Victoria Neave, Mark Scott, Daney De La O, Marco DeLuna, Edward Martinez, Angie Mendoza Guinn, and Reshae Ridley.

Playing a key role in the hunger strike were some extraordinary legal scholars including, Judge and Professor Lupe Salinas, Associate Dean Fernando Colon Navarro, Professor Thomas Kleven, and Dean McKen Carrington.

LULAC leaders who attended or supported the event include: former National LULAC President, Rick Dovalina; LULAC National Civil Rights Commission Chair, Richard Sambrano; LULAC National Civil Rights Commission Vice Chair, Mary Ramos; LULAC National Vice President for the Southwest, Sylvia Gonzalez; LULAC District 8 leaders; and University of Houston LULAC Young Adults.



As of 2010, these students have either become attorneys or are working on completing their legal education.





# Mediation

## Chapter 8





# Chapter 8 ▾ Mediation

**For over thirty-five years the Community Relations Service (CRS U.S. Department of Justice) has offered mediation services in resolving racial and ethnic disputes in hundreds of communities throughout the nation.**

## **PROCEDURES GOVERNING**

This service has successfully resolved a variety of conflicts, surrounding civil disorder, church burnings desecration of mosques, synagogues and other places of worship, racial tensions and violence in senior and junior high schools, colleges and universities, major demonstrations, hate crimes, racial tensions in housing units, environmental justice, Native Americans and local officials, and law enforcement use of force in minority communities.

The following description is designed to provide interested individuals with an understanding of the mediation process, ground rules and procedures employed by CRS.

## **JURISDICTION OF CRS**

Congress established CRS in 1964 with the purpose of providing "... assistance to communities and persons therein in resolving disputes, disagreements or difficulties relating to discriminatory practices based on race, color or national origin which impair the rights of persons in such communities under the Constitution or laws of the United States or which affect or may affect interstate commerce." (See 42 U.S.C. 2000g-1). To fulfill this purpose, CRS offers mediation assistance.

## **ENTRY BY CRS IN DISPUTES**

Mediation assistance from CRS may be effected upon the request of an appropriate State or local official, other interested person, or at CRS' own discretion.

## **PROTECTION OF CONFIDENTIALITY DURING MEDIATION**

The authorizing statute 42 U.S.C. 2000g-2, requires that: The Service shall hold confidential any information acquired in the regular performance of its duties upon the understanding that it would be so held." In the over thirty-five years of CRS' existence, no employee has been found to have violated this provision. In the single challenge to CRS' confidentiality protection, the Court recognized the value of CRS' relationship with the parties and upheld its responsibility to maintain confidentiality (See *City of Port Arthur v U.S.*, Civil Action No. 80-0648, D.C. Dist. Ct.).

Aside from facing criminal penalties set forth in the statute, CRS mediators realize that the effectiveness of our service will be seriously jeopardized if confidentiality is not observed.

All proceedings within the mediation session remain legally privileged under Federal Rules of Evidence (Rule 408), evidence of conduct or statements made in compromise negotiations, i.e., mediation, may not be

admitted at subsequent legal or administrative proceedings. All participants are asked to respect, even after the conclusion of mediation, the confidentiality of specifics of the discussion, except for those points set forth in the concluding agreement or other joint statements that the parties agree may be made public.

## **ROLE OF THE CRS MEDIATOR**

The CRS mediator is responsible for establishing and interpreting ground rules and procedures for the negotiation session. The mediator schedules, arranges, and chairs the joint mediation sessions. When necessary, the mediator may arrange various kinds of resource assistance to the parties. The CRS mediator serves as moderator or referee to ensure that procedural rules are observed and to guide discussion toward constructive consideration of remedies and solution. In no sense is the mediator an arbitrator, judge, or decision-maker. CRS recognizes that only the parties themselves can reach a mutually satisfactory settlement, accomplished by full examination of the issues, open-minded exchange of views, and acceptance of reasonable remedies or solutions to recognized grievances and needs.

## **RESPONSIBILITIES OF THE PARTIES**

Often disputes referred to CRS involve claims from an organization or class of individuals against a government entity, employer, or corporation. CRS encourages the direct participation of the parties, assisted by counsel, at the negotiation sessions.

Typically, the negotiating teams for each of the parties consist of three to five members.

One member from each team should serve as chairperson and generally leads the team's participation in negotiations. Each team is understood to be authorized to represent the interests and concerns of its constituency or parent body and to be empowered to seek a negotiated settlement of outstanding issues. Final authority to approve the agreement may rest with the negotiating team or with a parent body.

Only those individuals who are able and willing to make a commitment to participate in every mediation session should consent to serve on a negotiation team. Continuity is vital as is full attendance of all negotiating team members. A team may wish to have one or two alternate members attend all mediation sessions, but they participate in negotiations only when one of their negotiators is absent due to illness or personal emergency.

Each team should prepare thoroughly for the mediation process, developing its proposals for resolution of issues and problems, and planning for effective presentation of its



# Chapter 8 ▾ Mediation



proposals during joint negotiations.

## THE MEDIATION PROCESS

Mediation is a voluntary process in which the parties to a dispute attempt to resolve their differences through discussion, clarification, and orderly negotiation. Unlike an adjudicated settlement of disputes, successful mediation does not consist of “winners” and “losers” but of parties who have carefully examined and resolved a defined set of issues and practices. While mediation may address alleged past offenses, its main focus is prospective, forging a consensus on reasonable and necessary actions for the future.

Usually as a first step, the mediator will meet with each team and perhaps also with its parent body or general membership. The mediator will listen carefully to everyone, seeking understanding in depth of their real concerns and needs and of the positions of the group on the issues. The mediator’s main objective throughout is to enhance the possibility that the parties will come to understand better each other’s situation and proceed to hammer out a mutually acceptable settlement. From these, agendas are developed covering all matters which are to be addressed during the joint negotiations. All outstanding issues are open for negotiation.

Joint mediation sessions, usually held at a neutral setting, seldom last longer than three hours, depending on the effectiveness of the session and the wishes of the participants. How many such sessions and what time span will be required to complete the agenda are difficult to predict. Much will depend upon the complexity of the issues, the severity of conflicting positions, and the determination of each team to find or create workable solutions.

Where possible, it is sometimes desirable to hold the joint sessions in a concentrated time frame or on consecutive days. It often may be necessary to recess sessions for a time to consult with the parties or advisors, consider proposals, draft prospective agreements, or for other compelling reasons.

During the mediation sessions any team or the mediator may request a caucus in order for the team members to consult with one another in

private. The mediator is available to the teams during caucus for consultation, if desired. If a team wishes to discuss any matter with the mediator in confidence, such information will not be disclosed except as clearly authorized.

Such communication is encouraged. The more fully the mediator is permitted to understand the real concerns and positions of each party, the more useful the mediator can become in raising questions or offering ideas which will help forge an agreement.

In some situations, the mediator may find that better progress can be made in separate meetings with the respective teams than in joint sessions.

Mediation sessions are closed to the news media and other outside parties, except for resource specialists or observers agreed to in advance. While mediation is under way, no participant or other person present may report or discuss the content of the proceedings or positions involved. This does not limit team members from conferring as need be from time to time with their parent body or key decision makers whom they represent. Usually the participants choose to have only the mediator respond to press inquiries.

## FORMALIZATION OF AN AGREEMENT

Matters finally agreed upon in mediation are set forth in a written document signed by the parties and witnessed by the mediator. Generally, the agreement includes provisions for ongoing local monitoring of the agreement’s implementation and procedures to be employed, including the use of CRS, in the event disagreements arise over execution of the accord.

## MEDIATOR STANDARDS OF CONDUCT

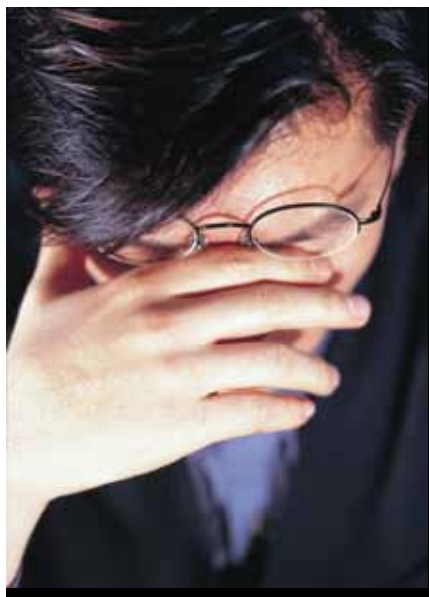
CRS mediators recognize the critical and sensitive nature of their activities, and abide by the standards of conduct set out in the Code of Federal Regulations (28 CFR 45.735-2 et seq).

## CONCLUSION

There can be no advance guarantee, or even assurance, that the parties will achieve agreement.

The Community Relations Service, however, has successfully mediated cases throughout the country, involving a wide range of issues affecting minority racial or ethnic groups and communities. Often, the parties feel greater satisfaction with a solution that they have helped formulate and over which they have exerted control rather than one imposed on them. Further, a significant by-product of the process is that the parties come to understand each other in a much improved manner and are prepared to solve problems in the future on their own.

Thus, not only have many of the problems taken to mediation been resolved without extensive litigation, but also the parties have witnessed constructive changes in attitudes, relationships, and conditions.





# Chapter 8 ▾ Mediation

## RULES FOR MEDIATION

### 1. Definition of Mediation:

Mediation is a process during which an impartial, neutral person, the mediator, facilitates communication between the parties in a dispute to assist reconciliation, settlement or understanding among them. The mediator may suggest ways of resolving the dispute but may not impose his or her own judgment on the issues for that of the parties.

### 2. Agreement of Parties:

The parties involved in the mediation of the dispute agree to these rules by their signatures (Parties and attorneys will be asked to sign prior to mediation session).

### 3. Consent to Mediator:

The parties consent to the appointment of the individual named as mediator in their case. The mediator may not, and will not, act as an advocate for any party to the mediation.

### 4. Conditions Precedent to Serving as

#### Mediator:

The Mediator shall not serve as mediator in any dispute in which he or she has any financial or personal interest in the result of the mediation.

Prior to accepting an appointment, the Mediator shall disclose any circumstance likely to create a presumption of bias or prevent a prompt meeting with the parties. In the event that the parties disagree as to whether the Mediator shall serve, the Mediator shall not serve.

### 5. Authority of Mediator:

The Mediator does not have the authority to decide any issue for the parties, but will attempt to facilitate the voluntary resolution of the dispute by the parties. The Mediator is authorized to conduct joint and separate meetings with the parties and to offer suggestions to assist the parties achieve settlement. If necessary, the Mediator may also obtain expert advice concerning technical aspects of the dispute. Arrangements for obtaining such advice shall be made by the Mediator or the parties, as the Mediator shall determine.

### 6. Commitment to Participate in Good Faith:



While no one is asked to commit to settle his/her case in advance of mediation, all parties commit to participate in the proceedings in good faith with the intention to settle, if at all possible.

### 7. Parties Responsible for Negotiating Their Own Settlement:

The parties understand that the Mediator will not and cannot impose a settlement in their case and agree that they are responsible for negotiating a settlement acceptable to them. The Mediator, as an advocate for settlement, will use every effort to facilitate the negotiations of the parties.

The Mediator does not warrant or represent that settlement will result from the mediation process.

### 8. Authority of Representatives:

Each party representative agrees that he or she has authority to settle the dispute involved in the mediation and that all persons necessary to the decision to settle shall be present at the mediation.

### 9. Time and Place of Mediation:

The mediation time and a convenient location agreeable to the Mediator and the parties as the Mediator shall determine.

### 10. Identification of Matters in Dispute:

If requested, prior to the first scheduled mediation session, each party shall use his or her best efforts to provide the Mediator and all attorneys of record with an Information Sheet and Request for Mediation on the form provided by the mediator setting forth its position with regard to the issues that need to be resolved.

### 11. Privacy:

Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the Mediator.

### 12. Confidentiality:

Confidential information disclosed to a Mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the Mediator. All records, reports or other documents received by a Mediator while serving in that capacity shall be confidential. The Mediator shall not be requested or compelled to produce or divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.

The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial or other proceeding:

- a) views expressed or suggestions made by another party with respect to a possible settlement of the dispute;
- b) admissions made by another party in the course of the mediation proceedings;
- c) proposal made or views expressed by the Mediator; or
- d) the fact that another party had or had not indicated willingness to accept a proposal for settlement made

# Chapter 8 ▾ Mediation



by the Mediator.

### 13. No Stenographic, Audio or Video Tape Record:

There shall be no stenographic record, tape-recording, or videotaping of the mediation process.

### 14. Termination of Mediation:

The mediation shall be concluded:

- a) by the execution of a settlement agreement by the parties;
- b) by declaration of the Mediator to the effect that further efforts at mediation are no longer worth while; or
- c) by a written or verbal declaration of a party or parties to the effect that the mediation proceedings are terminated.

### 15. Parties to Rely on Own Counsel:

If the mediation is concluded by a settlement agreement, the parties are advised, and agree, to have the agreement independently reviewed by their own attorney and counsel before executing the agreement in final form.

The parties understand and agree that the Mediator is not acting as an advocate for any party and each party states that they have not relied upon legal advice or counsel from the Mediator in entering into the settlement agreement.

### OTHER COMMON GROUND RULES FOR DISCUSSION SESSIONS

1. The mediator will serve as the convener and facilitator of the discussion session(s).
2. The parties have agreed to discuss the issues voluntarily.
3. Each party in the process retains its decision making authority.
4. The parties have a common desire to resolve problems and improve relations.
5. Caucusing is possible by either party on any issue with the mediator, and the mediator may suggest that a party caucus at any given point in order to maintain orderly progress or break an impasse.
6. Meetings will be orderly and free from interruptions.
7. Reports to the media regarding progress may be conducted jointly at the end of each session, or after the

entire process has been completed. The parties should decide which would be more appropriate, before starting first session.

8. The meeting site will be \_\_\_\_\_.
9. All conclusions will be in writing.
10. Both parties agree to provide whatever documents, information and substantiating facts requested by either party and as permitted by the institution or governmental entity.
11. Both parties may have a maximum of \_\_\_\_ advisors, \_\_\_\_ spokespersons and \_\_\_\_ alternates.





## Case Work

# The Experts in LULAC Mediation

For as long as LULAC has been involved in resolving conflicts related to racial tension throughout the country, LULAC leaders have utilized the extraordinary power of mediation. Mediation, a type of alternative dispute resolution, is a cost-saving tactic that community leaders can use to avoid time-consuming and expensive litigation and court costs. The United States Department of Justice Community Relations Service (CRS) has often participated as a third party neutral to facilitate mediation sessions.

Several leaders have emerged as the preeminent mediators in this country. **Richard Sambrano**, **Efrain Martinez**, **Justo Garcia**, and **Hector Flores** acquired their expertise when working for the Department of Justice. **Edward Elizondo**, a United States Equal Employment Opportunity Commission retiree, specializes in employment disputes. LULAC National President, **Rosa Rosales**, and community activist, **Angie Garcia**, have also gained national recognition for their work. **Jodi Perry**, a City of Fort Worth, Texas retiree, has served as an Arbitrator, Senior EEO Investigator, Mediator, Housing Hearing Officer and EEOC Mediation Manager. Collectively, these mediators have over 100 years of mediation experience.

