Gates Public Service Law Program: The Rollback of Civil Rights Era in America

Panelists:
John Trasviña, President and General Counsel, Mexican-American Legal Defense & Educational Fund
Pramila Jayapal, Executive Director, Hate Free Zone Washington
Luis R. Fraga, Vice Provost of Faculty Advancement, University of Washington
Cristóbal Joshua Alex, Campaign Coordinator, National Campaign to Restore Civil Rights
M. Lorena González, President Latina/o Bar Association of Washington

January 25, 2008

Michele Storms: Good afternoon everyone. My name is Michele Storms and I am the Director of the Gates Public Service Law Program here at the University of Washington School of Law. And it is my pleasure right now to welcome all of you today on behalf of the Gates Public Service Law Program and the University of Washington Law School to this panel discussion on the rollback of civil rights.

I first want to gratefully acknowledge the Latina/Latino Bar Association of Washington for giving us this opportunity to cosponsor this important event. Many of you may know that LBAW has their annual dinner this evening and their keynote is John Trasvia, the President and General Counsel of the Mexican-American Legal Defense and Education Fund. And, in an interest on behalf of LBAW to bring him to a variety of audiences and to really generate good community discussion about the issues of which he advocates, they came to us and gave us this chance to work with him, so we are really happy to be presenting this panel today.

Very quickly, I have a couple of logistical matters that I have been told I must share with you. And the first is, for those of you who are lawyers and hoping to have continuing legal education credit, if you did not already check in at the desk outside the room, please do so at the conclusion of this talk, so that you can be registered to receive your credit. And also, a little one of my own administrative message is to please take a moment now to turn the sound off on your cellphones or pagers if you have them with you.

So, our topic today is enormously important. It is the erosion or rollback of civil rights. One way to define or look at civil rights is equal treatment of all people with respect to protection of the law and to the enjoyment of life, liberty and property, their protections and privileges given to all citizens by law, protected by the Constitution and the Bill of Rights. It is so timely for us to have this discussion this week at the end of the Martin Luther King holiday week.

Significant advances in civil rights for people living in this country were made and
enacted into law, thanks to the efforts of coalitions of dedicated people who marched and testified, boycotted, filed lawsuits and engaged lawmakers ultimately in enacting laws that would benefit the people of our society regardless of color or nationality or creed. But, it behooves us at this point, however, to be aware that those rights are beginning to roll way back or in some cases, the rights are not being applied to all people and that is something that should be of concern to every one of us.

In our audience today, we have students and lawyers, academics, community activists, people from all around. And I believe what brings all of us here is our shared commitment to social justice and equality for all people. So, I am really grateful that we have this opportunity to have this conversation.

I am going to shortly introduce our panelists, but before I do so, I want to share words from our Washington State Governor, Christine Gregoire. It was her intention and desire to be here actually today, which would have been so exciting for us, but you can understand that the Legislature being in session and the governor's office having many matters to contend with, that she wasn't able to be here. So, she has sent a letter and if you will bear with me, I'd like to read that to you.

"Greetings from the Governor, January 25th 2008. I am delighted to extend warm greetings to all of you attending this afternoon's discussion on the rollback of civil rights era in America presented by the Gates Public Service Law Program and the Latina/Latino Bar Association of Washington.

Today, you have the privilege of hearing from very distinguished panelists. I am sure you will find their insight and wisdom regarding threats to our civil rights, especially for communities of color invaluable. Perhaps more important will be their thoughts on what we all can do in response to these threats, ensuring the protection and preservation of justice, fairness and opportunity for everyone.

Democracy can only be made whole through the inclusion, representation and participation of all our residents. I commend the Public Service Law Program and the LBAW for their commitment to social justice reflected in this program and their vision of fully integrated socially and economically engaged communities of color.

Diversity is one of our nation's greatest strength. In particular I want to recognize the mission at LBAW to empower and equip the Latino community, which in turn strengthens us all.

Thank you all for coming and please accept my best wishes for a thoughtful and productive program.

Sincerely, Christine O. Gregoire, Governor."

So now, I'd like to just let you know who these distinguished panelists are. And we really do have some wonderful people here with us today and I am going to begin, to my
immediate right, with Lorena Gonzlez who is the moderator for our panel today and is the current President of the Latina/Latino Bar Association of Washington. Lorena Gonzlez is an associate with Schroeter Goldmark & Bender. Her practice focuses on representing individuals in the areas of civil rights, employment, serious personal injury and medical malpractice. She is a 2005 honors graduate at the Seattle University School of Law.

Lorena, as I said, is currently the President of LBAW and has been a member of the executive board since 2003 and is the youngest President in the history of the organization, has executed several programs under her leadership, including an Annual Legal Clinic at the Hispanic Seafair, a Latino community law forum in southwestern Washington and a stronger coalition between LBAW and community-based organizations that provide services to Latinos.

She was the recipient of LBAW's Outstanding Member of the Year Award in 2004 and was the only law student in the history at LBAW to receive that award. She is also the current Co-President of the Latino Political Action Committee of Washington, a progressive organization designed to politically empower Latinos in Washington State.

To her right is Cristbal Joshua Alex who is currently the Campaign Coordinator of the...

**Cristbal Joshua Alex:** It is a long name.

**Michele:** ...National Campaign to Restore Civil Rights. It is not written here and so all of a sudden I just blanked here. So, thank you for bearing with me.

