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Continuum of Violence Against Latinas and Latinos

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THE CONTINUUM OF VIOLENCE AGAINST LATINAS AND LATINOS

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Violence against Latinas and Latinos based on national origin, ethnicity, race, sex, and sexual orientation is a historical reality and part of the fabric of United States society and culture.¹ Violence

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¹ For purposes of this article, I define violence as both words and actions intended to injure physically, intimidate, assault physically and emotionally, and demean and dehumanize, individual Latinas and Latinos, and Latino communities, as well as words and actions which have these results, regardless of the existence or nonexistence of conscious, anti-Latino animus. See, e.g., FED. BUREAU OF INVESTIGATION, HATE CRIME STATISTICS, 2003 (2004), available at <http://www.fbi.gov/filelink.html?file=/ucr/03hc.pdf>; FED. BUREAU OF INVESTIGATION, HATE CRIME STATISTICS, 2004, (2005), available at <http://www.fbi.gov/ucr/hc2004/openpage.htm>; FED. BUREAU OF INVESTIGATION, HATE CRIME STATISTICS, 2005 (2006), available at <http://www.fbi.gov/ucr/hc2005/index.html>; FED. BUREAU OF INVESTIGATION, HATE CRIME STATISTICS, 2006 (2007), available at <http://www.fbi.gov/ucr/hc2006/index.html>; FED. BUREAU OF INVESTIGATION, HATE CRIME STATISTICS, 2007 (2008), available at <http://www.fbi.gov/ucr/hc2007/index.html>; JOSE LUIS MORIN, *LATINO/A RIGHTS AND JUSTICE IN THE UNITED STATES: PERSPECTIVES AND APPROACHES* 61–73 (2d ed. 2008) (discussing racial profiling and bias in the criminal justice system) [hereinafter *LATINO/A RIGHTS AND JUSTICE IN THE UNITED STATES*]; AMNESTY INT'L, USA: POLICE BRUTALITY WIDESPREAD PROBLEM IN NEW YORK CITY (1996), available at <http://asiapacific.amnesty.org/library/Index/ENGAMR510501996?open&of=ENG-2M4> (reporting on police brutality in New York City, including shootings and deaths of individuals while in police custody, involving mostly people of color); Jenny Rivera, *Preliminary Report: Availability of Domestic Violence Services for Latina Survivors In New York State*, 16 IN PUB. INTEREST 1 (1997–98); Jenny Rivera, *The Availability of Domestic Violence Services for Latina Survivors in New York State: Phase II Investigation*, 21 BUFF. PUB. INT. L.J. 37 (2002–03); Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials*, 14 B.C. THIRD WORLD L.J. 231 (1994); NAT'L COALITION OF ANTI-VIOLENCE PROGRAMS, *Hate Violence Against Lesbian, Gay, Bisexual, and Transgender People in the United States: 2008* (2009) available at http://www.ncavp.org/common/document_files/Reports/2008%20HV%20Report%20smaller%20file.pdf. CIVILRIGHTS.ORG, CAUSE FOR CONCERN: HATE CRIMES IN AMERICA, http://www.civilrights.org/publications/reports/cause_for_concern/p9.html (last visited Aug. 1, 2009) (discussing history of hatred against Hispanics); TYLER LEWIS, CIVILRIGHTS.ORG, REPORT: HATE VIOLENCE AND RHETORIC ON THE RISE AGAINST LATINOS (2006), <http://www.civilrights.org/hatecrimes/united-states/report-hate-violence-and-rhetoric-on-the-rise-against-latinos-1.html>; Sean Hamill, *2 White Youths on Trial in Killing of a Mexican*, N.Y. TIMES, Apr. 28, 2009, at A13, available at <http://www.nytimes.com/2009/04/28/us/28immig.html> (discussing trial of two white teenagers charged with the fatal beating of Mexican immigrant); Dennis Hevesi, *Teen-age Brothers Charged in 5 Bias At-*

has been visited upon the Latino community by both private individuals and public officials, through individual acts of violence and through official policies and practices that adversely impact Latinos and Latinas and target them because they are seemingly dangerous to society.² In the United States, Latinas and Latinos experience violence along a continuum which is not linear, and includes violence perpetrated by private individuals and public officials. This violence is based on national origin, ethnic, racial, gender and anti-immigrant animus, and may include “hate violence”, and constitute “hate crimes”.³ Violence by public officials includes police brutality; police discretionary practices that result in increased stops and arrests of Latinos (especially Latino youth); discretionary prosecutorial policies that result in increased prosecutions and higher charges and sentences for Latinos; practices that result in lower rates of investigation and prosecution of claims of violence targeting Latinos; and police and prosecution practices that fail to properly address gender-based violence and domestic violence against Latinas.⁴ While these forms of violence