The work of these mediation experts have long-lasting effects on the communities they serve. For example, the Sambrano Agreement, named after Richard Sambrano, is still referred to today as the leading memorandum between a public school system and the community. It arose from a case that Richard Sambrano mediated between the Albuquerque Public School System and Latino leaders in New Mexico in which significant disparities existed between affluent and poorer schools. The Sambrano Agreement resolved a myriad of issues including disparities in the school facilities, curriculum, and funding, among others.

These eight exceptional mediators have worked on a plethora of cases and ultimately transformed stormy, near-riot situations to peaceful communities. A non-exhaustive list of cases these mediators have worked on includes issues with police and sheriff's departments; dozens of school districts; the U.S. Postal Service; state agencies like the Texas Alcoholic Beverage Commission; a state's Department of Public Safety; Levi Straus; the Coors Boycott; Iowa Beef Plant (Tyson Foods); and Dallas County Community College District.



*Richard Sambrano*



*Rosa Rosales*



*Ed Elizondo*



*Jodi Valenciano Perry*



*Efrain Martinez*



*Angie Garcia*

*Justo Garcia*



*Hector Flores*



## Case Work

# The Experts in LULAC Mediation

**Case #1:** In the early eighties the Reata Committee, a group of Hispanic horsemen from the Houston area, asked CRS to help in resolving long standing issues it had with the Houston Livestock Show and Rodeo. Committee members accused the Rodeo of discrimination in how they were excluding Hispanic students from the thousands of dollars in scholarships it awards annually and in not allowing Hispanics to play a more significant role in Rodeo affairs. Tony Bruni, the president of the Committee, complained to the CRS Houston office that Rodeo officials would not even return his phone calls. The main complaint was that the Rodeo's criteria for awarding scholarships called for students to participate in agricultural, ranch or farming programs, effectively led to excluding Hispanics students who lived in the city where the keeping of farm animals was not allowed. CRS met with all the parties and conducted several months of negotiations that led to significant changes in the policies and allowing the Committee to play a prominent role in raising monies specifically for Hispanic students. During a time when negotiations had reached an impasse Frank Ortiz, then the LULAC district director, joined the discussion and played a significant role in bringing about a settlement. Since then the Reata Committee evolved into the Go-Tejano Committee which has raised thousands of dollars for Hispanic scholarships and has played an active role in Rodeo affairs. Go-Tejano Day annually sets new attendance records at Reliant Stadium, the new home of the Rodeo. The great number of Hispanic students who have received four-year scholarships from the Rodeo owe a lot to efforts of the Reata Committee and LULAC for their education.



*Efrain  
Martinez*

**Case #2:** In the mid-ninetees the Katy Texas police department assisted the U.S. Immigration and Naturalization Service (INS) in conducting a raid on the Hispanic day-labor site in this city. Johnny Mata and other LULAC officials, were joined by other Hispanic groups, in protesting and later in filing a federal law suit against the City of Katy, its police department, the U.S. Attorney General, and INS, alleging gross violations of the laborers civil rights. A few months later both the plaintiffs and defendants asked the Community Relations Service (CRS) of the U.S. Department of Justice to mediate the dispute. CRS and the attorneys for both sides then went before federal judge Melinda Harmon who released the case for mediation. LULAC and other community representatives helped the complainants in composing the list of issues to be negotiated. After several months of negotiations led by CRS, the parties reached agreement on more than ten significant issues which among other things called for the Katy Police Department to create new policies governing its officers involvement in any future INS activity, and hours of civil rights training for them and INS agents. The plaintiffs said they intended to use these policies as models for other police departments. After Judge Harmon approved the agreement, attorneys for both sides told CRS they were pleased with the outcome and with the thousands of dollars they saved through mediation.





# Legal Case Structure & Procedure

## Chapter 9





# Chapter 9 ▼ Legal Case Structure & Procedure

## BASIC STRUCTURE FOR HANDLING LEGAL CASES

In order to maintain an effective civil rights program, it is necessary to have established machinery to properly handle these matters. It is equally important to understand this machinery.

The first point to understand is that LULAC, although it consists of a national office, geographical vice presidents, state offices and local councils, operates as a unit with a spirit of cooperation.

This is even more essential in legal cases.

**The basic structure is as follows:**

### A: ANNUAL CONVENTION AND NATIONAL BOARD OF DIRECTORS

The annual convention sets the policy for our organization and this policy is binding upon every unit of LULAC, local councils, state offices, geographical vice presidents and the national office. The national board of directors has the responsibility of administering this policy.

The national board of directors, of course, have full authority between conventions, subject only to policy established by previous conventions.

### B: NATIONAL LEGAL STAFF

The national legal staff consists of a general counsel and volunteer assistants who have the responsibility for maintaining the legal program of the organization subject to the policy established by the national conventions and the board of directors.

This staff is available at all times for services to all of the units of the organization whenever appropriate legal matters are referred to them.

### C: STATE OFFICERS

The state LULAC offices should have legal committees composed of lawyers from each of the states in the regions. This committee should have a chairman selected by the state president and this chairman should assume responsibility for the legal cases in the state.

The rules governing the action or these state legal committees should be drawn up in consultation with the national legal counsel and this committee should work closely with the national legal committee.

### D: STATE LEGAL COMMITTEES

Each state office should have a state legal committee composed of

as many lawyers as can be drawn from the state so that there will be the widest geographical distribution. This committee should have a chairman also selected by the state president. The state legal committee should have no authority other than the authority granted it by the state executive committee.

### E: COUNCIL LEGAL REDRESS COMMITTEE

Each chapter should appoint a legal redress committee, the duties of which are as follows:

- 1) The legal redress committee shall include lawyers where possible. It shall investigate all cases reported to it for legal redress, consulting when necessary with the attorneys of the national legal committee, and shall watch over all litigation in which the chapter is interested.
- 2) The legal redress committee shall keep the chapter executive committee informed on the progress of every case.
- 3) The legal redress committee shall not give general legal advice.

### F: LULAC SPECIAL CONTRIBUTION FUND

The LULAC Special Contribution Fund shall be a tax exempt arm of National LULAC. The National LULAC Special Contribution Fund shall be limited to supporting various programs of the organization exclusive of lobbying and political action and cannot under any circumstances be used to engage in any propaganda or other activities which tend to influence legislation.

The basic policies of the National LULAC Special Contributions Fund shall be developed by a Board of Trustees selected by the National LULAC Board of Directors.

Persons, foundations and corporations desiring to receive a tax deduction should be urged to give to the Special

Contributions Fund. Councils can be especially helpful in obtaining gifts through bequests. These gifts, however, may not be withheld by the Councils. They must be administered by the Special Contribution Fund Trustee. Any questions with respect to them should be directed to the LULAC National President or the General Counsel.

### LEGAL CASE PROCEDURE

#### BASIC PROCEDURES FOR HANDLING LEGAL CASES

**At the 1997 Annual Convention of National LULAC in Anaheim, California, the following resolution with**





# Chapter 9 ▼ Legal Case Structure & Procedure



## respect to procedures in legal cases was adopted:

“We recognize that success can only be achieved by complete cooperation between the different units of the LULAC organization in regard to legal cases. We therefore agree that our councils, national vice presidents and state offices, except in cases of emergency will not enter into any legal case until a report on such proposed case is sent to the next higher office, with a copy to the national office; that the state, respective vice president and national offices will be given progress reports on these cases and a final report when the case is closed. That the legal redress committees of the Councils and state offices shall file with the national executive committee and legal counsel, regular reports concerning the legal work, in order that the organization might be able to keep abreast of this work.”

Pursuant to the above resolution, therefore, except in emergency cases, the following procedural steps are prerequisite to LULAC intervention in or institution of any legal cases:

### A: INVESTIGATION-GET THE FACTS

Each proposed case should be carefully and thoroughly investigated by some responsible member of the state or local committee in order that the actual facts may be obtained. All complaints or statements of fact should be in the form of affidavits.

Although speed is essential, in most instances it is also necessary to proceed with caution. A thorough investigation is essential in order to arrive at an intelligent conclusion and in order to prevent embarrassment and wasted time and money.

The results of such investigation should be given to the councilor state executive committee with the recommendation of the appropriate legal redress committee.

No case may be handled as a LULAC case unless a chapter or state executive committee has voted to officially handle the case or unless the general counsel decides that LULAC should take the case.



### B: PREPARATION FOR A CASE:

#### 1. Retainer:

Prior to announcing or in any way committing LULAC to proceed in a legal matter, the individuals involved should be requested to sign a retainer authorizing the Councilor state office to secure an attorney to handle the case.

#### 2. Competent Counsel:

It is most important to get a competent, honest, interested and courageous lawyer. Under all circumstances, care must be taken to retain an attorney who must be willing to raise every proper question necessary to a thorough defense and prosecution of the case. It will be beneficial to the local Councils or state office if the terms of the retainer with the attorney are discussed with the national legal counsel before commitment. All such agreements as to fees and services should be in writing and it should be clearly understood that the lawyer is to make regular reports to the local Council and to the state LULAC office and general counsel concerning the case.

The national office should be advised of every legal step before it is too late. If this advice is followed, we normally will not have to concern ourselves with being unable to appeal because of some technicality. The national legal staff shall always be ready to cooperate. Have the attorney send copies of all proposed proceedings or briefs to the national office, where they will be examined before filing. In doing this, you will have the combined advice of your local attorney and the legal staff of the national office, which probably has handled similar cases elsewhere.

### C: BUILDING PUBLIC SUPPORT:

While the legal redress committee, or attorney retained by the council, state or national office attorney is handling the actual case, the council and state office should inform the public about the injustices of which the case is an example.

#### 1. Speakers:

In this connection, send speakers to meetings of all interested organizations to acquaint them with the facts and to get their support and cooperation.

#### 2. Press, Radio, Television:

Every conceivable means of publicizing the activities of the council and/or state offices with respect to any complaint of discrimination or with respect to any case in which the council and/or state office is interested should be utilized. Meetings with the local press should be held as often as possible in order that the press may have the facts, the legal opinion and views of the council and/or state office with respect to any of their activities.

Every effort should be made to get articles on the cases in leading magazines.

Assistance in all these publicity matters may be received by writing the national LULAC general counsel and person responsible for public relations of the organization.



## ▼ Latina Legal Scholar ▼

**The Honorable Lena Levario** is the presiding judge of the 204th Criminal District Court of Dallas County Texas. In 1993, she became the first Latina judge in the history of Dallas County after having been selected Public Defender of the Year in 1988. Judge Levario was a founder of Dallas LULAC Council for Justice, Equality and Business Development and after serving as its first president, immediately rose through the ranks becoming Chair of the National LULAC Resolutions Committee and Special Counsel to President Hector Flores. She also was an essential member of the National LULAC Civil Rights Manual Task Force.



Photo by Luis Nolasco Torres

In 2004, Judge Levario was hired by the City of Dallas to conduct an independent investigation of corruption in the Dallas Police Department. Her investigation resulted in criminal charges against several police officers. She was also one of the LULAC organizers of the immigrant rights march in Dallas on April 9, 2006 wherein 500,000 protesters marched for justice. She has been recognized at the state and national level by LULAC for all of her work in the area of civil rights. In 2005 Judge Levario was selected National Woman of the Year/

### PROFILE

- Presides over the 204th Criminal District Court in Dallas where she hears only felony cases;
- Has a record of twenty years experience in the practice of criminal law where she served as lead attorney in hundreds of cases;
- Ran a successful business for over 11 years as a sole practitioner;
- Recognized by her peers as “Public Defender of the Year”;
- Featured in D Magazine for work as Public defender in article titled “The Law and Lena Levario” 1992
- Became Dallas County’s first Latina Judge;
- Instituted new bond amount standards to address revolving door for habitual offenders;
- Ran one of the most efficient courts in the county;
- While member of the Dallas County Juvenile board worked with Hispanic and African-American activists to address complaints regarding allegations or racism in the hiring and firing practices of the department.

Independent Investigator, City of Dallas Fake Drug Scandal, 2004.

Hired by the City of Dallas along with attorney, Terry Hart, to investigate allegations of possible police corruption. Worked with and supervised staff of 7 Dallas police officers assigned to assist the panel. Responsible for all aspects of the investigation including determination of the protocol to be used, scope and substance. Arranged for education of panel on all relevant topics, including city policies and procedures, forensic accounting, and undercover drug

procedures. Conducted interviews of witnesses, reviewed documents, met and worked closely with Dallas County District Attorney Special Prosecutor and his investigators. Resolved serious and complex legal issues. Responsible for media contacts and Freedom of Information requests.

Produced a well-received report. Referred cases involving police officers for administrative violations and for criminal prosecution. The report made several recommendations for changes in policy and procedures and all but one of the recommendations was adopted by the police department.

Independent Investigator, Follow-Up Report, City of Dallas Fake Drug Scandal, 2006

Responsible for ascertaining the results of the referrals the Panel had made regarding any potential criminal and administrative referrals and for determining what steps DPD has taken in the year to appropriately implement the Panel’s recommendations

Produced a well-received report. The City of Dallas requested the Panel’s continued, periodic assistance for quality control purposes.

Legal Counsel, League of United Latin American Citizens 2002-2005. Responsible for providing legal advice and guidance to LULAC National President and board members. Responsible for providing advice on national policy, including official policy positions and resolutions. Conducted yearly resolutions committee meetings with over 800 voting members and close to 100 resolutions involving difficult and highly emotional issues.

Provided advice regarding potential U.S. Supreme Court nominees; participated in a telephone conference with the White House, along with other national Latino organization members regarding Hispanic nominees to the U.S. Supreme Court.

Personally met with President and Founder of Rainbow/PUSH Coalition, Rev. Jesse Jackson to produce resolution to form coalition to promote civil rights.

As President of local Council: Provided Christmas dinner to hundreds of Dallas residents; Sponsored and put on a civil rights symposium in Dallas with top district, state and national officials, including: the head of the U.S. Justice Department, Civil Rights Division, State President of the NAACP, the U.S. Attorney for the Northern District, and top officials with the Equal Employment Opportunity Commission; Have spent many hours providing free legal advice to persons in need; Entered into Memorandum of Understanding with Chief Kunkle and Dallas Police Department regarding racial profiling and hiring, recruitment and retention of Hispanic police officers.

# Immigration



## Chapter 10





# Chapter 10 ▼ Immigration

## Basic Information for the Migrant to the United States

The purpose of this summary is to inform in a general manner rather than to offer information about individual cases. It would not be possible in a short summary of this nature to include all possible themes relating to this topic. We remind you that there is no substitute for the advice of a lawyer for individual cases.

### I. Part One: Immigration Categories

**Legal immigration to the United States can be made in any of the following categories:**

- Immigration through family reunification
- Immigration for the purpose of employment
- Refugees and Political Asylees
- The Visa Lottery
- Length of Time
- Amnesty

#### A. Family Petitions

**Relatives who can submit papers on your behalf are:**

**1. Immediate Family:** There is no limit to the number of immigrants in the family unit who may apply.

- The spouse of a U.S. citizen.
- The first category, and most desirable, is the category for immediate relatives of US citizens.