He joined the campaign after practicing civil rights law with MacDonald Hoague & Bayless, the leading civil rights firm in the northwest. And during that time, he focused his practice on police and governmental misconduct, including important cases dealing with prisoner rights, police shootings, discrimination and the constitutionality of various state laws. Before joining MacDonald Hoague & Bayless, he served as a law clerk to the Honorable William W. Baker, Washington Court of Appeals.

And to his right is Pramila Jaipal, Founder and Executive Director the Hate Free Zone here in Washington State. She created this grassroots nonprofit organization in November 2001 in response to the backlash against immigrant communities of color. Since its creation, this organization has grown into a leading voice for its courageous and groundbreaking work on behalf of immigrant and refugee communities targeted post 9/11.

Pramila and the Hate Free Zone have received several awards and recognitions for this work including the City of Seattle's 2002 Civil Rights Award, the Washington Bar Association's Access to Justice Community Leadership Award, the Japanese-American Citizens League Leadership Award and several others.

She is an activist and writer and has been actively involved in international and domestic social justice issues for over 12 years working across Africa, Asia and Latin America as well as domestically with immigrant refugee communities in Washington State. And she
has a masters in business administration and is the most lawyerly non-lawyer I know.

[laughter]

**Pramila Jaipal**: I think, that is a compliment.

**Michele**: It is. And to her right is Luis R. Fraga. He has just recently joined the University of Washington as Associate Vice Provost for Faculty Advancement and as well heads up the Diversity Research Institute here at the University of Washington. He will also serve as a political science professor and his appointment began this summer.

He received his Ph.D. from Rice University and was a member of the American Political Science Association Standing Committee on civic engagement and education that coauthored "Democracy At Risk: How Political Choices Undermines Citizen Participation and What We Can Do About It." He is also a coauthor of the recently published "Multiethnic Movements: The Politics of Urban Education Reform." He is one of six principal investigators on the Latino National Survey, the first ever state stratified survey of Latinos in the United States.

And finally at the end of our row, our panelist is John Trasvia, the President and General Counsel of the Mexican-American Legal Defense and Educational Fund, who is also the keynote speaker for the LBAW event this evening. He was appointed President and General Counsel in November of 2006. Mr. Trasvia began his career at MALDEF in Washington D.C. as a legislative attorney in 1985. He also worked for U.S. Senator, Paul Simon as General Counsel and Staff Director for the U.S. Senate Judiciary Subcommittee on the Constitution.

And in 1977, President Clinton appointed Mr. Trasvia as Special Counsel for Immigration Related Unfair Employment Practices. As special counsel, he led the only Federal government office devoted solely to immigrant workplace rights. He was the highest ranking Latino attorney at the U.S. Department of Justice and after returning to California, he taught immigration at Stanford Law School, so second Stanford Law School connection because I forgot to mention that Luis Fraga was a professor there as well.

As a highly sought after advocate, Mr. Trasvia testified in the last Congress before his US Senate Judiciary Committee in support of extension of the Voting Rights Act and before the US House Education and Workforce Committee against English-only legislation.

In 2006, he was named Attorney of the Year by the Hispanic National Bar Association as well as by San Francisco's La Raza Lawyers Association.

So, as you can see they are highly qualified, highly esteemed and well-prepared to share information with you, not only to help you understand where we stand in terms of civil rights today, but also to help us see maybe where we can go forward.
I turn it now over to Lorena González and ask you to join me in welcoming her to Seattle.

[applause]

**Lorena González:** Thank you Michele. And thank you to all of you for joining us here today. I hope that we are able to have a true dialogue on all of these issues.

So, just briefly before we begin the presentations, I wanted to explain that all of you have some notecards in front of you. And so, throughout the presentations that you will be hearing today to the extent that you have any questions please fill those out and then - Anne, will you be running those up to us? OK.

So, she will be running those notecards up to me and I'll go ahead and present your questions to each of the panelists. And feel free to direct any of your questions on the notecards to a particular panelist.

So, what we'll do is we'll have each panelist present for about 10 minutes on a particular topic. And then, we will go ahead and wrap up that particular aspect and then we'll go ahead and start off with the questions. So, I definitely encourage all of you to seize the opportunity to ask all these brilliant folks some questions about the civil rights era.

So, we'll start off with Josh. Josh is going to talk to us about what has been happening within our court system, the Supreme Court of the United States in particular, in the arena of civil rights. So, he is going to lay the foundation for us with regard to that and provide us also with some solutions on what we can do to prevent the rollback of civil rights.

**Josh:** Thank you. And thanks Michelle for that kind introduction. I have one correction to make. I think, I was the youngest President of the Latino Bar.

[laughter]

**Josh:** I think, that's right.

**Michele:** We continue to fight about that. I'm the youngest looking President of the Latino Bar.

[laughter]

**Josh:** She always gets me at the end there. But, it is an honor to be back here at my alma mater the University of Washington and to be invited to join a panel of such distinguished individuals.

As Michelle mentioned, I work with the National Campaign to Restore Civil Rights. And we are a collection of about a hundred different progressive civil rights organizations that are working to educate the public about the civil rights rollbacks that are resulting from the right wing takeover of our courts.
Aside from educating the public about the rollback, we also work to build a movement to stop the rollback using the media, the courts and the legislature. I want to just start off by emphasizing what a crucial role the courts have, not only in protecting civil rights, but really in fashioning a more just vision of our society.

The founding fathers recognized that the judiciary is the least democratic branch of our government. But, access to courts is a really necessary requirement for a true functioning democracy.