tacks in Brooklyn, N.Y. TIMES, Sept. 25, 1995, at B4, available at <http://www.nytimes.com/1995/09/29/nyregion/teen-age-brothers-charged-in-5-bias-attacks-in-brooklyn.html> (discussing attempted murder charges in case involving attacks on Latino and four Asian men by two teenage brothers); *Possible Bias Attack Leaves Boy Critical*, N.Y. TIMES, Jan. 23, 1996, at B2, available at <http://www.nytimes.com/1996/01/23/nyregion/possible-bias-attack-leaves-boy-critical.html>, (discussing possible bias attack against thirteen-year-old Latino by African American junior high students).

² For examples of police violence, see *Charges Against Priest who Videotaped Police are Dropped*, N.Y. TIMES, Mar. 26, 2009, at A22, available at <http://www.nytimes.com/2009/03/27/nyregion/connecticut/27priest.html> (discussing complaint filed with the Department of Justice Civil Rights Division claiming police brutality, use of excessive force, and racial profiling of Latinos); John Eligon, *Victims' Families Sue New York City in Fatal 1995 Police Shooting*, N.Y. TIMES, Mar. 6, 2009, at A16, available at <http://www.nytimes.com/2009/03/07/nyregion/07trial.html> (discussing lawsuit for wrongful death and pain and suffering in case involving fatal police shooting of two young Latino men by police); Nick Miroff, *Hispanic Woman Accuses Police of Bias and Beating*, WASH. POST, Feb. 05, 2009, at B2, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/02/04/AR2009020403774.html> (reporting claim of Latina hospitalized and arrested during traffic stop that she was treated “[l]ike an animal” because she is Latina and does not speak English); Christine Negroni, *Priest's Video Contradicts Police Report on Arrest*, N.Y. TIMES, Mar. 12, 2009, at A23, available at <http://www.nytimes.com/2009/03/13/nyregion/13harass.html> (describing complaints by Latino residents of New Haven, Connecticut, of harassment by local police).

³ See *supra* notes 1–2.

⁴ See *supra* notes 1–2; CTR. FOR CONST. RTS., RACIAL DISPARITY IN NYPD STOPS-AND-FRISKS: THE CENTER FOR CONSTITUTIONAL RIGHTS PRELIMINARY REPORT ON UF-250 DATA FROM 2005 THROUGH JUNE 2008 (2009), available at http://www.ccrjustice.org/files/Report_CCR_NYPD_Stop_and_Frisk_0.pdf; Jenny Rivera, *Puerto Rico's Domestic Violence Prevention and Intervention Law and the United States Violence Against Women Act of 1994: The Limitations of Legislative Responses*, 5 COLUM. J. GENDER & L. 78 (1995).

by public officials stand apart from violence by private individuals, both are intricately connected and arguably codependent. Inflammatory media stereotypes that propagate inaccurate images of Latinos as a danger to the United States government and economy are an integral part of this continuum of violence.⁵

Violence by private individuals and public officials is tolerated and facilitated by the existing legal and social frameworks of United States society, and is underreported and ignored by public officials, despite its very serious impact on the individual targets of violence, and on the Latino community more generally.⁶ Violence by private individuals is facilitated and promoted by actions and words of officials who create an environment that presents Latinos as dangerous to individual safety and a threat to societal norms, while simultaneously failing to penalize actions motivated by animus against Latinos. For example, the use of aggressive police tactics and ethnic and racial profiling in Latino communities is, in part, justified by alleged higher crime rates in Latino communities, and higher rates of criminal activity by Latinos.⁷ At least one study

⁵ See, e.g., MORIN, *LATINO/A RIGHTS AND JUSTICE IN THE UNITED STATES*, *supra* note 1, at 61–73; LEO R. CHAVEZ, *THE LATINO THREAT: CONSTRUCTING IMMIGRANTS, CITIZENS, AND THE NATION* 21–42 (2008) (discussing the construction of Latinos as a threat to United States society through press and other media-distorted images of Latinos and Latinas). For an early and comprehensive analysis of the portrayal of Latinas and Latinos in film, television and other media, see *LATIN LOOKS: IMAGES OF LATINAS AND LATINOS IN THE U.S. MEDIA* (Clara E. Rodríguez ed., 1997).