There is no limitation on the number visas issued per year in this category. This category consists of the parents of US Citizens, the spouses of US Citizens and the unmarried children of US Citizens.

Children are further defined as being less than twenty-one years of age at the time of adjustment to lawful permanent resident.

**2. Categories of Special Preference:** The law places a limit on the number of immigrants awarded this type of visa. There are currently long waiting periods for many of the relative (preference) categories that vary dramatically depending on the country of origin and family relationship. These long delays are the result of a yearly quota set for each of the categories and the large numbers of petitions already pending.

- The first preference category is made up of the “unmarried sons and daughters of U.S. Citizens.” This group is made up of the children of U.S. Citizens who have reached the age of twenty-one years.
- The second preference category is divided into two parts and is filled by the eligible relatives of lawful permanent residents. Under family category A, immediate relatives (spouses and unmarried children under twenty-one years of age) of lawful permanent residents are allowed to immigrate. The current wait under this category is over four years for all countries.
- Children who attain the age of twenty-one and are unmarried will drop to category 2B with the same priority date. The wait in this category is currently

over seven years for all countries. Although children of the qualifying relative can adjust their status at the same time as their parents do, marriage terminates all eligibility for residency as the son or daughter of a lawful permanent resident.

- The married sons and daughters of U.S. Citizens occupy the third family category. This category allows the spouse and unmarried children under twenty-one of the qualifying relative to immigrate with them at the same time. The wait in this category is generally a little over three years. Children of the Basic Information for the Migrant to the United States applicant who attain the age of twenty-one during the pendency of the petition are no longer eligible to immigrate with their parent and siblings. However, the petitioning parents will be able to file their own petition for these adult children after receiving their green card in the United States.
- The fourth category is for the brothers and sisters of US Citizens. This category also allows the spouse and unmarried children under twenty-one to immigrate with the principal beneficiary as permanent residents. Children of the beneficiary who attain the age of twenty-one during the pendency of the petition are no longer eligible to immigrate with their parent and siblings.

#### 3. Immigration Process if you have a Relative

The standard immigration process for relatives is described below. If you are located within the U.S., you may qualify to continue the process to change your status through one of the procedures mentioned in this summary.

To petition for a relative visa, the petitioner must file an I-130 petition with the Bureau of Citizenship and Immigration Services in the Department of Homeland Security for approval. Upon approval, the Bureau of Citizenship and Immigration Services sends the package to the National Visa Center (NVC), where it enters the jurisdiction of the U.S. Department of State. The NVC forwards the package to the U.S. Consulate in the country of the intended visa recipient.

The U.S. Consulate sets up a file on the intended visa recipient. Having accomplished that, a package of instructions and forms are sent out to the intended recipient, who completes the forms and returns them to the consulate, along with the necessary documents, such as birth and marriage certificates. All documents should be translated into English. After updating the file, the consulate schedules a visa interview and sends more forms, instructions (with interview date) to the intended visa recipient. Among other things, the instructions include details about obtaining a medical exam.

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- At the visa interview, the visa is issued upon satisfaction of the consular adjudicator. The approval of the Citizenship Office does not indicate that one has obtained legal status, nor does it protect one in the case that he is arrested, nor is it a work permit.
- After sending the approval notice, the case is referred to the National Visa Center. This office will send you the Affidavit of Support which the immigrant's sponsoring relative must sign. This affidavit, along with the applicant's tax documents and employment records plus the corresponding fee should be paid to the same center.
- After checking the Affidavit of Support, the National Visa Center will refer the case to the U.S. Consulate in the immigrant's country of origin, where it will appear in a waiting list according to its particular category.
- When the U.S. Consulate receives the case and when the immigrant's priority date is near at hand, the consulate will send additional documents which must be filled out and returned. The case will be investigated and the immigrant will be notified of his final interview.
- When the date of the final interview has arrived, if everything is in order, the immigrant will receive his residency visa and can enter the U.S. legally. Nevertheless, it is possible that the consulate may not award the visa.
- Precisely because the above-described process may take several years, it is crucial to advise the U.S. Consulate of any change in address so that the documents do not go astray.

## B. Work Visas

There are several different categories of work visas, but let us consider the most important elements in this process. As a general rule, qualified people with a university diploma or a specialized position may immigrate if they have a job offer in the U.S. It is not sufficient that your employer wishes to help you immigrate. You and your employer must complete a document called the Immigrant Petition for Alien Worker (I-140).

The purpose of the document is to prove that there are no qualified employees available in the U.S. that might fill this position. It is probable that the employer may have to

announce the opening and interview all the applicants.

### Step 1:

In most work-related categories, the employer should present a request for work certification (Form ETA 750) with the Alien Labor Certification (ALC) Section of the Workforce Commission in his state. This form should include a detailed description of the position as well as the minimum qualifications required. You should fill out the portion of Form ETA 750 that summarizes your experience and qualifications and present the documents that support this information. The job requirements must be legitimate, which means that you may not be the sole qualified person. The salary must reflect the necessary expertise required to fulfill the position.

### Step 2:

Your potential employer should present Form I-140 at the nearest INS office. Accompanying the document must be certificate provided by the state's Work Force office as well as your supporting documents. All papers written in a foreign language must be translated to English. You must indicate on the forms whether you plan to return to your country of origin while the papers are being processed, or if you wish to change your immigration status while you remain in the U.S. In order to continue with your case, the petition must be approved by the Bureau of Citizenship and Immigration Services (BCIS). This approval will indicate the preference category under which you will be admitted.

### Step 3:

If the Bureau of Citizenship and Immigration Services

accepts your request, you must report to the regional office of the BCIS or await notification from the U.S. consulate that you indicated when you filed your I-140 form.

### Step 4:

When the U.S. Consulate receives your case and when your 'priority date' is near, that consulate will send you another packet of documents which you must fill out and return. The consulate

will investigate your case and advise you of one last appointment. If all is in order, during this final appointment you will receive your legal residency visa and you may return to the U.S. legally.





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Nevertheless, it is possible that the consulate may not approve your visa if it indicates some valid reason to reject your case. As the above-mentioned process may take several years, it is important that you inform the consulate about any changes in your address so that correspondence relating to your case will not go astray.

## C. Political Asylum

The question of political asylum is very complicated. Unfortunately, there are lawyers who accept cases on the basis of political asylum without explaining that this category is very restricted and very few cases are admitted as political asylees under this category.

Individuals who are unable or unwilling to return to their home countries because they fear that they would be harmed on account of their race, religion, nationality (ethnicity), political opinion, or membership in a particular social group may apply for political asylum. Persons who are granted political asylum are eligible to adjust their status to permanent residency after one year of physical presence in the United States.

The following problems relating to your country of origin are NOT accepted as justification for political asylum:

- Extremely broad hardships
- Economic conditions
- Difficulty of finding employment
- Lack of educational opportunities for your children.
- Inadequate medical services.
- The fact that you have already lived in the U.S. for many years.

If your application for political asylum is not accepted, which is very possible, they will send you a date for a court hearing known as the Removal Proceeding. It is important to remember that only a very select number of situations lend themselves to this category of immigration.

## D. The Visa Lottery

Each year, 50,000 immigrant visas are made available through a lottery to people who come from countries with low rates of immigration to the United States. The purpose of the Visa Lottery is to diversify the flow of nationalities immigrating to this country.

Each year the Department of State determines which countries have the lowest number of people wishing to immigrate to the U.S. This list of countries may vary from one year to another. As a general rule, European and African countries are nearly always excluded. Neither Mexico, China, the Philippines nor India have appeared on this list and it is doubtful that they will ever qualify.

## E. Length of Time Living in This Country

Currently, there is no law that permits one to legalize his migratory status on the basis of having already spent

seven or ten or even more years living illegally in the U.S. In accordance with the previous law, in a few very exceptional cases, if one has lived here continually for seven or more years and also can demonstrate that his deportation would result in a critical damage to himself or his family, he may ask the judge for a 'Cancellation of Removal'.

This is an immigration law that allows people who have already been detained and are in process of deportation to appeal to a judge for a waiver of deportation. In order to qualify for this category, the foreign national must prove:

- 1) that he has lived here continuously for ten years;
- 2) he has not convicted of a crime;
- 3) that his deportation would create exceptional and extremely unusual hardships for his U.S. citizen or permanent resident family members.

It is very risky to make this application because the applicant must turn himself in voluntarily to the INS and appear before an immigration judge.

Consequently, this step should not be considered unless the individual is already under deportation orders. You should not be misled by 'notarios', immigration counselors or unscrupulous lawyers who advise you to report to the INS to ask for your legalization of status under this category. If the judge does not approve of your request, as happens in the great majority of cases, you may be deported. It is recommended that you only apply under this option if you are already being held by the INS or if you are under deportation proceedings.

## Part Two: Change of Migratory Status within the U.S.

U.S. immigration law assumes that most immigrants will apply and wait in their country of origin. In these cases, the application is presented in that country, and the immigrant's appointment will be made with the appropriate consulate in order to determine if he qualifies for a residency visa, in accordance with the categories mentioned above.

Nevertheless, in many cases the foreign national is already residing within the U.S., either with a non immigrant visa, or under undocumented status. In certain cases, he will not be required to return to his country of origin in order to file his immigration papers.

## A. Normal cases

As a general rule, there are five requirements to qualify for the change of immigration status:

- Be approved by the INS under the guidelines for permanent residency.
- Wait until a visa in your category becomes available (it may take many years).
- Provide proof of your legal entrance in the U.S.
- Have current immigration documents, or if this is not possible, be the immediate relative of a U.S. citizen.
- Not have worked in the U.S. illegally, or if this is not

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possible, be the immediate relative of a U.S. citizen.

## Part Three: Reasons for Ineligibility

In addition to qualifying in one of the previously described categories, foreign nationals who desire to legalize their immigration status must not meet any of the grounds of ineligibility. The visa for legal residence may be denied if any of the following conditions exist:

### A. Reasons for Ineligibility

**A criminal record. Among the crimes that may make you ineligible for a visa are:**

- Theft, except minor theft with a sentence of less than six months;
- Most drug-related crimes;
- A crime of moral turpitude, such as burglary, fraud, aggression, domestic violence, child abuse.

**Prior immigration record, such as:**

- Deportation orders;
  - Residence in the U.S. without proper documentation, unless you have requested a change of status during this period;
  - Having given false information or used false documents in order to obtain an immigration benefit;
  - You have missed an appointment with an immigration judge;
  - You requested Voluntary Departure but did not leave the U.S. during the required period. In this case, you may not receive an immigration visa for the subsequent 10 years;
  - You have been caught transporting undocumented foreigners in your vehicle, even if no charges were brought against them.
- You do not have sufficient funds to support yourself in the U.S. without becoming a public charge. In accordance with the law, if your relative (for example, your father, son, brother, or spouse) presented the immigration documents, that relative may sign an Affidavit of Support through which they promise to support you economically and to reimburse

the government in the case of you receiving any sort of public assistance (welfare).

The relative who signs this document must have sufficient income to cover the expenses proportional to the number of persons in the family of the immigrant and his accompanying relatives.

Nevertheless, if the sponsoring relative does not have sufficient funds as required by the law, it is possible to present a document of support signed by a friend or another family member.

### B. Pardon

If you find yourself in one of the categories that render you inadmissible, in a limited number of cases you may request a 'pardon'. You may be eligible for a pardon in the following situations:

- To have received the approval of your request for a visa as a legal resident.
- To wait until a visa is available for the category for which you qualify.
- If you are the spouse or child (not necessarily a minor child) of a U.S. citizen or of a legal resident of the U.S.
- To be able to prove that your relatives will suffer extreme hardship if you cannot immigrate.

If a U.S. consular official determines that you should request a pardon, you should fill out the forms and pay the fees to that official. If you request a 'pardon', it is probable that you will have to wait many months while your request is processed. During this period of time, you may not enter the United States.

Pardons are forbidden in the following cases, and these conditions may negate any possibility of you obtaining your legal residence:

- Having attempted to enter the U.S. under the pretenses of being a U.S. citizen when you were actually a foreign national;
- Any drug-related conviction, except that of the possession of small quantities of marijuana;
  - The attempt to bring undocumented individuals into this country, even if they were not charged with any crime. The only exception permitted is if these individuals were your immediate relatives.

## IV. Part Four: Deportation

### A. Your Rights If Arrested

In you are arrested within the U.S., either at your place of employment or as you travel within the country, you have the following rights:

- To call a lawyer;
- To speak to a representative of your consulate;
- To provide information to your relatives or close friend of where you are;
- To not give information about your nationality or





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immigration status. The only information you must provide is your name. Do not give a false name because this would make it difficult for your family to locate you;

- In the moment you are detained, or later in the deportation hearing, you may ask for Voluntary Exit. In some cases, Voluntary Exit will be beneficial in that it makes your repatriation to your country of origin more rapid. Nevertheless, if you have been previously arrested, your request for Voluntary Exit may be denied.

In the following instances, is not recommended to sign the forms for Voluntary Exit unless you have first consulted with an immigration lawyer:

- If your immigration documents are currently being processed
- If your spouse is a U.S. citizen or a permanent resident
- If you have any legitimate document that legalizes your presence in the U.S., even if the attending official questions its validity or rejects it. Examples would be if you have previously requested family reunification or amnesty, and the case is still pending;
- If you have lived continuously in the U.S. for more than 10 years and you have no criminal record;
- If your deportation hearing with an immigration judge is pending.

If any of the previous conditions exists, it is not recommended that you sign the Voluntary Exit documents. Instead, you may ask that your case be referred to an immigration judge for a Deportation Hearing. However, you run the risk that he will order your deportation and that you will immediately be detained.

- Should you decide to request a Deportation Hearing, in order to avoid being detained while you await the date of the hearing, you may ask the immigration authorities to permit you to post a bond.

However, if you have a criminal record it is unlikely that bond will be permitted.

- If you have asked that your case be heard by a judge, you may also ask that he permit you to leave under the rules of Voluntary Exit.
- If you are the mother or father of underage children and do not have anyone to care for them, you have the right of remaining with your children.

## B. Grounds for Deportation

Several grounds for deportation exist. As a general rule, these conditions apply to permanent residents as well as to undocumented individuals.

The following are some of the most important reasons for deportation:

- **Illegal entry:** Obviously, having entered illegally is a reason for deportation. It does not matter how many years ago the individual entered this country;

- **Helping other undocumented individuals to enter the U.S.:** They can deport if you knowingly assisted another person to enter without legal permission, or with false documents. It is not necessary that these crimes be legally processed;
- **Drugs:** You may be deported for transporting drugs into the U.S. It is not necessary that this crime be legally processed.
- **Failure to maintain permanent residence:** Permanent residents may be deported if they live more than one year outside of the U.S.
- **Criminal record:** Foreign nationals, including permanent residents, may be deported if they have been convicted of a crime. The following factors are considered in these cases:

- a. The individual's immigration status;
  - b. The particular charge against the individual;
  - c. When the charges occurred;
  - d. Whether or not the individual was declared guilty.
- C. Criminal Records

Criminal records are a frequent cause of deportation.