The courts were designed to protect the minority from the majority. And the courts, the way they are supposed to work, are oftentimes a last resort for folks to vindicate their rights. But, in recent years, we have seen a drastic shift in the courts to the right. And the result of that is the courthouse doors are being closed to many important civil rights claims. We have to get back to working on owning the courts.

Let me just point out also really quickly that this is going to be a very brief overview of the rollback. So, my apologies to many of the lawyers here and other folks and especially to those in the room who are doing a lot of the heavy lifting in this area.

We are just going to barely touch on some of these issues today, beginning with the contextual barriers to the enforcement of rights and the inability to be able to get into courts. As a lot of you know, starting around the 80s with Ronald Reagan coming in, there was a shift in politics, a shift in media. And really the right wing point of view started to take over.

That spilled over into our legal services. These are the groups that provide civil legal aid to poor folks. Their funding was slashed. They were saddled with numerous restrictions. At the same time, the right started to fund think tanks and anti-social justice law firms that were quite successful and have been quite successful in litigation.

You used to be able to rely on the agencies, the Federal agencies and the offices of civil rights to help with enforcement. No more, because the Federal government is going in a completely different direction now.

And then of course, the most drastic and scary part of this is there has been a major seachange in the makeup of our courts. There's been really a stealth campaign to stack the courts with folks from the right wing. The result of that is a gutting of many of our most important civil rights protections.

So, how did we get to this? How did we get into this mess?

[music and audio]

Man: How did all this start? Many date it to 1964. Barry Goldwater, a Republican candidate from the extreme right.
Goldwater lost in a landslide. But, his defeat galvanized ultraconservatives. They didn't get that far with their agenda though - until 1980.

**Man 2:** I Ronald Reagan do solemnly swear...

**Ronald Reagan:** I Ronald Reagan do solemnly swear...

**Man:** They moved aggressively under Reagan, led by people like Attorney General Edwin Meese and young lawyers like Samuel Alito.

If there was ever any doubt about what they had planned, that disappeared in 2002 when law professor Dawn Johnsen exposed documents that made it crystal clear.

**Dawn Johnsen:** Reagan and Meese succeeded with collaboration by the Department of Justice in making movements to set forth the blueprints of radically moving constitutional law to the right by overruling a series of landmark Supreme Court decisions on all the great issues of the day.

**Man:** Meese didn't act alone. Ultraconservatives had partners on the outside - big business and big money. They poured millions into law schools, into think tanks, into nonprofit law firms and into a group called the Federalists Society.

It began as a forum for debate. It turned into a way to groom lawyers for high government office and the Federal bench.

And there were more allies. Allies on the religious right. They said to change the law you had to change the courts.

**Man 3:** ... homosexuality is an unacceptable lifestyle. Amen.

**Man 4:** And what you saw beginning in the early 1980s was really a coming together of conservative ideas, conservative intellectuals, conservative lawyers and conservative money, all pointing in one direction. And the direction was, "Let's get the people we want on the Courts."

[end of video]

**Josh:** And they have been extremely successful at getting the people they want on the Court.

The Federalist Society is a key part of that. A great majority of recent appointments to the Federal Bench have been society members and not only the Federal Court, but also the Department of Justice.
If you look at the different Circuits around the country, 11 of the 13 are Republican majority Circuit. In fact seven of the Circuits are a two to one majority. A lot of folks don't understand that with the way the rhetoric in Washington is framed. They think it's the other way around.

The results of that court stacking - well there are a couple of things that have come out of it. Let me just show you this.

[video]

**Man:** We no longer have candid, revolutionary efforts to change the American Constitution as we know it. We rather have a stealth revolution. I believe the Constitution protects the right to privacy.

[music]

**Man 2:** You're not suggesting that there wasn't any discussion?

**Man:** Not since Roe v Wade. I cannot remember personally engaging in those discussions.

**Man 3:** Justice Thomas, when asked about Roe against Wade, said he had never talked about it to anyone. And then of course, when he gets on the Bench, he makes his decision absolutely plain from the get go.

[music]

**Man:** I don't have any objection or basis to object or, at this point, any quarrel with the way that the court has interpreted the Interstate Commerce Clause.

[music]

**Josh:** And so, with the court stacking, what we've seen is a drastic rollback in three major areas of our civil rights. The most important and significant is the ability of Congress to pass laws. Really, challenges to the authority of Congress to pass certain key legislation.

The second is challenges to the authority of Congress to subject the states to those requirements. In other words, if Congress has the power to pass the law, can we make the states accountable?

The third is, if you have the power to pass a law, and you can subject the states to the requirements, can you even get into court to vindicate those rights?

The first one, again, the reason I say that's the most significant is because if Congress doesn't have the power to pass laws, that undercuts the very validity of existing civil
rights laws themselves.

The key case in this area is United States v. Morrison. It was a five-four decision, and pretty drastic facts in that case: Christina Brzonkala was a student at Virginia Polytechnic Institute. She was gang-raped by several of her classmates and the school didn't take any action against them. In fact, the students stayed in the school, they continued to harass her, and the only thing she could do was go to court and bring a claim under the Violence Against Women Act, which is a federal law that allows you to assert a claim in federal court against perpetrators of violence against women.

What the Court did in that case was very shocking to many court watchers, but the Court went in and said that violence against women wasn't substantially enough connected to interstate commerce. So, they didn't have the authority under the Commerce Clause to pass it. But, then they went a step further and said they couldn't even pass it under the 14th Amendment, Section Five of the 14th Amendment. And that has an effect in all types of different areas of key civil rights legislation.