⁶ *Report: FBI Hate Crime Statistics Vastly Understate Problem*, INTELLIGENCE REPORT (S. Poverty Law Ctr., Montgomery, Ala.), Winter 2005, available at <http://www.splcenter.org/intel/intelreport/article.jsp?aid=586> (reporting that since 1992, the real number of hate crimes in the U.S. are between nineteen and thirty-one times higher than the statistics published by the FBI, which are based on voluntary reports from law enforcement agencies). For a recent survey on community perceptions of police conduct and response, see PEW HISPANIC CTR., *HISPANICS AND THE CRIMINAL JUSTICE SYSTEM: LOW CONFIDENCE, HIGH EXPOSURE* (2009) <http://pewhispanic.org/files/reports/106.pdf> (reporting that about 46% of Latinos say they have confidence that police officers will not use excessive force on suspects, compared to 73% of whites and 38% of African Americans); Press Release, LatinoJustice PRLDEF, DOJ Answers LatinoJustice's Request for Investigation of Hate Crimes in Suffolk County (Jan. 12, 2009), http://www.prldef.org/civil_rights/patchogue/doj_investigates_suffolk.pdf (outlining response from U.S. Department of Justice (DOJ) to LatinoJustice's request, wherein DOJ opened formal investigation into allegations that hate crimes in Suffolk County, Long Island have been systematically mishandled by county law enforcement and have not been charged as hate crimes) (on file with author); Letter from Cesar A. Perales, President and General Counsel, LatinoJustice PRLDEF, to Mark Kappelloff, Chief, Criminal Section, U.S. Department of Justice & Benton J. Campbell, U.S. Attorney, E.D.N.Y. (Nov. 25, 2008), available at http://latinojustice.org/civil_rights/cases/DOJ_Suffolk_Letter.pdf (alleging that local law enforcement fail to investigate and prosecute hate crimes against Latinos in Long Island, N.Y.).

⁷ Heidi Beirich & Mark Potok, *Countering Anti-Immigrant Extremism: The Southern Poverty Law Center's Strategies*, 12 N.Y. CITY L. REV. 405 (2009); Christina Iturralde, *Rheto-*

suggests that Latinos are less likely to be involved in violent crimes than other groups, and do not use illegal drugs at rates higher than other racial or ethnic groups.⁸ Nevertheless, the stereotypes of Latinos as dangerous persist.

Recently, officials and private individuals have turned their anger towards one sector of the Latino community, Latino workers who are undocumented, and may be recent arrivals in the United States. The targeting of this population is made possible by a new, yet all too familiar, wave of anti-immigrant rhetoric. The rhetoric and language of anti-immigrant hate has inflamed and divided communities. Violent actions and hate speech targeting Latinos have increased at the same time.⁹ The rhetoric has continued to depend on images that construct Latinos as noncitizens who take jobs from “real Americans” and are a drain on local economies.¹⁰ These images, and government officials’ endorsement and acceptance of these images as accurate representations of all Latinos in the community, provide justifications for private individuals who are not Latinos to act against Latinos with the goal of ridding communities and neighborhoods of this perceived “plague” of outsiders. It justifies efforts by private individuals and local officials to take matters into their own hands and become enforcers of immigration laws at the local level. These efforts are illustrated by local efforts to “step in” and enforce laws that the federal government will not or cannot enforce, in order to protect the property and lives of the local population from the perceived foreign immigrant interloper. This recent trend continues the historic use of stereotypes to demonize Latinos and characterize Latinos as not fully American.

Critics and advocates argue that the inevitable consequence of

ric and Violence: Understanding Incidents of Hate Against Latinos, 12 N.Y. CITY L. REV 417 (2009). See also MORIN, *LATINO/A RIGHTS AND JUSTICE IN THE UNITED STATES*, *supra* note 1, at 90–100.

⁸ NANCY E. WALKER ET AL., NAT’L COUNCIL OF LA RAZA, *LOST OPPORTUNITIES: THE REALITY OF LATINOS IN THE U.S. CRIMINAL JUSTICE SYSTEM* 4 (2004), available at <http://www.nclr.org/content/publications/detail/27567> (follow “Adobe Acrobat (PDF) Download (1.66 MB)” hyperlink) (citing BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, *SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS, 1999 (2000)* & MICHAEL J. COYLE, NAT’L COUNCIL OF LA RAZA, *Statistical Brief # 2, in LATINOS AND THE TEXAS CRIMINAL JUSTICE SYSTEM* (2003)) See also MORIN, *supra* note 5.

⁹ See, e.g., Iturralde, *supra* note 7, at 417 (discussing dramatic rise in reported incidents against Latinos); Posting of Nezua, Media Consortium MediaWire Blogger to The Huffington Post, http://www.huffingtonpost.com/the-media-consortium/harvesting-hate-in-hard-e_b_150252.html (Dec. 11, 2008, 11:44 EST) (reporting specific recent examples of hate crimes against Latinos).