Below we will analyze the relationship between criminal records and deportation in terms of the three conditions mentioned in the above section.

### The individual's immigration status:

- a. **Undocumented:** When an undocumented individual is stopped by the police, he is frequently turned into immigration authorities. Consequently, it is best to avoid being accused of any crime. This practice is completely legal. Whether or not the undocumented person can defend himself against these charges will depend on the factors that will be mentioned in the following section;
- b. **Permanent Residents:** If the crime occurred during the first five years of residence, it is most likely that the individual will be deported. If it occurred after this period of time, the type of crime will most likely determine the action of the authorities.

### The type of criminal act:

- a. **Misdemeanors:** Normally, crimes that result in a sentence of less than six months in jail will not be considered grounds for deportation;
- b. **Serious (aggravated) crimes:** The law permits the deportation of individuals with serious criminal records. This is true even when they are permanent residents or married to permanent resident or American-citizen spouses and/or permanent resident or American-citizen children;

### Among the records that are considered as aggravated crimes are:

- a. Rape or sexual abuse of a minor;
- b. Embezzlement or money laundering of a sum in excess



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- of \$10,000;
- c. Theft, with the exception of theft of small amounts of money;
- d. Prostitution;
- e. Smuggling of aliens;
- f. Possession and/or traffic of drugs;
- g. Nearly any other violent crime, if the resulting sentence could have been more than one year, whether or not the sentence was actually passed.

## In accordance with the law, the following are not considered to be aggravated crimes:

1. Driving while intoxicated (DUI), whether or not convicted of a felony in accordance to the law.
2. Physical aggression that did not result in serious injury
3. Illegal use of a vehicle (joy riding, auto burglary)
4. Exposing a minor to a dangerous situation, even when there are no elements of physical or sexual abuse.

## When the crime occurred:

If the crime occurred during the first five years after immigrating, there are fewer grounds for defense. It is occurred after that period of time, it is possible that the legal resident may avoid being deported.

In 1996 the law expanded the list of crimes that may be grounds for deportation. Additionally, certain records that in the past were not considered grounds for deportation now may lead to deportation, even retroactively. Nevertheless, according to a ruling of the Supreme Court, if you find yourself in deportation proceedings because of a crime perpetuated before 1996, you may qualify for a pardon, as will be expanded upon in the next section.

## D. Rights during a Deportation Hearing

In a deportation hearing, the following are the rights of the immigrant:

- To be represented by a lawyer. Nevertheless, as there are public defenders provided in immigration cases, you will need to hire a lawyer.
- To have the services of an interpreter if you need help in this area.
- To present witnesses and documents in your defense.
- To interrogate the witnesses speaking against you, if there are any.
- That the process be carried out with due process.
- To use all legal challenges to your deportation that may exist.

## E. Defense and Appeal in the Deportation Hearing

Although you may be under deportation orders, your expulsion from the country is not automatic. Among the courses of appeal and defense that you may request are the following:

**1. Bonds:** If you request your hearing before an immigration judge, in order to avoid being detained during the hearing, you may request the issuance of a bond. The minimum bond in such cases is \$1,500. If you have a criminal record, it is probable that the bond will not be permitted. The judge may reduce the bond's value or eliminate it completely, releasing you under your word. In this case, you must request a 'bond hearing,' which may take a week, during which time you will remain in jail.

**2. Voluntary Exit:** In the moment of your detention, or later in your deportation hearing, you may request Voluntary Exit. In some cases, this may make your repatriation to your country of origin more rapid. Nevertheless, if you have been previously arrested, your request may be denied. The new law limits the time the judge may give you before you must leave the country under Voluntary Exit to a maximum of 120 days.

**3. Termination of Process:** In certain cases, you may ask that the judge terminate the case when the evidence for your deportation presented by the Bureau of Immigration and Customs Enforcement (ICE) is insufficient.

**4. Pardon according to section 212(c):** In accordance with the decision of the Supreme Court in the case of St. Cyr, foreign nationals that are declared guilty of crimes that are now considered aggravated crimes may ask for a pardon if they meet the following requirements:

- Be a permanent resident;
- Have been declared guilty of a crime that occurred before April 1, 1996;
- At the moment the time was committed, having lived at least 7 years in the U.S.

**5. Cancellation of Removal:** If a basis for deportation exists, in some cases the foreign national may avoid deportation if he qualifies for a condition known as Cancellation of Removal.





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If the judge permits this, the immigrant will be considered a legal resident of the U.S. Basically, there are three groups of immigrants who may qualify for cancellation of deportation.

- a. Legal residents: The legal resident may qualify for this category if he has been a permanent resident for five years and has been in this country for seven years, as long as he was not convicted of an offense that is considered as an aggravated crime.

**6. Undocumented:** The undocumented foreigner may qualify for this condition if he can prove that a. he has lived continuously for at least ten years in this country.

- b. He has no legal record that can be considered as aggravated crimes.
- c. he can prove that his deportation would cause extreme and exceptional suffering for his legal resident or citizen spouse or child.

**Victims of domestic violence:** The undocumented person who is the spouse of a citizen of the U.S. or of a legal resident and that has been the victim of domestic violence may ask for a Cancellation of Deportation if he or she can prove:

- a. three years continuously living in the U.S.
- b. his or her deportation would cause serious problems to his child, his spouse, or to him or her personally.

7. Political Asylum: In a deportation interview, you may ask for the condition of political asylum as explained above.

8. Appeals: If your petition or application is denied and a deportation warrant has been issued, your response is limited to Administrative Appeal presented before the corresponding federal court.

9. To re-open a deportation case: In certain cases, you may ask for your deportation case to be reopened. You should consult a lawyer if you find yourself in one of the following situations:

- a. you were deported because of driving while intoxicated;
- b. you were deported after 1996 for some crime that occurred before that date;
- c. You were deported because you did not appear for a hearing, but you had not received notification of that hearing;
- d. Your lawyer did not attend the hearing, did not present the documents in time, or in some other form committed a serious error as he was representing you.

## F. Deportation to your Port of Entry: Summary Removal

In accordance with the new law, if you try to enter with false documents or if you falsely say you are a U.S. citizen, the INS will detain you and apply a new process called Summary Removal. Unless you qualify for political

asylum, you will not have the right to a hearing before an immigration judge nor to consult with a lawyer.

If you are processed in this manner, this will remain in your record and will disqualify you for a visa, local border passes or to legalize your situation until you have spent five years outside of the U.S.

Committing this crime a second time can disqualify you for 20 years, and the third time brings this sanction for your lifetime. If you try to enter claiming to be a U.S. citizen when you are not, you may be disqualified to receive an immigration visa for the remainder of your life.

## Part Five: Deception in Immigration Procedures

Unfortunately, considerable deception exists with relation to immigration matters. Mexico's consular network has detected and reported several cases of deception on the part of immigration lawyers and assistants. To avoid being deceived, the Mexican Consulate recommends that you exercise considerable caution with people:

### Who offer to process your case under the areas of:

1. Amnesty
2. Political Asylum
3. Length of time (seven or ten years)
4. Suspension or Cancellation of Deportation

### Whose office is located in their home;

- Who cannot give you the name of the section of immigration law under which they will submit your case and detailed requirements relating to that law;
- Who assure you that they can obtain legal immigration documents for you, after several other lawyers have advised you that you have very few possibilities of qualifying;
- Who say they can speed up the processing of your pending case. Unless the individual who is immigrating has been naturalized in the U.S. there is



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no way to do this;

- Who do not have a professional license to practice law;
- Who claim to be an immigration official but cannot show their official id card that identifies them as such;
- Who are 'notarios' or 'immigration advisors', as these are not lawyers and may deceive you or negatively influence your immigration situation.

## Part Six: Common Questions

### A. Work Permits

Many people do not wish to immigrate permanently to the U.S., but rather only wish to obtain a legal work permit. Unfortunately, as a general rule, this is only possible if your employer is willing to help you legalize your status.

Except in a few very exceptional cases, the only people who are awarded temporary work permits are those who present to the INS office a request for 'Adjustment of Status' because they are close relatives (husbands, wives, children) of U.S. citizens or those who are in other categories but are very close to the date of their immigration appointment.

Some people that are under deportation orders will be able to present a request for a work permit.

Nevertheless, we do not recommend that you turn yourself into the INS in order to request this permit. While it may be offered to you for use during your pre-deportation period, but a subsequently you will be required to leave the country. Do not be deceived by notarios or unscrupulous lawyers who advise you to turn yourself into the INS in order to request a work permit.

The fact that you have applied to be a legal resident of this country does not give you any right to remain here or to work in the U.S. Nor does it include permission to return after you have left the country.

### B. Entry and Exit Visas

Many people who do not qualify as an immigrant according to the rules outlined above may ask if they can obtain a multiple re-entry permit that will allow them to enter and exit the country frequently.

Unfortunately, in most cases, this permission is denied. The fact that you have applied to be a legal resident of this country does not give you any right to remain here or to work in the U.S. Nor can you obtain permission to return after you have left the country.

On the other hand, if you have a pending immigration case, leaving the country may negatively affect your chances of legalizing your residency in the future.

### C. How long will it take to process my case?

The length of time depends on the category through which you are requesting your visa. There is no numerical limit to the number of people who can ask for legal immigration based on the fact that they have a U.S. citizen spouse, parent, or minor child.

This sort of case requires less time, but nevertheless it may take up to 18 months, due to the heavy case load being

processed.

For all other foreign nationals, the law limits the number of visas that may be awarded each year, according to category. For this reason, waiting lists are formed according to the date the application was filed, its category, and the nationality of the applicant.

In accordance with the new law, after April 1, 1997 the length of time you have spent in the U.S. with illegal status as you await your immigration appointment may count as part of the time you are out of status and may disqualify you for a visa unless you qualify for under section 245 (i).



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## Guía Básica del Migrante en los Estados Unidos

El propósito de este resumen es informar de manera general, no dar asesoría sobre un caso específico.

No sería posible en un resumen de esta naturaleza comentar todas las situaciones.

Siempre recomendamos que consulte con un abogado sobre su situación específica.

### I. Primera Parte: Categorías para inmigrar a Estados Unidos.

**Para poder inmigrar legalmente a Estados Unidos, la persona debe encontrarse en una de las siguientes categorías:**

- Inmigración por medio de la familia
- Inmigración en base al trabajo
- Refugiados y Asilo político
- Inmigrantes de diversidad: La lotería de visas
- El Tiempo
- Amnistía

#### A. Inmigración para familiares

Los familiares que pueden presentar una solicitud a su favor son:

##### 1. Parientes inmediatos:

No hay límite en el número de inmigrantes en este grupo.

- El cónyuge de un ciudadano de Estados Unidos.
- Los hijos menores de 21 años de los ciudadanos de Estados Unidos. Se incluyen en este grupo los hijastros de un ciudadano de Estados Unidos siempre y cuando la persona que desea inmigrar tuvo menos de 18 años de edad cuando su madre o padre se casó con la persona que va a presentar la solicitud. Si el hijo fue menor de 21 años cuando se presentó la solicitud, no importa que rebase dicha edad antes de terminar el caso.
- Los padres de los ciudadanos de Estados Unidos, siempre y cuando el ciudadano sea mayor de 21 años de edad.

##### 2. Categorías de preferencia:

La ley limita el número de inmigrantes en este grupo, mismo que resulta en listas de espera de varios años en todas las categorías.

- Primera preferencia: Los hijos solteros de los ciudadanos de Estados Unidos.
- Segunda preferencia 2A: El cónyuge de un extranjero con residencia legal, así como sus hijos menores de 21 años de edad.
- Segunda preferencia 2B: Los hijos mayores de 21 años de edad de los residentes legales, siempre y cuando el hijo sea soltero.
- Tercera Preferencia: Los hijos casados de los ciudadanos de Estados Unidos. También califican el

cónyuge y los hijos menores de 21 años de edad Del inmigrante.

- Cuarta Preferencia: Los hermanos de los ciudadanos de Estados Unidos, siempre y cuando éste sea mayor de 21 años de edad. También califican el cónyuge y los hijos menores de edad del hermano(a).

### 3. Proceso para inmigrar si tiene un familiar:

El proceso normal para inmigrar si tiene un familiar se describe a continuación. Si se encuentra dentro de Estados Unidos, posiblemente califique para seguir el procedimiento para el cambio de su calidad migratorio dentro del país que se comenta en este resumen.

- El pariente (residente legal o ciudadano de Estados Unidos) que le va a inmigrar debe presentar una solicitud a la nueva Oficina de Ciudadanía y Servicios de Inmigración (BCIS) junto con los documentos necesarios, tales como actas de nacimiento y matrimonio y el pago del derecho correspondiente. Los documentos en idiomas extranjeros deben traducirse al inglés.
- La oficina de ciudadanía y servicios de inmigración revisa los documentos y manda un “aviso de aprobación”. En dicho aviso aparece lo que se conoce como la “fecha de prioridad”, que es la que va a determinar el orden en el que se va a conceder su cita para la entrevista necesaria para la entrega de su visa de residencia legal. La aprobación de la oficina de ciudadanía y servicios de inmigración no quiere decir que uno ya esté legal, ni le protege en contra de ser detenido o expulsado. Tampoco es un permiso para trabajar.
- Después de enviarle el “aviso de la aprobación”, el caso se refiere al “Centro Nacional de Visas.” Dicho centro le mandará los formatos relacionados con la carta de manutención que el pariente que le esté inmigrando debe firmar. Este formato, junto con las declaraciones de impuestos y constancias de trabajo de la persona que le está inmigrando y el pago del derecho correspondiente deben de remitirse al mismo centro.
- Después de revisar la carta de manutención, el centro nacional de visas refiere el caso al consulado de Estados Unidos en su país de origen, en donde entrará en una lista de espera según la categoría que le corresponde.
- Cuando el consulado de Estados Unidos recibe su caso y cuando se acerca su “fecha de prioridad” dicho consulado le enviará otro paquete de formatos, mismos que hay que llenar y devolver. El consulado hará una investigación de su caso y le avisará de su cita final.
- Cuando asista a su cita final, si todo está en orden, recibirá su visa de residente legal y puede regresar a

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Estados Unidos en forma legal. Sin embargo, es posible que el Consulado no le otorgará su visa si existe algún motivo de inadmisibilidad, mismos que se comentan a continuación.

- Como el proceso arriba mencionado puede tardar varios años, es muy importante avisar al Consulado de Estados Unidos sobre cualquier cambio de domicilio pues de no hacerlo el envío de su cita se podría extravíar.

## B. Inmigración Con Base En El Empleo

Hay diferentes categorías para inmigrar con base en su empleo, pero consideramos que es más importante entender el proceso. Como regla general pueden inmigrar en base a su trabajo las personas altamente calificadas, con título universitario o con un oficio especializado siempre y cuando tengan una oferta de trabajo en Estados Unidos.

¿Así que su patrón está dispuesto a ayudarle?

Eso es bueno pero no es suficiente. Usted y su patrón tienen que cumplir con un trámite de conocido como “certificación de trabajo.” El propósito básico del trámite de “certificación de trabajo” es comprobar que no hay trabajadores calificados disponibles en Estados Unidos que puedan hacer el trabajo.