That second point here, the ability to subject the states to the requirements of federal law is also very important. Another sad case: Patricia Garrett in Alabama was a nurse. She got breast cancer, and as a result her hospital started to discriminate against her. They demoted her, they moved her to another job, and the only thing that she could do, again, was go to federal court under the Americans with Disabilities Act. Again, it worked its way up to the Supreme Court, and the Court said, "No, regardless of the merits of the case, Congress cannot subject the states to the requirements of the ADA." And that has a spillover effect in a host of other areas.

The third is this ability to get into court. A key case, again out of Alabama, and again it's a five-four decision rolling back our rights, it's called Sandoval. It's a case that has to do with an English-only law to get a driver's license in Alabama, and it guts a major piece of the 1964 Civil Rights Act called Title VI. Basically, what it means is you can no longer just have despaired impact on a community of color, you actually have to show intentional discrimination.

And there are a couple of other key cases in this area that limit a particular statute called 42 USC 1983. It's a long name for a statute that basically is just a vehicle to be able to get into court and assert your federal rights and your civil rights. But, that's been really hampered through a series of cases, one from out here called Gonzaga v. Doe.

These are sort of the three major areas of the rollback, but there's sort of a catch-all fourth area; I don't really even know what to call it. [laughter]

It's basically an avalanche of cases that are starting to come down from the Supreme Court that are really rolling things back. And you all must be very familiar with the first one, the Seattle and Louisville school cases. This is really a big rollback in the area of integration. Last term, a five-four decision, the court said that Seattle's very modest efforts to integrate our schools is unconstitutional, basically turning Brown on its head.
No longer can you challenge certain actions that violate the separation of church and state. Standing requirements: This third one is one of the hardest things to explain; it's a case called Beckanen, which limits attorneys' fees. A lot of folks think, "Oh, well, the attorneys are getting enough money anyways," or that it's not important, about the fees. But, you can't go into federal court and litigate unless you have a lawyer to help you, and a lawyer's not going to be able to help you if they can't get fees, because how are they going to keep the lights on?

And a host of other areas: Mandatory arbitration, basically waiving your rights to get into court, you have to go to an arbitrator in employment disputes and other areas. The Americans with Disabilities Act is terribly difficult now to bring a claim under because the definition of disability is so tortured. Limits to free speech, and a whole other area called qualified immunity. So, these are a whole avalanche of cases, especially in the last couple of terms that we're starting to see.

It's not all that depressing, though. There's hope. And let me just say that there's a silver lining to all of this, and in the very few minutes that we have left I'll talk about what we can do. But, the silver lining here is that these cases are so cross-cutting, across silos and they affect so many people. A case in the area of disability rights can affect somebody who's doing work in racial justice, or environmental law. So, there's a strong incentive for all these groups to work together, and that's the silver lining there.

And I think, the first step, really, here is to start talking about these issues and educate the public about it. You know, these opinions are coming down and they're talking about things like sovereign immunity and private right of action. Well, most folks don't care about what that is. It doesn't make any sense. So, we've got to start breaking it down into real terms, talking about the real people that are affected by this rollback.

And then, we've got to change the terms of the debate. The right wing for so long has really controlled the terms of the debate. Let me show you what I mean by that.

[video starts]

**Man 1:** Support judicial restraint.

**Man 2:** Put people on the bench who are strict constructionists.

**Woman 1:** ... judicial restraint.

**Man 3:** ... interpreting the law, not writing it!

**Man 2:** ... who will interpret the laws, not legislate from the bench.

**Man 3:** ... more strict constructionists, interpret the law, and not try to...
George W. Bush: ... legislate from the bench.

[applause]

[video ends]

Josh: See, that's really strong messaging, and they do it over and over and over again. And you know, people who are activist judges and the ones who are legislating from the bench are the ones from the right wing that are rolling back all of these rights. Those are the activists. We don't even call them conservatives anymore, because they're anything but conservative.

And as progressive organizations, we need to put more money and more emphasis on communications and messaging. If you look at the right wing, the successful organizations of the right wing spend about 30 percent of their budget on the media. The left, we spend... we're in the teens. We need to move into funding, if we can get into the 33 percent range, we're great. If we can get into the 50 percent range on messaging, that'll make a huge difference.

You'll hear a little bit about immigration and what's going on in the immigration world, but that's especially important now because, quite frankly, we're not winning that debate in the public, when it comes to immigration. For example, if you go to middle America and ask a voter, using language like this: "Do you think illegal aliens should get... or, should we give illegal aliens free medical care?" They'll say no. Now, if you ask that same person, "Do you think that the government should deny equal access to emergency medical care for an unauthorized worker?" you're going to get a different answer, more than likely. So, you have to frame messages in language very carefully, and that's what we need to focus on.

Creative legal strategies. I'm not going to get into that too much, but we have to start thinking outside the box, using preemption and other doctrines to get around some of these barriers that the Court is erecting.

And then, nominations. We talked about how the right has controlled the nominations. Bush has appointed something like 300 judges in the last seven years. We've got a lot of work to do on that, and we've got to remind our Senators that they have a Constitutional obligation to provide advice and consent when it comes to these nominees.

I put Leslie Southwick up here just as a recent example of another battle that we lost that's going to hurt us for awhile. I think, it was probably about a month and a half ago, Leslie Southwick was appointed to the Fifth Circuit Court of Appeals because Dianne Feinstein in California switched her vote.