¹⁰ CHAVEZ, *supra* note 4.

this fear mongering is escalated violence against Latinos and an increased risk of violence to anyone perceived as Latino, regardless of immigrant status. The data supports these critics. The data suggests that there are real adverse consequences that are direct results of an environment filled with anti-Latino, anti-immigrant sentiment actualized at the national and local level. For example, there has been a quantifiable increase in the number of Latino crime victims,¹¹ an increase in the severity of injuries and fatalities, and further marginalization of Latinas and Latinos within United States society. Despite this escalated violence, law enforcement officials have discouraged Latinos from seeking police and local law enforcement assistance and protection.¹²

Although much of this violence occurs without public reaction or media coverage, there has been some media and law enforcement interest in the recent increase in attacks against Latinos.¹³ Regardless of whether the media's interest is due to the dramatic rise in the violence or whether law enforcement's response is related to increased pressure from advocates,¹⁴ the numbers of violent attacks and the circumstances surrounding the attacks are real, and they are part of a continuum of violence against Latinas and Latinos.

The two articles in this edition address specifically the recent anti-Latino immigrant hate violence spreading across the United States. In *Countering Anti-Immigrant Extremism: The Southern Poverty Law Center's Strategies*, Heidi Beirich and Mark Potok discuss the Southern Poverty Law Center's efforts to address the increased violence against Latinos that is driven by anti-immigrant animus and which has its roots in Latino-hate speech and anti-immigrant orga-

¹¹ According to FBI data, attacks against Latinos across the United States increased 40% from 2003 to 2007. See *Anti-Latino Hate Crime Up for Fourth Year*, INTELLIGENCE REPORT (S. Poverty Law Ctr., Montgomery, Ala.), Winter 2008, available at <http://www.splcenter.org/intel/intelreport/article.jsp?aid=990>. See also Posting of Mark Potok to Hate Watch, <http://www.splcenter.org/blog/2008/10/29/anti-latino-hate-crimes-rise-for-fourth-year> (Oct. 29, 2008) (noting a 2005 DOJ study indicating that the FBI may be underestimating incidents of hate crimes by a factor of twenty to thirty).

¹² See, e.g., Letter from Cesar A. Perales to Mark Kappelhoff & Benton J. Campbell, *supra* note 6.

¹³ See, e.g., Anne Barnard, *Assaults on Latinos Spur Inquiry*, N.Y. TIMES, Jan. 12, 2009, at A21, available at <http://www.nytimes.com/2009/01/13/nyregion/13patchogue.html> (reporting that federal authorities opened criminal investigation into reports of assaults against Latinos on Long Island); *Justice Department Probes Long Island Hate Crimes*, N.Y. DAILY NEWS, Jan. 13, 2009 (reporting on federal investigation into assaults against Latinos on Long Island).

¹⁴ See Beirich & Potok, *supra* note 7, at 405 (describing Southern Poverty Law Center's coalition work).

nizations. Their article chronicles the Center's efforts to publicize the violence, identify the individuals and organizations at the root of the violence, and to combat violence through litigation and organizational strategies. In *Rhetoric and Violence: Understanding Incidents of Hate Against Latinos*, Christina Iturralde also discusses how anti-immigrant rhetoric is constructed as anti-Latino rhetoric, and encourages violent acts against Latinos. Her article is a timely warning of how words and the language of violence have devastating impacts that we cannot ignore.

These articles contain several similar themes. First, both articles describe a dramatic increase of violence against Latinos, driven by a constructed picture of Latinos as immigrants who are a threat to United States society and culture. Second, both articles discuss the very serious consequences of this violence, pointing out that it has escalated to acts leading to severe injuries and death. Third, the articles also discuss the important role served by litigation to stop and repel violence and to make visible the violence that otherwise would remain in the shadows. Fourth, the articles discuss the importance of organizing and coalition work, in part because the violence drives people underground and outreach strategies are critical to reach potential and past victims. As these articles establish, organizing is a key part of antiviolence work, necessary as a response to violence that escalates, with increased severity in part as a result of public indifference and misinformation.

These articles describe the challenges of a social lawyering law practice that seeks to promote an anti-violence justice agenda on behalf of Latinas and Latinos. The authors help us to understand and appreciate that practitioners must find ways to address public perceptions driven by intentional misinformation, the need to challenge official inaction and insensitivity, and ways in which social justice activists may speak out against emotion and fear that drive anti-Latino animus. They also remind us that this is not an exercise without real consequences; there are lives at stake.