Es probable que el patrón tenga que anunciar la plaza y entrevistar a todos los aspirantes.

**Primer Paso:** En la mayoría de las categorías por el empleo, el patrón debe presentar una solicitud para la certificación del trabajo (Formato ETA 750) con la administración de capacitación y empleo del departamento de trabajo. Dicho formato debe incluir una descripción detallada del trabajo que le ofrecen, así como los requisitos mínimos necesarios para poder hacer lo. Usted debe completar la parte del formato ETA 750 que resume su experiencia y calificaciones y presentar los documentos que comprueben que usted cuenta con dichos requisitos.

Los requisitos para el trabajo deben ser legítimos, es decir no puede ser que usted es la única persona que califique.

El salario debe ser adecuado para la experiencia y capacitación que soliciten.

**Segundo Paso:** Si el Departamento de Trabajo otorga la “certificación de trabajo”, su patrón debe presentar el formato I-140 con la oficina de ciudadanía y servicios de inmigración. Dicha solicitud debe incluir la certificación recibida del departamento de trabajo y sus documentos de prueba. Los documentos en idiomas extranjeras deben traducirse al inglés.

En dicho formato debe señalar si pretende regresar a su país para terminar su trámite o si califica para solicitar su cambio de calidad migratoria en Estados Unidos. Para seguir adelante con su caso es necesario que la oficina de ciudadanía y servicios de inmigración (BCIS) apruebe esta solicitud. La aprobación señalará cuál de las categorías de preferencia por el empleo le corresponde.

**Tercer Paso:** Si la oficina de ciudadanía y servicios de inmigración acepta su solicitud, debe presentar su solicitud de cambio de calidad migratoria en la oficina regional del BCIS o esperar la notificación del consulado de Estados Unidos que usted señaló en su formato I-140.

**Cuarto Paso:** Cuando el consulado de Estados Unidos recibe su caso y cuando se acerca su “fecha de prioridad” dicho consulado le enviará otro paquete de formatos, mismos que hay que llenar y devolver. El consulado hará una investigación de su caso y le avisará de su cita final.

Cuando asiste a su cita final, si todo está en orden, recibirá su visa de residente legal y puede regresar a Estados Unidos en forma legal. Sin embargo, es posible que el consulado no le otorgue su visa si existe algún motivo de inadmisibilidad, mismos que se comentarán a continuación. Como el proceso arriba mencionado puede tardar varios años, es muy importante avisar al consulado de Estados Unidos sobre cualquier cambio de domicilio pues de no hacerlo el envío de su cita se podría extravíar.



## C. Asilo Político

La cuestión del asilo político es sumamente complicada. Desgraciadamente, hay abogados y gestores que recomiendan a sus clientes que presenten estas solicitudes sin explicarle las consecuencias. La verdad es que son pocos los casos en los cuales procede presentar una solicitud de asilo político.

Los requisitos para solicitar el asilo político se resumen en no poder regresar a su país de origen por motivo de su:

- Su raza o grupo étnico
- Sus opiniones sobre cuestiones políticas
- Su religión

Se presentan las solicitudes de asilo político a un centro especial. Si se aprueba la solicitud,



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tendrá la calidad de asilado hasta que haya una visa de residente permanente disponible, mismo que puede tardar varios años.

## No son motivos de asilo político los motivos siguientes:

- Delincuencia generalizada en su país de origen
- Condiciones económicas
- Falta de trabajo
- Falta de oportunidades de educación para Sus hijos
- Falta de atención médica adecuada
- El hecho de que usted ya esté acostumbrado de vivir en Estados Unidos.

Si la oficina de ciudadanía y servicios de Inmigración no acepta su solicitud de asilo político, lo que es muy probable, le citarán a una audiencia de deportación. Por este motivo, son muy excepcionales los casos en los cuales conviene presentar dicha solicitud.

## D. Visas de Diversidad: La Lotería de Visas

Cada año se otorgan 50,000 visas a inmigrantes que son nacionales de países que no tienen un flujo migratorio significativo a Estados Unidos. El propósito de esta “lotería de visas” es diversificar el flujo migratorio a este país. Cada año el departamento de estado determina cuáles países tienen el número más bajo de personas que inmigraron a Estados Unidos. Esta lista puede variar de un año al otro. Como regla general, casi siempre vienen incluidos los países europeos y africanos. Nunca han aparecido en la lista de visas de “diversidad” México, China, las Filipinas o la India ni es probable que participen en el futuro previsible.

## E. El Tiempo

Actualmente no hay ninguna ley que le permita legalizar su situación migratoria por el puro hecho de tener siete, diez o más años de residencia como indocumentado en Estados Unidos.

De acuerdo con la ley anterior, en ciertos casos muy excepcionales, si contaba con siete años o más de residencia continua y además podía demostrar que su deportación resultaría en una situación grave para usted o para su familia podría solicitar al juez de inmigración un beneficio conocido como “suspensión de deportación”. La ley de 1996 desapareció la figura de “suspensión de deportación” y la sustituyó con otra que se llama “cancelación de remoción”.

Dicha figura es aplicable en menos casos que la suspensión de deportación. Para calificar para dicho beneficio el extranjero indocumentado tiene que comprobar:

1. tener un mínimo de 10 años de residencia continua en Estados Unidos
2. no tener antecedentes penales y
3. que su deportación provocará dificultades sumamente graves e inusitadas para su cónyuge o hijos, siendo requisito que éstos tengan la nacionalidad norteamericana o residencia legal.

Cabe señalar que la solicitud del beneficio de “cancelación de remoción” tiene que hacerse ante un juez de inmigración en un juicio de deportación. En otras palabras, solicitarlo significa que tendrá que entregarse voluntariamente a la oficina de ciudadanía y servicios de inmigración y exponerse al riesgo de ser deportado. Por lo tanto, en casi ningún caso es recomendable solicitarlo a menos que ya esté en un proceso de deportación.

No se deje engañar por notarios públicos, asesores de inmigración o abogados sin escrúpulos que le aconsejan que se entregue a migración para pedir su legalización mediante esta figura. Si el juez no aprueba su solicitud, como sucede en la gran mayoría de los casos, puede resultar deportado. Debido a que los casos de este tipo que son aprobados son tan excepcionales, sólo es recomendable solicitarlo en el caso de ser detenido por el Servicio de Inmigración, o ya en el proceso jurídico de deportación.

## II. Segunda Parte. Cambio de calidad migratorio dentro de Estados Unidos

La ley de inmigración de Estados Unidos supone que en un caso normal el extranjero que desea inmigrar está esperando en su país de origen. En dichos casos, se presentará la solicitud en este país y el inmigrante acudirá a una cita en el Consulado de Estados Unidos para determinar si califica para una visa de residente legal, de acuerdo a las categorías y motivos de inadmisibilidad arriba mencionados.

Sin embargo, en muchos casos, el extranjero se encuentra en Estados Unidos, tal vez con una visa de no-inmigrante o en forma indocumentada. En ciertos casos no tendrá que trasladarse al Consulado de Estados Unidos para terminar su trámite de visa de inmigrante, sino que podrá solicitar su cambio de calidad migratoria en Estados Unidos. Todo el proceso se tramita ante la oficina de Inmigración.

## A. Casos Normales

Como regla general, hay cinco requisitos para calificar para el cambio de calidad migratoria:

- Recibir la aprobación de su solicitud para una visa de residente legal.
- Esperar a que exista una visa disponible de acuerdo a la categoría que le corresponde. (Puede tardar varios años).
- Comprobar su entrada legal a Estados Unidos.
- Contar con documentos migratorios en vigor, o en su defecto ser pariente inmediato de un ciudadano de Estados Unidos.
- No haber trabajado en Estados Unidos sin el permiso del Servicio de Inmigración o en su defecto ser pariente inmediato de un ciudadano de Estados Unidos.

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## III. Tercera Parte: Motivos de Inadmisibilidad

Además de encontrarse en uno de los grupos mencionados que pueden inmigrar, los extranjeros que desean legalizar su situación migratoria no deben tener ningún motivo de inadmisibilidad. Es decir, pese al hecho de que la oficina de ciudadanía y servicios de inmigración aprobó la solicitud que presentó su pariente o patrón, le pueden denegar su visa de residencia legal si tiene uno de los siguientes problemas mencionados a continuación.

### A: Motivos de Inadmisibilidad

- Tiene antecedentes penales. Entre los delitos que pueden impedir que reciba su visa de inmigrante son:
  - a. Robo, exceptuando robo menor con sentencia de menos de seis meses.
  - b. Casi cualquier delito relacionado con drogas, sin importar que dicho antecedente haya sido borrado.
  - c. Delitos de violencia, tales como agresión, violencia doméstica, abuso de menores, etc.
- Tiene antecedentes migratorios. Entre los migratorios que le pueden perjudicar son:
  - a. Deportación formal, con audiencia ante un juez.
  - b. Estancia indocumentada en Estados Unidos, a menos de que solicite su cambio de calidad migratoria dentro de Estados Unidos.
  - c. Haber intentado entrar a Estados Unidos diciendo ser ciudadano de Estados Unidos cuando no lo es o con documentos falsos o de otra persona.



d. Le citaron para una audiencia ante el juez migratorio y no acudio .

e. Solicito salida voluntaria y no abandono el territorio norteamericano dentro del termino que le otorgaron, puede ser descalificado para recibir una visa de inmigrante hasta no pasar 10 años fuera de los Estados Unidos.

f. Le detuvieron con personas indocumentadas en su vehiculo, aunque no le procesaron por delito alguno.

- No tiene solvencia economica suficiente para mantenerse en Estados Unidos sin convertirse en carga publica. De acuerdo con la ley, si su pariente (por ejemplo padre, hijo, hermano o conyuge) presento la solicitud para inmigrarle, dicha persona debe firmar un documento mediante el cual se compromete a apoyarle economicamente y a rembolsar al gobierno en el caso que le otorguen algun tipo de asistencia publica (welfare).

El pariente que firma dicho documento debe contar con un ingreso suficiente para cubrir los gastos que corresponden al numero total de personas en la familia del inmigrante y de los parientes que lo acompañan.

Sin embargo, si su pariente no cuenta con el ingreso que marca la ley, siempre es posible presentar otra declaración de manutención firmada por un amigo o familiar.

### B: Perdones

Si se encuentra en una de las categorías de personas que son inadmisibles o que son sujetas a las sanciones de inadmisibilidad, en ciertos casos puede solicitar un “perdon”. Los requisitos para solicitar un perdon son:

- Haber recibido la aprobación de su solicitud para una visa de residente legal.
- Esperar hasta que exista una visa disponible de acuerdo con la categoría que le corresponde.
- Ser el conyuge o hijo (no necesariamente menor de edad) de un ciudadano de Estados Unidos o de un residente legal.
- Poder comprobar que los parientes arriba mencionados sufren en forma extrema si no puede inmigrar.
- Si el funcionario del Consulado de Estados Unidos determina que debe solicitar un perdon, debe presentar el formato y pagar el derecho correspondiente a dicho funcionario.
- Si es necesario solicitar un “perdon” es probable que tenga que esperar varios meses mientras que se tramita su solicitud. Durante este periodo, no debe cruzar a Estados Unidos.

No existen perdones en los siguientes casos, y se tiene un antecedente de este tipo es posible que jamás podrá obtener su residencia legal.

- Haber intentado entrar a Estados Unidos diciendo ser ciudadano de Estados Unidos cuando no lo es
- Casi cualquier delito relacionado con drogas, sin importar que dicho antecedente haya sido borrado.



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La única excepción es para la posesión de cantidades menores de marihuana.

- Intentó introducir personas indocumentadas, aunque no le procesaron por ningún delito. La única excepción es para la introducción de sus parientes inmediatos.

## IV. Cuarta Parte: Deportación

### A. Derechos En Caso de Ser Detenido en El Interior del País

En caso de ser detenido en el interior de Estados Unidos, por ejemplo, en su trabajo, en la carretera, en el tren o autobús o en las instalaciones de revisión alejadas de la frontera, tiene los siguientes derechos:

- A llamar a un abogado.
- A comunicarse con el Consulado de su país de origen.
- A que le informen en donde se encuentra y a comunicarse con sus familiares o persona de su confianza.
- A no dar información alguna sobre su nacionalidad o calidad migratoria. La única información que está obligado a proporcionar es su nombre. No debe dar un nombre falso porque su familia no podrá localizarte.
- Al momento de la detención, o posteriormente en la audiencia de deportación, puede pedir su salida voluntaria. En algunos casos, la salida voluntaria le beneficia en cuanto a que hace más rápida su repatriación y no queda antecedente de deportación en su expediente. Sin embargo, si ha sido detenido con anterioridad la salida voluntaria podría serle negada. No es recomendable firmar la salida voluntaria sin consultar previamente con un abogado especializado en materia migratoria si se encuentra en las siguientes situaciones:

- a: Tiene sus documentos migratorios en trámite.
  - b: Su cónyuge es ciudadano de Estados Unidos o residente permanente.
  - c: Tiene algún documento legítimo que ampare su estancia en Estados Unidos, sin importar que el oficial lo rompa o diga que no es válido. Por ejemplo, si solicitó amnistía o la unidad familiar y su caso todavía no se ha resuelto.
  - d: Tiene más de diez años de residencia continua en Estados Unidos y no tiene antecedentes penales.
- A solicitar una audiencia de deportación ante el juez migratorio. Si no le conviene firmar su salida voluntaria por los motivos expuestos arriba, puede pedir que su caso sea hecho del conocimiento de un juez de Inmigración, lo que se conoce como audiencia de deportación. Esto puede ser conveniente o no dependiendo de su situación. Si sabe que no goza de ningún beneficio de inmigración y no tiene su caso en trámite tal vez no sea conveniente solicitar una audiencia ante el juez, ya que lo más probable es que éste ordenará su salida del país y puede permanecer detenido pendiente la audiencia.

- Si decide solicitar una audiencia de deportación, a fin de evitar que quede detenido mientras se celebra la audiencia, puede solicitar a la autoridad migratoria que considere la posibilidad de su libertad bajo fianza. Si tiene antecedentes penales es poco probable que le otorguen libertad bajo fianza.
- Si ha solicitado que su caso sea llevado ante un Juez puede solicitar igualmente a él que se le otorgue una salida voluntaria, lo cual será decidido a la luz de las circunstancias del caso.
- Si es madre o padre de hijos menores y no existe quien los cuide, tiene el derecho a que no le separen de ellos.

### B: Motivos Para La Deportación

Existen varios motivos para la deportación. Como regla general, dichos motivos aplican tanto a los residentes permanentes como a los indocumentados.