I talked to some folks in Seattle a while back when this battle was brewing, and they said, "Why should I care about what's going to happen in the Fifth Circuit? I'm in the Ninth Circuit out here." Well, as I mentioned earlier, a lot of these key cases are coming from
the Southeast. I don't know what it is, there's some kind of judicial superhighway from the Southeast straight to the Supreme Court, and that's where we're getting these hits. Something like Leslie Southwick, who is anti-worker, anti-gay, and some people think pretty bad on race, is going to cause some problems across the country even though he's out in the Fifth Circuit.

In the last minute here, I'll talk about legislation. A lot of these really bad cases can be corrected through legislative fixes. We're calling this 'the 2008 Window of Opportunity.' I've got here a bunch of materials for you. But, just two days ago, Senator Kennedy introduced the Fairness Act of 2008, which will correct... It's almost a kitchen sink bill. It's going to correct a lot of these terrible rollback cases that we've talked about. It'll have a Sandoval fix, it'll have a fix for the ADEA, the Age Discrimination and Employment Act that's been hurt very badly by the courts. It'll fix that attorneys' fees provision, among a host of other different fixes. So, it's a step in the right direction. It doesn't move the ball forward in terms of where the court was 10 years ago, but it certainly will help out quite a bit and correct some of the missteps.

**The ADA Restoration Act:** You know, politics make strange bedfellows. You know who Sensenbrenner is? The guy out of Wisconsin who's extremely anti-immigrant? He introduced the ADA Restoration Act. I don't understand it. [laughter]

It's a very good act and will go a long way to protecting folks in the disability arena.

And Lilly Ledbetter Fair Pay Act: You guys know about this case that came down last term? She, Lilly Ledbetter's a wonderful woman in Alabama, of all places, who worked at Goodyear Tire for 20 years. A wonderful, fine person who did the same kind of work, actually more work, worked harder than her male counterparts. Went up to manager, found out toward the end of her career that she was being paid significantly less just because she's a woman. She filed a lawsuit, was very successful at district court, went up to the Supreme Court, and the Court said, "You know, you should have filed that lawsuit 180 days after the first action to discriminate against you, even though you had no way of knowing about it for 20 years until you received this anonymous note." Just an absurd case. And that has been introduced and has a hearing next week.

So, these are a couple of key pieces of legislation to watch, and I'll get out of the way because I'm taking up too much time here, but thank you so much.

[applause]

**Lorena:** Thank you, Josh. So, now we're going to hear from Pramila, who is going to talk to us about the immigrant rights movement that is taking place in Washington State. And so, without further ado, I will hand it over to you.

**Pramila:** Should I go over there?

**Lorena:** Absolutely, you can.
**Pramila:** I would like to use a [indecipherable] so it's always nice for me to stand up. Thank you so much, I am so happy to be here and particularly with all of my esteemed colleagues that are on the panel. This is a great opportunity.

Lorena mentioned the Hate Free Zone. I started Hate Free Zone right after September 11th. I honestly didn't intend that it would be an organization, but there are greater plans in life that we sometimes don't know about. And so now it really has become one of the most exciting immigrant rights organizations in the state doing tremendous work with a number of coalition partners. Hillary Stern, who's the executive director of Casa Latina, is going to be honored tonight at the dinner, and many others who are doing important, important work on immigrant rights issues.

Our mission is to advance the fundamental principles of democracy and justice by building power in immigrant communities in collaboration with key allies. So, all of that is important to us, and we are particularly focused, I think, on, as Josh said, the importance of bringing many different communities who are affected by these issues, both immigrant and nonimmigrant, cross-sectoral, cross-ethnic, to come together to be able to build the kind of political power that we think it's going to take to rollback some of what we're hearing about.

We are rooted in our communities, but we are now probably too large to be called a grassroots organization. We really believe that the importance of building political power is to be able to win policy change. And that's winning policy change at the local level, at the state level, and federally.

And so, I have the pleasure of chairing a national campaign called the Liberty and Justice for All Campaign, which includes a broad coalition of human rights groups, Human Rights Watch, the Leadership Conference on Civil Rights, the Asian American Justice Center, and a number of different groups that have come together to say how do we address these issues that initially we called "post-9/11 issues"? They've expanded much, much beyond post-9/11 issues into really fundamental questions of due process, of Constitutional rights, and of treatment of a number of different minority communities.

I also work on national immigration reform issues, and so we were a part of the Coalition for Comprehensive Immigration Reform, last year pushing for comprehensive immigration reform at the federal level. We also chair a local table or state table of organizations who are working on those issues. So, that's how we come to this work.

Immigration as a civil rights issue is not, obviously, a new concept, though it is still a debated concept. In September of 1980 the U.S. Commission on Civil Rights actually published a report called "The Tarnished Golden Door: Civil Rights Issues in Immigration." And at that time, and I don't know if, John, you were... That was, I guess, before you...

**John:** Even before my time.
Pramila: Even before your time. John and I started working together back when he was in the Justice Department right after I had started September 11th... started Hate Free Zone.

But, the report focused on a few key areas at that time, I thought it would be constructive to outline them for you. That were areas that we needed to look at where civil rights abuses were occurring. And those were the past and present discriminatory provisions of immigration law, and we all know and can strong the numerous instances in which entire populations have been denied the right to citizenship, as well as other ways in which immigration law is administered.