#### Entre los motivos más importantes son:

- **Entrada Ilegal:** Obviamente, haber entrado en forma ilegal es motivo de deportación. No importa cuanto tiempo haya pasado desde que la persona entró.
- **Introducción de Indocumentados:** Le pueden deportar si a sabiendas ayudó a otra persona entrar en forma indocumentada o con documentos falsos, sin importar que no haya sido con fines de lucro. Para propósitos de deportación no es necesario que le procesen penalmente por delito alguno.
- **Introducción de Drogas:** Le pueden deportar por haber introducido a drogas a Estados Unidos. Para propósitos de deportación no es necesario que le procesen penalmente por delito alguno.
- **Abandonar la Residencia Permanente:** Los residentes permanentes pueden ser deportados si abandonan a su residencia. Como regla general, se considera que el residente permanente abandonó su residencia si ha vivido fuera de Estados Unidos durante más de un año.
- **Antecedentes Penales:** Procede la deportación de extranjeros, inclusive los residentes permanentes, si cuentan con ciertos antecedentes penales. Para determinar si procede la deportación, son importantes cinco factores:
  - a: La calidad migratoria de la persona
  - b: El antecedente que tiene
  - c: Cuándo ocurrió el antecedente
  - d: Si se declaró culpable o no

### C: Los Antecedentes Penales

Los antecedentes penales son causa frecuente de la deportación. En este apartado, analizaremos la relación entre los antecedentes penales y la deportación de acuerdo a los factores que se identificaron arriba:

#### La Calidad Migratoria de la persona:

- a. Indocumentados: En caso que un indocumentado sea



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detenido por la policía es frecuente que lo turnen a las autoridades migratorias, aun si resultó no ser responsable por el delito que le imputaron. Dicha política es totalmente legal. Si el indocumentado puede defenderse de la deportación dependerá de los factores que se comentan en el apartado que sigue.

- b: Los Residentes Permanentes: Si el delito ocurrió dentro de los primeros cinco años de residencia, es más factible que proceda la deportación. Si es después de este tiempo, depende de la clasificación del delito.

## El tipo de delito de que se trate

- a: Delitos menores: Generalmente, delitos con una sanción máxima de menos de seis meses de cárcel no causarán la deportación.
- b: Los delitos agravados: La ley permite la deportación de personas con antecedentes que se consideran delitos agravados, sin importar que sean residentes permanentes o que tengan cónyuges y/o hijos que son ciudadanos o residentes legales. Entre los antecedentes que se consideran como delitos agravados son:
- 1: Violación y abuso sexual de un menor de edad.
  - 2: Fraude o lavado de dinero con una cantidad mayor que \$10,000.
  - 3: Robo, con excepción de los robos de menor cuantía.
  - 4: Prostitución
  - 5: Tráfico de indocumentados
  - 6: Posesión y/o tráfico de drogas
  - 7: Casi cualquier otro delito violento si la sentencia que pudiera haber sido dictada era mayor de un año, sin importar la sentencia que efectivamente se dictó.

## De acuerdo con la jurisprudencia, los siguientes delitos no son delitos agravados:

- 1: Manejar bajo la influencia (DUI), sin importar que se dictó sentencia de felonía de acuerdo a las leyes del Estado.
- 2: Agresión física que no resultó en lesiones serias
- 3: Introducirse en un vehículo ajeno sin permiso (joy riding, auto burglary).
- 4: Exponer a un menor de edad a una situación peligrosa, siempre que cuando no haya elementos de abuso físico o sexual del menor.

## Cuándo ocurrió el delito

Si el delito ocurrió dentro de los primeros cinco años después de inmigrar hay menos defensas; si ocurrió después de dicho término, es posible que el residente legal podrá evitar la deportación.

En 1996 la ley aumentó la lista de delitos que pueden ser motivo de deportación. Inclusive, ciertos antecedentes que en el pasado no fueron motivo para la deportación ahora sí pueden dar lugar a dicha sanción y aún en forma retroactiva. Sin embargo, de acuerdo con un fallo de la Suprema

Corte, si usted se encuentra en un procedimiento de deportación por causa de un delito que ocurrió antes de 1996, posiblemente califique para un perdón como se comenta a continuación.

## D: Derechos en Una Audiencia de Deportación

En una audiencia de deportación todo individuo cuenta con los siguientes derechos:

- A ser representado por un abogado. Sin embargo, no hay abogados de oficio o defensores públicos en los casos de inmigración, así que tendría que contratar a un abogado.
- A contar con la asistencia de un intérprete si lo necesita.
- A presentar testigos y pruebas en su propia defensa.
- A interrogar a los testigos en su contra, si lo hay.
- A que el proceso se lleve a cabo de acuerdo a la ley.
- Solicitar los beneficios que pueden evitar su deportación si califica.

## E: Defensas y Recursos en Una Audiencia de Deportación

Aunque esté en un proceso de deportación, su expulsión del país no es automática. Entre los recursos y beneficios que puede solicitar son los siguientes:

- 1: **Fianzas:** Si solicita su audiencia ante un juez migratorio, a fin de evitar que quede detenido mientras se celebra la audiencia, puede solicitar su libertad bajo fianza. La fianza mínima es de \$ 1,500 dólares. Si tiene antecedentes penales, es probable que no le otorguen libertad bajo fianza. El juez puede reducir la cantidad de la fianza o eliminarla por completo permitiendo la libertad bajo palabra. Para ello habrá que esperar a que se fije una fecha para una “audiencia de fianza” lo que puede significar una semana o más de detención.
- 2: **Salida Voluntaria:** Al momento de la detención, o posteriormente en la audiencia de deportación, puede pedir su salida voluntaria. En algunos casos, la salida voluntaria le beneficia en cuanto hace más rápida su repatriación. Sin embargo, si ha sido detenido con anterioridad, la salida voluntaria podría ser negada. La nueva ley limita el término que el juez puede otorgarte para efectuar su salida voluntaria a un máximo de 120 días.
- 3: **Terminación del proceso:** En algunos casos, puede pedir que el juez de por concluido el proceso si el motivo que alega a la Oficina de Inmigración y Enfozamiento de Aduanas (BICE) como causal para su deportación no es suficiente.
- 4: **Perdón de acuerdo a la sección 212(c):** De acuerdo con el fallo de la Suprema Corte en el caso St. Cyr, los extranjeros que se declararon culpables de delitos que ahora se considera delitos agravados pueden solicitar un perdón si cumplen los siguientes requisitos:
  - Ser residente permanente



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- Haber declarándose culpable a un delito que ocurrió antes del 1 de abril de 1996.
- En dicho momento tenía cuando menos 7 años de vivir en el país.

**5: Cancelación de Remoción:** Si existe una base para la deportación, en algunos casos el extranjero puede evitar se deportado si califica para el beneficio conocido como “cancelación de remoción.” Si el juez concede dicho beneficio, tendrá la calidad de residente legal de Estados Unidos. Básicamente hay tres grupos de extranjeros que pueden calificar para la cancelación de deportación.

**a: Residentes Legales:** El residente legal puede calificar por este beneficio si tiene cinco años de residencia permanente y siete años de estancia en el país, siempre y cuando no tenga un antecedente penal que se considera como delito agravado.

**b: Indocumentados:** El extranjero indocumentado puede calificar por este beneficio si puede comprobar:

- tener diez años en el país en forma continua,
- no tener antecedentes penales que se consideran ser delitos agravados,
- puede comprobar que su deportación resultará en un sufrimiento muy grave y excepcional a su cónyuge o hijo es ciudadano o residente legal de Estados Unidos.

**c: Víctimas de Violencia Doméstica:** El indocumentado que es cónyuge de un ciudadano de Estados Unidos o de un residente legal y que ha sido víctima de violencia doméstica puede solicitar la cancelación de deportación si puede comprobar:

- tener tres años de residencia en forma continua en Estados Unidos,
- su deportación causará problemas serios a su hijo, cónyuge o a ello mismo.

7. Asilo Político: En una audiencia de deportación podrá solicitar el beneficio de asilo político como se comentó arriba.

8. Apelaciones: La ley limita los recursos de apelación en contra de un auto de deportación. En términos generales, proceden únicamente el recurso de apelación administrativa y el recurso de amparo (habeas corpus) presentado ante la corte federal correspondiente.

9. Re-Abrir Un Caso de Deportación: En ciertos casos, puede solicitar re-abrir su caso de deportación. Debe consultar a un abogado si se encuentra en una de las siguientes situaciones:

- a: Fue deportado por manejar bajo la influencia
- b: Fue deportado después de 1996 por algún delito que ocurrió antes de dicha fecha.
- c: Fue deportado en su ausencia y no recibió la notificación de la audiencia.
- d: Su abogado no asistió a la audiencia, no presentó los documentos con tiempo o en alguna otra forma cometió un error serio en su representación.

## F: Deportación en el Puerto de Entrada:

### La Remoción Sumaria

De acuerdo con la nueva ley, si intenta entrar utilizando documentos falsos o dice ser ciudadano de Estados Unidos cuando no lo es, Inmigración le detendrá y le aplicará un proceso nuevo llamado “remoción sumaria.” A menos que califique para el asilo político, no tendrá derecho a una audiencia con un juez migratorio ni a la asesoría de un abogado.

Si es procesado de esta forma, esto queda en su expediente y le descalifica para recibir una visa, tarjeta de cruce local o para legalizar su situación hasta no pasar cinco años fuera de Estados Unidos.

Cometer de nuevo el mismo delito le puede descalificar por 20 años y la tercera vez es de por vida. Si intentó entrar como ciudadano de Estados Unidos cuando no lo es, puede descalificarse para recibir una visa de inmigrante por el resto de su vida.

## V. Quinta Parte: Fraude En Los Trámites de Inmigración

Desgraciadamente existe mucho fraude en los trámites de inmigración. La red consular de México ha detectado y denunciado a las autoridades varios casos de fraude. Para evitar el fraude recomendamos lo siguiente:

- Tener mucho cuidado con personas que ofrecen tramitar su caso por las siguientes figuras:

1. Amnistía
2. Asilo Político
3. El Tiempo (Siete o Diez años)
4. Suspensión o Cancelación de Deportación.

- Tener mucho cuidado con personas cuya oficina está en su casa.

- Exigir que le digan el nombre de la figura de la ley que se pretende utilizar para tramitar su caso y los requisitos para la misma.

- Tener mucho cuidado con personas que le aseguren que sí puede inmigrar cuando varios abogados le han informado que tiene pocas posibilidades.

- Tener mucho cuidado con personas que le digan que pueden agilizar un caso que ya tiene pendiente.

A menos que la persona que le está inmigrando se haya naturalizado en Estados Unidos, los casos no se pueden agilizar.

- Exigir ver la Cédula Profesional de la persona quien dice ser abogado.
- Exigir ver la placa de la persona quien dice ser oficial de Inmigración.
- No acudir a “notarios” o “consejeros de inmigración” ya que no son abogados y pueden defraudarle o inclusive perjudicar su situación migratoria.

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## VI. Sexta Parte: Preguntas Comunes

### A. Permisos de Trabajo

Muchas personas no quieren inmigrar a Estados Unidos de manera permanente—solo quieren obtener un permiso para poder trabajar legalmente en este país. Desgraciadamente, como regla general las leyes no contemplan este tipo de permiso, sin importar que su patrón esté dispuesto a ayudarlo.

Salvo casos muy excepcionales, las únicas personas que pueden recibir permisos temporales de trabajo son aquéllos que presentan a la Oficina de Ciudadanía y Servicios de Inmigración una solicitud de “Ajuste de Status” por ser familiares directos (esposos, esposas e hijos) de ciudadanos norteamericanos o por otras categorías que ya están muy cerca de la fecha de su “cita migratoria”.

Algunas personas que ya se encuentren en proceso de deportación también podrán presentar una solicitud para un permiso de trabajo. Sin embargo, no recomendamos que se entregue a Inmigración con el propósito de obtener tal permiso. Tal vez se lo otorguen mientras que dure el proceso de deportación, pero posteriormente tendrá que abandonar el país.

No se deje engañar por notarios públicos, asesores de inmigración o abogados sin escrúpulos que le aconsejan que se entregue a Inmigración para pedir un permiso de trabajo.

El hecho de haber presentado una solicitud para una visa de residencia legal no le da ningún derecho a permanecer o trabajar en Estados Unidos. Tampoco puede obtener un permiso para regresar después de una salida de los Estados Unidos.

### B. Permisos Para Entrar y Salir

Muchas personas que no califican para inmigrar de acuerdo a lo que se comentó arriba, preguntan si pueden obtener un permiso para entrar y salir de Estados Unidos. Desgraciadamente, en la mayoría de los casos, no es posible obtener tal permiso. El hecho de haber presentado una solicitud para una visa de residencia legal no le da ningún derecho a permanecer o trabajar en Estados Unidos.

Tampoco puede obtener un permiso para regresar después de una salida de los Estados Unidos. Por otra parte, si ya tiene una solicitud pendiente, abandonar este país puede perjudicar sus posibilidades de legalizar su situación en el futuro.

### C: ¿Cuanto tiempo tardará mi trámite?

El tiempo que puede tardar depende de la categoría en la que esté solicitando su visa. No hay límite en el número de visas para personas que están solicitando su inmigración legal por contar con un cónyuge, padre o hijo (mayor de 21 años) que es ciudadano de Estados Unidos.

Este tipo de caso se tramita en menos tiempo, sin embargo puede tardar hasta 18 meses debido a la carga de trabajo administrativo.

Para todos los demás extranjeros, la ley limita el número de visas que se pueden otorgar cada año por país y por categoría. Por lo tanto se forman listas de espera según la fecha en que presentó su solicitud, su categoría y su nacionalidad.

El hecho de haber presentado una solicitud para una visa de residente legal no le da ningún derecho a permanecer o trabajar en Estados Unidos.

De acuerdo con la nueva ley, después del 1ro de abril de 1997 el tiempo que permanece sin sus documentos migratorios en regla en Estados Unidos mientras espera su cita para la visa de residente permanente puede contar como tiempo de “estancia indocumentada” y puede descalificarle para una visa a menos que califique para la sección 245 (i).



## Case Work

# Examples of LULAC Immigration Case work

### Jaime Martinez Coordinates 1996 March That Draws 200,000 in Washington, D.C.

A June 5, 1996 article in the San Antonio Express lead story recognizes Jaime Martinez “as a leader of the working men and women, immigrants, and Latinos throughout the United States” and



highlights his role in coordinating a most successful march and demonstration outside the U.S. Justice Department over what they called “bestial behavior” by federal law enforcement agents against undocumented immigrants.

In a later meeting with the Assistant Attorney General for Civil Rights, Deval Patrick, the group, lead by Mr. Martinez, cited the well-publicized beating of undocumented immigrants by Riverside County, California, sheriff’s deputies “This is not Nazi Germany. This is America. Such bestial behavior by so-called representatives of the law cannot and must not go unpunished for their crimes,” said Jaime Martinez.

Martinez and other leaders said they would urge President Clinton to veto “mean-spirited” immigration reform legislation working its way through congress. The immigration legislation promoted “immigration grant bashing and ran against the grain of the American democratic tradition”, Martinez said. The meeting contributed to the decision by Attorney



Photo by Luis Nuño Briones

General Janet Reno to conduct an investigation into the Riverside incident as well as one in Eagle Pass in which a 31-year-old Hispanic claimed was beaten by U.S. Border Patrol agents.

### DALLAS MEGA-MARCH

Led by Domingo Garcia and Hector Flores:

As many as half a million people marched peacefully through downtown Dallas for the rights of illegal



Photo from The Dallas Morning News



## Case Work

# Examples of LULAC Immigration Case work

immigrants, in the largest civil rights demonstration in the city's history – and to some experts, the birth of a new social movement, thanks to the efforts of Domingo Garcia and Immediate Past LULAC President Hector Flores.



The march brought together U.S. citizens and immigrants, both legal and illegal. It drew families and teenagers and a mix of veteran activists and those demonstrating for the first time. Police reported only one arrest, for public intoxication. This may be attributed by excellent training by march organizers of self-policing marshals.

The rallies, plus an economic boycott, certainly grabbed the attention of people across the country – including those who had thought much about the immigration debate before.

**Why the Mega-March?** Domingo Garcia, arguably Dallas' best known activist, former state representative, mayor pro tem, civil rights lawyer, LULAC Council President and former Civil Rights Commission Chair and one of the key mega march organizer put it this way: "At the heart of our efforts is the common goal of using our Constitutional rights of assembly, petitioning our government, and expression to cause Congress to enact comprehensive federal immigration reform. Comprehensive reform means not breaking families apart, not jailing children, creating a true and efficient path to citizenship for law-abiding immigrants, and supporting legislation that continues to project both the human and civil rights of all peoples; despite their immigration status. This coalition effort is the continuation of momentum of the Mega-March of Dallas that took place on April and May of 2006, in response to HR 4437 and other anti-immigrant Congressional legislation.

### Organized and focused

Participants had been told to wear white shirts to symbolize peace, wave American flags and carry banners with positive messages.

At City Hall, they listened to a series of speakers and waved their flags. Among the loudest ovations was for Bishop Charles Grahmann of the Dallas Diocese, who told the crowd: "We're on a journey, and it is a journey that is sometimes very difficult. ... We welcome the opportunity to voice our support for all of our people to become part of the American Dream."

One of the rally speakers was 16-year-old Gustavo Jimenez Jr., a Duncanville High School student who is credited with being one of the organizers of the student walkouts. "This was kind of a wake-up call to all of us," he said. "To let the government know it is going to mess with our families."

Dallas Police Chief David Kunkle attributed the peaceful nature of the protest to the work of the volunteers and organizers.

### Davenport, Iowa Immigration March

Iowa State Director Gilbert Sierra leads LULAC officials and community in Iowa March.





## Case Work

# Examples of LULAC Immigration Case work

### LULAC OHIO:

#### LULAC OHIO JOINS CAMPAIGN AGAINST OHIO'S VEHICLE REGISTRATION POLICY

The League of United Latin American Citizens (LULAC) of Ohio joined with numerous community leaders and organizations to demand the halt of the December 8, 2009 cancellation of 47,457 vehicle registrations by the Ohio Bureau of Motor Vehicles (BMV). This

was the Ohio Department of Public Safety's attempt to require vehicle owners to provide a social security number even though no actual law existed to back such a requisite. This act was merely a thinly veiled and inappropriate attempt to enforce federal immigration policy at the state level.

LULAC deemed this act by Governor Ted Strickland's administration to be highly dangerous to the public safety and the state's collective consciousness. Further, that the act would devastate Ohio's future economic development. LULAC found the act to violate Ohio laws in the following ways:

- 1) Ohio Revised Code § 4503.10 did not specify whether driver's licenses or identification cards had to be from Ohio. The Bureau of Motor Vehicles misquoted the Ohio Revised Code and imposed restrictions beyond the reach of the law.
- 2) The enforcement of Immigration law is solely the duty and responsibility of the federal government. In a misguided and ideological step to prevent the increase of immigration, Ohio was attempting to enforce immigration law without legal basis or authority.
- 3) By invalidating vehicle registrations prior to expiration dates, the state chose to breach their contracts with the 47,457 affected vehicle owners.

The effect of this policy stretched far beyond the 47,457 targeted vehicle registrants. The negative effects of the policy would reach all of Ohio's families, businesses and workers regardless of background.



Up to this point, the subject of undocumented immigration in Ohio had been utilized as a sensational political wedge issue. To eliminate the vehicle registrations of nearly 50,000 Ohio residents would not be the way to move forward as it would destroy the state's

economic recovery and not the answer to the question of undocumented immigration. All empirical research on the subject invalidated the claims of those who sought to capitalize on the topic for political gain.

This was an action brought by LULAC which sought to halt the actions of the

Defendants in excess of statutory authority granted to the Ohio Bureau of Motor Vehicles (BMV) in Revised Code Chapter 4503 concerning registration and renewal of registration for motor vehicles. LULAC sought declaratory and injunctive relief, or in the alternative a writ of mandamus compelling the BMV to forego the policy declared in an October 8, 2009 Mass Mailing to at least 40,000 Ohio residents who chose not to provide a social security number at the time of the registration or renewal of the registration of their motor vehicles pursuant to Section 4503.10 of the Revised Code.

LULAC demanded judgment and relief as follows:

- A. That a declaratory judgment be entered declaring that the BMV's policy reflected in October 8, 2009 Mass Mailing is in excess of statutory authority and not be authorized by Revised Code Section 4305.10;
- B. That an injunction be issued against the BMV preventing it from canceling the automobile registration of LULAC members who do not comply with the directive contained in the October 8, 2009 Mass Mailing;
- C. In the alternative if injunctive did not become available, that a writ of mandamus be issued compelling BMV to perform its duties in compliance with Revised Code Section 4503.10 and order it to abandon the policy reflected in the October 8, 2009 Mass Mailing.
- D. That LULAC be awarded such other relief as may be just including costs and attorneys' fees.



# Health & Human Services

## Chapter 11





# Chapter 11 ▼ Health and Human Services

## LULAC affirms its commitment to the elimination of discrimination towards Hispanics in all areas of health and human services.

Hispanics are one of the most undeserved communities in health and human services, primarily due to language and cultural barriers as well as concerns about citizenship and eligibility.

LULAC encourages public education on the existing laws that outlaw discrimination in this arena and supports the investigations and alternative dispute resolution strategies of the Office for Civil Rights of the U.S. Department of Health and Human Services.

### About OCR

The Office for Civil Rights' (OCR) legal authority to ensure nondiscrimination cuts across all of the programs and services funded by the Department of Health and Human Services (HHS). From hospitals and nursing homes, to Head Start centers and social service agencies, the public expects to receive high quality services free from discrimination based on race, color, national origin, disability, age, sex and religion.

As the primary defender of the public's right to non-discriminatory access to and receipt of services, OCR historically has played a major role in a variety of civil rights initiatives in the health and human service context, such as desegregating hospitals and issuing regulations to open up facilities and services to persons with disabilities.

OCR recognizes that it also has exciting challenges ahead. The evolution to managed care, the implementation of welfare reform, and the continued prevalence of racial and ethnic disparities in health status raise a host of new civil rights challenges for OCR.

Because we are aware of our broad responsibilities to enforce anti-discrimination laws, our strategic plan focuses on key areas of concern.

These include race or national origin discrimination in health care services, services to persons with limited English proficiency, and discrimination against persons with HIV/

AIDS.

### Mission

The Department of Health and Human Services, through the Office for Civil Rights, promotes and ensures that people have equal access to and opportunity to participate in and receive services in all HHS programs without facing unlawful discrimination. Through prevention and elimination of unlawful discrimination, the Office for Civil Rights helps HHS carry out its overall mission of improving the health and well-being of all people affected by its many programs.

Through excellence in investigations, voluntary dispute resolution, enforcement, technical assistance, policy development and information services, OCR will protect the civil rights of all individuals who are subject to discrimination in health and human services programs.

As an organization of diverse and empowered individuals, OCR, through partnerships with customers and suppliers, will ensure equality in the delivery of services to HHS beneficiaries. Working collaboratively with HHS Operating and Staff Divisions to make civil rights concerns an integral part of HHS programs, OCR will use its human and technical resources efficiently to accomplish its mission. The success of OCR's compliance program will be reflected in the full participation of persons of diverse backgrounds and capabilities in health and human services programs nationwide.

### Health & Human Services Institutions or Programs Health and social service programs and institutions include:

- Extended care facilities
- Public assistance programs
- Nursing homes
- Adoption agencies
- Hospitals
- Day care centers
- Mental health centers
- Senior citizen centers
- Medicaid and Medicare
- Family health centers and clinics
- Alcohol and drug treatment centers
- Nutrition programs
- Physicians and other health care professionals in private practice with patients assisted by Medicaid.
- State agencies that are responsible for administering health care.
- Foster Care Homes
- Any facility or entity receiving HHS funding, including governmental entities, non-profit organizations and





# Chapter 11 ▼ Health and Human Services



educational facilities.

## ISSUES/CONCERNS

### 1. Language

Language is a primary barrier for Latinos in accessing health and human services. The United States is home to millions of national origin minority individuals who are “limited English proficient” (LEP). That is, they cannot speak, read, write or understand the English language at a level that permits them to interact effectively with health care providers and social service agencies. Because of these language differences and their inability to speak or understand English, LEP persons are often excluded from programs, experience delays or denials of services, or receive care and services based on inaccurate or incomplete information.

In the course of its enforcement activities, OCR has found that persons who lack proficiency in English frequently are unable to obtain basic knowledge of how to access various benefits and services for which they are eligible, such as the State Children’s Health Insurance Program (SCHIP), Medicare, Medicaid or Temporary Assistance to Needy Families (TANF) benefits, clinical research programs, or basic health care and social services.

For example, many intake interviewers and other front line employees who interact with LEP individuals are neither bilingual nor trained in how to properly serve an LEP person. As a result, the LEP applicant all too often is either turned away, forced to wait for substantial periods of time, forced to find his/her own interpreter who often is not qualified to interpret, or forced to make repeated visits to the provider’s office until an interpreter is available to assist in conducting the interview.

The lack of language assistance capability among provider agency employees has especially adverse consequences in the area of professional staff services, such as health services. Doctors, nurses, social workers, psychologists, and other professionals provide vitally important services whose very nature requires the establishment of a close relationship with the client or patient that is based on empathy, confidence and mutual trust. Such intimate personal relationships depend heavily on the free flow of communication between professional and client.

This essential exchange of information is difficult when the two parties involved speak different languages; it may be impeded further by the presence of an unqualified third person who attempts to serve as an interpreter.

### **OCR’s Response-Guidance Policy on Limited English Proficient Persons**

OCR issued internal guidance to its staff in January 1998 on a recipients obligation to provide language assistance to LEP persons. That guidance was intended to ensure consistency in OCR’s investigation of LEP cases. This current guidance clarifies for recipient/covered entities and

the public, the legal requirements under Title VI that OCR has been enforcing for the past 30 years.

This policy guidance is consistent with a Department of Justice (DOJ) directive noting that recipient/covered entities have an obligation pursuant to Title VI’s prohibition against national origin discrimination to provide oral and written language assistance to LEP persons.

It is also consistent with a government-wide Title VI regulation issued by DOJ in 1976, “Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs,” 28 C.F.R. Part 42, Subpart F, that addresses the circumstances in which recipient/covered entities must provide written language assistance to LEP persons.

### **Who is Covered Under the LEP Guidance Policy?**

All entities that receive Federal financial assistance from HHS, either directly or indirectly, through a grant, contract or subcontract, are covered by this policy guidance. Covered entities include:

- 1) any state or local agency, private institution or organization, or any public or private individual that
- 2) operates, provides or engages in health, or social service programs and activities and that
- 3) receives federal financial assistance from HHS directly or through another recipient/covered entity.

Examples of covered entities include but are not limited to hospitals, nursing homes, home health agencies, managed care organizations, universities and other entities with health or social service research programs, state, county and local health agencies, state Medicaid agencies, state, county and local welfare agencies, programs for families, youth and children, Head Start programs, public and private contractors, subcontractors and vendors, physicians, and other providers who receive Federal financial assistance from HHS.

### **Basic Requirements of LEP Guidance Policy**

A recipient/covered entity whose policies, practices or procedures exclude, limit, or have the effect of excluding or limiting, the participation of any LEP person in a federally-assisted program on the basis of national origin may be engaged in discrimination in violation of Title VI. In order to ensure compliance with Title VI, recipient/covered entities must take steps to ensure that LEP persons who are eligible for their programs or services have meaningful access to the health and social service benefits that they provide. The most important step in meeting this obligation is for recipients of Federal financial assistance such as grants, contracts, and subcontracts to provide the language assistance necessary to ensure such access, at no cost to the LEP person.

### **2. National origin discrimination & Immigrant Access**

Citizenship status is a second barrier for Latinos in



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accessing health and human services programs. Fear of disclosing personal information often leads immigrant Latinos to not apply for critical services. The Departments of Health and Human Services (HHS) and Agriculture (USDA) have issued policy guidance clarifying when states may or may not request information about citizenship, immigration status, and Social Security numbers on applications for Medicaid, SCHIP, Temporary Assistance to Needy Families (TANF), and food stamp benefits.

Many states have developed joint applications for a number of programs, such as Medicaid, TANF and food stamps, to make it easier for individuals to receive the services they need. In many situations, this has resulted in the inclusion of questions regarding the citizenship, immigration status and Social Security number of persons who are living in an applicant's household, but who are not applying for benefits or who are not eligible for benefits.

These inquiries may have the unintended effect of discouraging some families from applying for and receiving benefits to which they or their children are entitled. The guidance recommends that states review their application forms and eligibility determination processes and make changes, if necessary.

While states are often required to establish the citizenship and immigration status of applicants, they may not require applicants to provide information about any other person's citizenship or immigration status. For example, if a child is applying for Medicaid or the State Children's Health Insurance Program (SCHIP), the state may not require disclosure of the citizenship or immigration status of non-applicant parents or other household or family members.

In addition, states are reminded that the Privacy Act of 1974 prevents states from requiring that an individual disclose his or her Social Security number (SSN) unless there is a specific federal statute that mandates such disclosure. Thus, while states may require that applicants for Medicaid, TANF and food stamps provide their SSNs, states may violate the Privacy Act when they require non-applicants living in the household or family unit to provide their SSN's. States always may request individuals to voluntarily provide their SSNs as long as states make clear that disclosure is voluntary and explain what will be done with SSN's that are disclosed.

**Question:** Are there any civil rights issues involved in how states ask about citizenship, immigration status and SSNs when determining eligibility for public benefits?

**Answer:** Potentially yes. The answer depends on whether such inquiries have a discriminatory effect on people whose rights are protected by Title VI. Title VI of the Civil Rights Act of 1964, and its implementing regulation, prohibit entities receiving federal funds, such as states, from discriminating against any person on the basis of that person's race, color, or national origin. Title VI covers both intentional acts and facially neutral policies and actions

that have an adverse impact based on race, color or national origin.

For example, some application forms require an applicant (or someone acting on the applicant's behalf) to certify under penalty of perjury that each person in the applicant's household is a U.S. citizen or immigrant in;

**Question:** What are the rules for Medicaid, including a Medicaid expansion under SCHIP, with respect to questions regarding citizenship, immigration status, and social security number information on state applications?

**Answer:** Citizenship/Immigration Status: States must require disclosure of the citizenship or immigration status only of the person or persons for whom Medicaid benefits are being sought (i.e., the applicant(s)). (Social Security Act § 1137(d); 42 U.S.C. § 1320b-7(d)).