The practices and procedures in the administering of immigration law, the issuing of employer sanctions, the Constitutional rights that are or aren't provided during the immigration legal system, and a fifth one was the INS procedures around investigating complaints.

Even back in 1980, these were issues that were being discussed as civil rights issues, and since then clearly there are other areas to add to the list. Most recently, Charles Rangel called our current guest worker program and he was talking about the H1B program, which allows for agricultural workers to come in under very limited circumstances. And he said, "This is the closest thing I've seen to slavery."

So, both that H1B program, as well as our practices around whether or not we approve into legislation the ability for people to be here and work here in jobs that we are requiring them to be here and work for, or whether we do it by legislation or through the wink of the eye, the fact that we have 10 to 12 million undocumented immigrant workers who are performing critical jobs, often subject to tremendous exploitation, manipulation by employers, low wages, these are all pieces of the picture now that we have in terms of the rollback of civil rights.

In addition, I mentioned the violations of due process. And the wholesale violations of due process that have been occurring within the immigration system have to be mentioned. I think, the majority of people, the general public, does not know that 85 percent of people who go through the immigration system go through pro se. They don't have representation, it's a very complex system, for those of you who have studied immigration law, you know that it's changing all the time. And the idea, then, that you could make immigration violations the subject of, for example, local cops actually starting to enforce immigration law has all sorts of implications for what that means for people's due process.

Beyond that, there has been, at least since the mid-90s, a rollback of the ability that judges have within the immigration system to actually weigh the merits of a particular case. So, judicial discretion has been essentially eliminated. In many instances, you have cases where low-level clerks are making decisions about deporting families back to terrible circumstances.
And there has also been since the mid-80s an increasing criminalization of immigrants. So, that what you see in the process is minor crimes now becoming actually grounds for deportation, in some instances retroactively. So, somebody that had pleaded guilty to a minor crime that was not a deportable offense, if you get 364 days instead of 365 days, it's the difference between whether or not that is a deportable offense or not.

That then, has led to these punishments that are absolutely so out of line with what the actual crime is. And it was interesting, there was a report that was published by Human Rights Watch last year on deportation and family separation as a human rights issue. And between 1997 and 2005, there were 675,593 noncitizens who were deported for criminal offenses.

And you may have seen recently there was an announcement that the Department of Justice is now going to deport an additional 20,000 people this year, that's one of their strategies for this year. About 64.6% were removed for non-violent offenses like drug convictions, illegal entry, or larceny, 20.9% were removed for violent offenses, and 14.7% were removed for other crimes that weren't classified. The report estimated that about 1.6 million spouses and children living in the United States were separated from a parent, a husband, or a wife because of these deportations; 1.6 million people.

If you look also at the increase in federal detention centers-and I'm just curious, how many of you have actually been to a detention center? Has anybody been to a detention center? Great. So, at least we have some people. Many people don't realize that the detention center is essentially a jail. We just don't call it a jail, because we don't give people attorneys, and we don't want to have to provide attorneys.

It's a civil offense; it's not a criminal offense. If we made it a criminal offense, we'd have to give people public defenders. And we certainly don't want to do that. So, the immigration detention system has been growing increasingly under private contractors and those contractors, you won't be surprised to hear, are largely controlled by Halliburton. It is one of the largest constructors of federal detention centers.

So, none of these things are disconnected. They are all very connected. We actually have a wonderful project that we're doing right now at the Seattle University Law School Human Rights Clinic around detention conditions in our detention center.

So, the civil rights movement really was devoted to securing equal opportunity and treatment for members of minority groups, and that's exactly what we're continuing to do as we fight for immigrant rights. And I never want to diminish in any way the work and the importance of the civil rights movement in saying this. And I think, it's very important every time we talk about comparisons between the immigrant rights movement and the civil rights movement, to say that, because that work is far from finished. And we continue to do a lot of work with a black-brown coalition - John and I have been a part of that - a couple of conversations at the national level on what are we going to do about the civil rights movement and the unfinished business of the civil rights movement.
At the same time, we have to recognize that immigrant rights is a civil rights issue. It is a human rights issue. And it does require our attention. And that the tactics of demonizing, of criminalizing, of marginalizing in terms of political power and political participation, in terms of representation, are some of the same tactics that have been used in the past.

This is an urgent issue for us here in Washington State. It isn't just something that's happening in other parts of the country. This is happening right here in Washington State. And we have, actually, the tenth largest foreign-born population in the whole country. About 12% of our state is foreign born. We have the eleventh largest foreign born workforce, we have the fourth largest refugee resettlement population, and we are actually first in terms of what's called secondary migration of refugees - so secondary resettlement of refugees. So, we cannot afford to think that the issues of immigrant rights are not issues that require, as Dr. Martin Luther King said, "the urgency of now" - that require our attention now.

And so, the other thing that's interesting about Washington State, of course, is that we have a very wide diversity of immigrant communities. So, the largest populations are Asian - and that is very wide within that category - and the next largest from Latin America. But, that's changing so quickly that the census data is far behind. Because we're getting increasing numbers from Eastern Europe, we have, I think, it's the second largest number of Iraqis who will be resettled here following the Iraq War, if that ever happens. And so, this issue really is one that crosses all boundaries.

The immigration debates, I think, often tend to focus too narrowly on just one population, when in fact the criminalizing, demonizing of undocumented immigrants is important both in and of itself, as well as in terms of what it says about all immigrants. And what is happening, then, in terms of public perception and the resulting rollback of due process rights, of benefits and services access on a number of other levels.

So, I'll just say quickly, to wrap up, that in terms of what we can do, really Josh's last slide is very similar to what we believe also needs to be done. We have to change the terms of the debate when we're talking about immigration. There is no other way that we are going to succeed. And that doesn't mean that we do that solely. It's a multilayered strategy, we believe, that includes changing the terms of the debate, that includes policy work and legislative work to both push back on anti-immigrant ordinances, policies, etc., as well as to move forward positive solutions for how we think about the role of immigrants in this country.

We also need to continue to do this coalition building. It is important that it isn't just immigrant rights advocates who are advocating for immigrant rights. We really believe that the immigration question is not a question about immigration. It's really a question about who we are as a country, and what we're willing to stand up for. That's what it's about. And if we don't make it clear that this involves all of us, that it affects our view of what the Constitution provides, of what citizenship actually means, what it means to be a participating member of society, we will, I think, not be successful.
So, we have to build those coalitions, we have to change legislation, and we have to build political power. And so on that end, I'm happy to say that at Hate Free Zone we have now registered 21,000 new immigrant citizens to vote in the last 18 months. [applause] We are not just registering them, because that is only the first step of the process, but we are educating them about the issues that they are telling us they care about and want to be educated on. And then, we will be working actively to make sure that they understand the process, so that they can participate, and their participation is not marginalized.

By the election, we will have 30,000 new immigrant citizens registered to vote. And one of the consequences of that is that we are going to be able to push forward positive legislation. I'm sorry the Governor can't be here, but she has told us that she is going to announce - and I think, she will be either the fourth or the fifth governor in the country to do this - a New Americans Executive Order. And that will happen in the next couple of weeks, so watch out for it. We've had the support of the Latina/Latino Bar Association and many of the other colleagues that we have in labor, faith, business, who understand that this is a fundamental issue for Washington.

I want to just say quickly that there is the issue of the driver's license that's on the table. And I want to just say that because I'm hoping someone will ask a question about it, so I don't take up my other panelist's time right now. [laughter] But obviously, we're aware of that. We think that it is a bad idea, for so many reasons, to change the laws in the State of Washington. We are working actively with the governor's office to help them to maintain the line on our driver's license requirements as they are now, and then also to prepare our legislature.

Because what we're finding is so many of our legislators - wonderful people that believe in the issue of human rights, of civil rights, of immigrant rights, would like to do the right thing - actually don't always have the language to do it, or the information to do it with. And so they are actually reaching out to us and asking us for that help. We will be putting out a poll in the field for the first time looking at positive attitudes towards immigrants, how do we define and shape those? That's the part I was talking about, about changing the public debate.

And our new Americans Initiative, which includes the governor's executive order, also includes allocation of funding for a naturalization program for legal permanent residents - there are 135,000 legal permanent residents eligible for citizenship who have not naturalized - as well as a public media campaign on how we reach people and reconnect them, not only to their immigrant histories, but to their belief in what America is as a country, and how they can stand up for that belief.

So, thank you very much.

[applause]

**Lorena:** Thank you Pramila. So, I want to remind you all that if you have questions throughout the course of the presentations today, to make sure to jot those down and just
raise them up in the air and our runner will come by and pick those up for you. And we will go ahead and proceed to the next panelist.

**Luis R. Fraga:** Good afternoon everybody, I'm Luis Fraga, associate vice-provost here at the university, and I'm very happy to have the opportunity to address you for the few minutes that we have, and certainly in the question and answer session we'll have the opportunity to get into much more detail.

I've been asked to focus on one particular aspect of the research that I've been doing over the last 25 years, and that's to focus on the important civil rights implications and consequences of education, and the rollback in civil rights with regards to our educational policies.

It's no surprise that education would be at the center of any consideration of the civil rights rollback, and it's no surprise of the importance of Brown v. Board of Education, as an important, now perhaps symbolic, but at least at one time, an important step in understanding how it is that any of us, and how it is that our society generally, but certainly how any of us as individuals gain a capacity to understand our civic responsibilities, and gain a capacity to develop a set of important expectations as to what it is we might choose to do, and especially the expectations that we have as to what it is our nation, what it is our society, what it is our state with a small 's' might have to allow us to do, or give us the opportunity to do.

So, the development of expectations has tremendous implications for our understanding of rights is critically driven by the extent of which we have educational opportunity.

If one wants to focus on the rollback in civil rights with regards to education, there is a wealth of particular arenas in which we could focus our attention. We could focus on the re-segregation of American schools, an issue that doesn't come up very much, that I'll spend a little bit more time on here in just a minute.

The racial and ethnic re-segregation of our public schools rivaling any level of segregation since the Brown decision in 1954, and especially the ways in which that increasingly intersects with class segregation. A new phenomenon in American society, I would suggest to you.

We could focus upon, as a rollback on civil rights, the way in which voting rights and voting rights advocacy has been hurt by a number of important supreme court decisions, and the implications that that has, our focus of attention here today, on the capacity of Latinos and Latinas to serve on school boards - the highest level policy decision making arena, if you will, that greatly affects the lives and structure of educational opportunity in our country.

We could focus on the anti-English as a second language propositions that might be an appropriate focus of attention. In California, with its famous Proposition 227 in 1998. We could focus on propositions in Colorado - fortunately one that failed. Proposition in
Massachusetts that passed. And the fact that five new states are going to have votes in this next election to try to implement, similar to California and Massachusetts law, limitations on the capacity of schools and teachers to decide how best to try to provide education to their students whose English is not the primary language.