For example, if a parent applies for Medicaid on behalf of his or her child, the citizenship or immigration status of the parent (or other household members) is irrelevant to the child's eligibility, and the state may not require that parents disclose the information. States may not deny benefits because the applicant (or a person acting on behalf of the applicant) did not certify or document the citizenship or immigration status of persons in the applicant's household for whom benefits are not being sought.

These same rules apply to Medicaid expansion programs under SCHIP.

Social Security Numbers (SSNs): States must require the disclosure of SSNs only for applicants and recipients of Medicaid benefits (Social Security Act § 1137(a); 42 U.S.C. § 1320b-7(a)). If an SSN has not been issued, states must assist individuals to apply for one. (42 C.F.R. § 435.910(e)).

States can ask non-applicants for an SSN but only if they clearly indicate that provision of this information is voluntary, and if they indicate how the information will be used.

States may not deny benefits because the applicant did not provide the SSNs of persons who are neither applicants for nor recipients of Medicaid or SCHIP (Medicaid expansion



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program) benefits.

### 3. The Multiethnic Placement Act and Inter-ethnic Placement Provisions (MEPA)

The Multiethnic Placement Act (MEPA) and Inter-ethnic Adoption Provisions (IEP) were implemented in the spirit of removing barriers to permanency for the vast number of children in the child protective system, and to ensure that adoption and foster placements are not delayed or denied based on race, color or national origin. The purposes of MEPA-IEP are to:

- Reduce the length of time that children wait to be adopted,
- Facilitate the diligent recruitment and retention of foster and adoptive families, and
- Eliminate discrimination on the basis of the race, color, or national origin of either the prospective parent or the child.

### 4. Racial/Ethnic Health Disparities

In January 2000, the U.S. Department of Health and Human Services (DHHS) released Healthy People 2010, our nation's health goals for this decade.

One of two major themes of Healthy People 2010 is the elimination of racial and ethnic disparities in health status that have been documented repeatedly over the years across a broad range of medical conditions despite improvements in health for the nation as a whole.

Despite notable progress in the overall health of the nation, there are continuing disparities in illness and death experienced by members of racial and ethnic groups, compared to the U.S. population as a whole. The demographic changes that are anticipated over the next decade magnify the importance of addressing disparities in health status, which is a primary goal of Healthy People 2010. A national focus on disparities in health status that addresses both medical and social bases (including potential discrimination and civil rights issues) for disparities is important as major changes unfold in the diversity of the population and in the way in which health care is delivered and financed.

OCR's jurisdictional basis for working with states, localities, and providers with respect to potential race and national origin discrimination is Title VI of the Civil Rights Act of 1964. Recipients of HHS federal financial assistance must ensure that policies and procedures do not exclude or have the effect of excluding or limiting the participation of beneficiaries in their programs on the basis of race, color or national origin.

**The following HHS resources highlight OCR's focus to address disparities in healthcare:**

- Healthy People 2010. Describes this national health

promotion and disease prevention initiative created by a broad coalition of experts from many sectors to improve the health of all Americans. Healthy People is designed to achieve two overarching goals, one of which is to eliminate health disparities among different segments of the population. It contains 467 objectives in 28 focus areas. Healthy People 2010 provides background information on the initiative; the complete text (online and searchable), Healthy People 2010: Understanding and improving health (2nd ed.) (2000); data and statistics (see below); a list of the Healthy People partners and related sites; and other Healthy People publications. It is coordinated by the U.S. Office of Disease Prevention and Health Promotion.

- Healthfinder® just for you. Points to health education resources about a wide range of health concerns based on age, gender, race, and ethnic origin. healthfinder® is a service of the U.S. Department of Health and Human Services (DHHS)
- National Institutes of Health (NIH): Addressing Health Disparities. Describes the NIH plan for tackling (via research) disparities experienced by racial and ethnic minority populations in the following six areas: infant mortality, cancer screening and management, cardiovascular disease, diabetes, HIV infection/AIDS, and immunizations. Links to the strategic plans and resources on health disparities for all NIH institutes and centers.
- Office of Minority Health (OMH). Links to program information, conferences, publications, data, federal clearinghouses, and other resources about minority health issues including racial and ethnic health disparities. OMH was created by the U.S. Department of Health and Human Services to advise on public health issues affecting American Indians and Alaska Natives, Asian Americans, Native Hawaiians and Other Pacific Islanders, African Americans, and Hispanics.
- Center for Disease Control Launches Spanish-





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Language Website The CDC has launched its Spanish-language website at <http://www.cdc.gov/spanish>.

The general public, policy makers, media and public health professionals around the world rely on CDC's website for credible information to enhance health decisions. Now, Spanish speakers will have access to that resource. The Spanish language website is not a translation of the English language website (at [www.cdc.gov](http://www.cdc.gov)) but is tailored to Hispanic and Latino populations.

The web site will grow as CDC plans to translate more of its articles, press releases and other documents into Spanish and make them available at this site. Currently, Spanish speakers will find information that CDC has developed on a wide variety of health topics from asthma to diabetes.

In addition, Spanish speakers will find gateways to health information produced by our sister Federal agencies.

## 5. Persons With Disabilities

Approximately 54 million people almost one in five Americans have developmental, physical or mental disabilities. Their needs and abilities vary widely. But for all of these individuals, disability can affect every aspect of their lives with health, emotional, social and financial consequences. There are several laws designed to tear down the barriers to equality facing people with disabilities.

- **Olmstead/New Freedom Initiative.** In February 2001, the President announced the New Freedom Initiative, a government-wide framework for helping provide people with disabilities with the tools they need to fully access and participate in their communities.

The initiative's proposals that involve the Department of Health and Human Services (HHS) include: promoting full access to community life through swift implementation of the Olmstead Supreme Court decision; integrating Americans with disabilities into the workforce through swift implementation of the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA); and the creation of the National Commission on Mental Health.

Details of the New Freedom Initiative are available at <http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html> and at <http://www.hhs.gov/newfreedom>.

- Section 504 of the Rehabilitation Act of 1973 is a national law that protects qualified individuals from discrimination based on their disability. The nondiscrimination requirements of the law apply to employers and organizations that receive financial assistance from any Federal department or agency, including the U.S. Department of Health and Human Services (DHHS).

These organizations and employers include many hospitals, nursing homes, mental health centers and human service programs. Section 504 forbids organizations and employers from excluding or denying individuals with

disabilities an equal opportunity to receive program benefits and services. It defines the rights of individuals with disabilities to participate in, and have access to, program benefits and services. Section 504 protects qualified individuals with disabilities.

Under this law, individuals with disabilities are defined as persons with a physical or mental impairment which substantially limits one or more major life activities. People who have a history of, or who are regarded as having a physical or mental impairment that substantially limits one or more major life activities, are also covered.

Major life activities include caring for one's self, walking, seeing, hearing, speaking, breathing, working, performing manual tasks, and learning. Some examples of impairments which may substantially limit major life activities, even with the help of medication or aids/devices, are: AIDS, alcoholism, blindness or visual impairment, cancer, deafness or hearing impairment, diabetes, drug addiction, heart disease, and mental illness.

- The Americans with Disabilities Act (ADA) of 1990 provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, state and local government services, public accommodations, transportation, and telecommunications.

The ADA protects qualified individuals with disabilities. An individual with a disability is a person who has a physical or mental impairment that substantially limits major life activities; has a record of such an impairment; or is regarded as having such an impairment.

Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. Under the ADA, a qualified individual with a disability is an individual with a disability who meets the essential eligibility requirements for receipt of services or participation in programs or activities.

Whether a particular condition constitutes a disability within the meaning of the ADA requires a case-by-case



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determination. Physical or mental impairments include, but are not limited to: visual, speech, and hearing impairments; mental retardation, emotional illness, and specific learning disabilities; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; orthopedic conditions; cancer; heart disease; diabetes; and contagious and non-contagious diseases such as tuberculosis and HIV disease (whether symptomatic or asymptomatic).

## 6. Age

The Office for Civil Rights (OCR) of the U.S. Department of Health and Human Services (DHHS) enforces Federal laws that prohibit discrimination by health care and human service providers that receive funds from DHHS. One such law is the Age Discrimination Act of 1975.

The Age Discrimination Act of 1975 is a national law that prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Age Discrimination Act applies to persons of all ages. It does not cover employment discrimination. (The Age Discrimination in Employment Act applies specifically to employment practices and programs, both in the public and private sectors, and applies only to persons over age 40).

Complaints under the Age Discrimination in Employment Act should be sent to:

U.S. Equal Employment Opportunity Commission,  
Washington, D.C. 20506.

## 7. Medical Privacy

The privacy provisions of the federal law, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), apply to health information created or maintained by health care providers who engage in certain electronic transactions, health plans, and health care clearinghouses. The Department of Health and Human Services (HHS) has issued the regulation, "Standards for Privacy of Individually Identifiable Health Information," applicable to entities covered by HIPAA. The Office for Civil Rights (OCR) is the

Departmental component responsible for implementing and enforcing the privacy regulation.

The federal privacy regulation empowers patients by guaranteeing them access to their medical records, giving them more control over how their protected health information is used and disclosed, and providing a clear avenue of recourse if their medical privacy is compromised. The rule will protect medical records and other personal health information maintained by certain health care providers, hospitals, health plans, health insurers and health care clearinghouses.

- Patients must give specific authorization before entities covered by this regulation could use or disclose protected information in most non-routine circumstances - such as releasing information to an employer or for use in marketing activities.
- Covered entities generally will need to provide patients with written notice of their privacy practices and patients' privacy rights. The notice will contain information that could be useful to patients choosing a health plan, doctor or other provider. Patients would generally be asked to sign or otherwise acknowledge receipt of the privacy notice from direct treatment providers.
- Pharmacies, health plans and other covered entities must first obtain an individual's specific authorization before sending them marketing materials. At the same time, the rule permits doctors and other covered entities to communicate freely with patients about treatment options and other health-related information, including disease-management programs.
- Specifically, improvements to the final rule strengthen the marketing language to make clear that covered entities cannot use business associate agreements to circumvent the rule's marketing prohibition. The improvement explicitly prohibits pharmacies or other covered entities from selling personal medical information to a business that wants to market its products or services under a business associate agreement.
- Patients generally will be able to access their personal medical records and request changes to correct any errors. In addition, patients generally could request an accounting of non-routine uses and disclosures of their health information.

### How To File A Discrimination Complaint With The Office For Civil Rights

If you believe that you have been discriminated against on the basis of race, color, national origin, disability, age, and in some cases sex or religion, by an entity (recipient) that receives Federal financial assistance from the U. S. Department of Health and Human Services (DHHS), you





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may file a complaint with the Office for Civil Rights (OCR).

The complaint should be filed within 180 days from the date of the alleged discriminatory act. OCR may extend the 180-day period if you can show “good cause.”

Include the following information in your written complaint, or request a Discrimination Complaint Form from an OCR Regional or Headquarters office:

- Your name, address and telephone number. You must sign your name. (If you are filing a complaint on someone’s behalf, include your name, address, telephone number, and statement of your relationship to the individual—e.g., spouse, attorney, friend).
- Name and address of the institution or agency you believe discriminated against you.
- How, why, and when you believe you were discriminated against.
- Any other relevant information. You may call the OCR hotline to obtain the address for the OCR Regional Office or send your complaint to the Headquarters

address:

Director Office for Civil Rights  
U. S. Department of Health and Human Services  
200 Independence Avenue, SW - Room 509-F  
Washington, D.C. 20201

For information on how to file a complaint of discrimination, or to obtain information of a civil rights nature, please contact us.

Hotlines: 1-800-368-1019 (Voice)

1-800-537-7697 (TDD)

E-Mail: [ocrmail@hhs.gov](mailto:ocrmail@hhs.gov)

Website: <http://www.hhs.gov/ocr>





## Case Work

# Underserved Population: Latino Elderly

Health and social service programs disproportionately affect Latino elderly; therefore, LULAC has created positions at the local, state, and national level to specifically address elderly issues.

Additionally, the LULAC National Commission for the Aging was established in 2006. This initiative was spearheaded by Richard Fimbres during his tenure as LULAC National Vice President for the Elderly. The mission of the LULAC National Commission for the Aging is to raise national awareness of the increasing critical issues facing the Hispanic aging community; to create partnerships and alliances with other organizations that support and provide services to the aging; and to promote a better quality of life for the aging.

Statistics show that Latino senior citizens constitute a significant portion of the population. According to the National Hispanic Council on Aging (NHCOA), by 2030, estimates show that 70 million, or 20%, of the U.S. population will be 65 or older. The “U.S. Hispanic population, now the largest minority, is expected to have a growth rate of 555% from 1990 to 2030. Although U.S. Hispanics are considerably younger than other U.S. minority

groups and non-Hispanic Whites, the Hispanic elderly still represent a significant segment of the population numbering 2,284,279 persons aged 65 and older or

about 6.4% of the population. By 2030, it is projected that the Hispanic elderly will comprise 11.2% of the United States elderly population, and by 2050, 17.5 %.”

At the local level, numerous local organizations exist that provide services to Latino elderly. For example, Voces Olvidadas de la Tercera Edad (“VOTE”), Forgotten Voices of the Elderly, discovered that although some services were in place for senior citizens, Latino elderly repeatedly expressed a reluctance to utilize the services due to language barriers and a perception of a lack of cultural understanding. With the assistance of numerous LULAC members, a Latino elderly center in Texas was established to bridge this gap. Today, the Center serves the needs of low income Latino elderly by providing a daily refuge and activities for senior citizens at no cost to them. The Center provides not only an escape for the elderly, but it provides an opportunity for camaraderie not available to them elsewhere.









# Survival Kit

## Chapter 12



## Civil Rights Survival Kit:



The Civil Rights Survival Kit is featured as a model example of a catalog listing of available civil rights community resources produced by the LULAC District XXI Chair, Civil Rights Programs for use by all of the councils which come under the administration of the LULAC XXI District Director based in Fort Worth, Texas.

National LULAC officials believe that the model Kit warrants consideration by Councils, Districts and State LULAC organizations as a guide to begin their own process of identifying, cataloging and publishing for distribution a listing of available community resources that can play important partnership roles in addressing civil rights issues and concerns that affect Hispanics.

The model Kit can best be described as being some 52 pages in length, some information is in spanish and that it contains such information as:

1. Requests for Investigation (complainant intake form), follow up to complaint forms, procedures, legal terms, definitions, legal referral sources and listing of civil rights state and federal government agencies and community organizations;
2. Copies of actual resolution documents, press releases, press packet forms, news items, open records model requests and form letters requesting civil rights investigations by federal government agencies;
3. Information on government civil rights essential programs, forms, policies, regulations, examples and references; and
4. Listing of community based civil rights attorneys with specialization in such areas of law as employment discrimination, immigration, family, personal injury, criminal, etc. Some of the Attorneys on the listing provide "free initial consultations" and others do some "pro bono" work.

Entering google or internet at <http://civilrightssurvivalkit.freemovepage.com/> will make it possible for one to download everything that is available in the 52 page model kit.









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