We could focus on anti-affirmative action measures, whether in terms of supreme court decision making, or propositions and initiatives that have been passed. With our focus here at the university, we could focus on it with regards to implications for faculty hiring, and with regards to student enrollment. So, there are tremendous implications there.

We could focus on anti-immigration legislation, generally. To talk about education. We could talk about drivers' license bills. To talk about education. I was giving a talk in Texas a few years ago, and a group of teachers said "Do you understand how it is that the inability of undocumented adults to gain drivers license directly limits the educational opportunities of their children?" I hadn't thought about that one.

They said to the extent that children of undocumented workers are American born, and it is increasingly the case that many of our unauthorized immigrants have children who are American born, given the level of fines that exist for those who are caught driving without an appropriate license, it requires these families to give the responsibility of driving parents to work, particularly after 6:00 pm, to the children who do have a capacity to have drivers licenses.

It therefore limits the capability of these children in schools to participate in extra-curricular activities to further enrich the educational opportunities that they have. There's a direct educational implication of a drivers license bill that has so many other implications here in our society.

I don't have the time to talk about all of those, so I thought I'd choose to talk to you about two. The re-segregation of public schools, and the anti-affirmative action push backs that we have experienced over the past several years.

I want to conclude, after talking about those in a little more details, I want to conclude with a consideration of what some possible solutions, and how there might be, in fact, the way in which the rollback in civil rights pushes us to be far smarter, and far more strategic than I think, many of us thought we would ever have to be in understanding the way our civil rights would need to be enforced.

In enrollment segregation, and especially re-segregation, we're all familiar with key decisions that have been made. The Keys decision in 1973 was a key decision that identified Latinos as distinct from whites, and more similar to blacks, with regards to enrollment segregation in schools, because it had become the custom, such as in the school system where I was educated in Corpus Christi, Texas, for a school to claim that it was de-segregated, because it had African American students in classrooms with Latino students.
Since Latinos, at an earlier period of time, had been declared white under the law, it was possible to have a desegregated school where 90% of a school, 100% of a school, like all of the schools I attended, had students enrolled only Latinos and African Americans. Other schools were 100% white. The Keys decision was key to try to change that.

The Milkan v. Bradley decision, as you know, in 1974, that limited the intra-district bussing as a solution, was another major limit in the capacity of our nation to be able to desegregate a school. More recently, Missouri v. Jenkins, a decision that emphasized by our supreme court, the need to establish as a fundamental principal, an understanding educational opportunity as it relates to race, to re-establish local control as the primary basis through which judges had to decide whether or not to decide whether a school system could be under judicial review with regards to the oversight of court orders, and consent decrees.

More recently, the decision that was made with regards to the Seattle public schools, where race as any significant factor in the assignment of students to schools is no longer understood as being constitutional.

Well, what has the impact been of this trend in court decisions? Latinos have grown to now be about 9.6 million students in our public schools all across the country. They constitute now about 19.8% of all students enrolled in our public schools. Just under 20%. That represents an increase - these are 2006 data - that represents an increase from 1968 of 356%. A 356% increase in the percentage of Latinos, the percentage that Latinos compromised of students enrolled in our public schools.

The growth in the percentage that African Americans students are in our public schools, during that same time period, 1968-2006, is just at 31%, and all of this coincides with a decline in the white percentage of public students enrolled in our public schools at about 27%. African Americans are now 17.2% of all students in our public schools, whites are at about 57%. What's important about that 57% is that it's just over half.

Within the next five years, I would predict that most of the students who attend public schools in the United States are going to be non-white. What have the implications of this been for re-segregation of our schools? About 77% of Latinos attend majority/minority schools today in the United States - 77%. The percentage for African Americans is 73%. By that, I mean these students - 77% of all Latinos, 73% of all African Americans - attend public schools where Latinos and African Americans combined are a majority of the students in those public schools.

If one looks at hyper-segregated schools: schools where Latinos and African Americans combined are 90-100% of the students in those schools, a full one third of both African Americans and Latinos attend such hyper-segregated schools.

If a school is hyper-segregated in this fashion, 90-100% Latino and African American combined, nationwide, it is likely that 86.7% of the students in those schools qualify for a free or reduced lunch, the best measure of we have that income segregation in the country.
If you attend a school that is 90-100% white, the percent of students who qualify for free or reduced lunch is between 5-8%.

We have a system of, I think, it's fair to say, apartheid that has been reestablished and reinstitutionalized, driven fundamentally by court decisions and rollbacks on civil rights and we have little opportunity, I think, to try to address it in a significant way.

Let me talk a little bit about affirmative action. Well, we're all familiar with the court decisions regarding affirmative action going back to the Bakke decision in 1978, the famous Hopwood decision in 1996 in the 5th Circuit, and the more recent Grutter decisions in 2003 in the Supreme Court with regards to reconsiderations of affirmative action. We're all familiar as well with propositions that were also written and designed to manipulate public opinion, I would argue, but to limit the extent to which institutions could pursue affirmative action, like Proposition 209 in California, and I-200 here in the state of Washington that passed in 1998.

What we know in terms of the impact that these propositions have had depends upon the area where you look. There's been a tremendous decline in the capacity of minority firms to obtain public contracts as a result of these provisions. There has been a noticeable decline in the percentage of African-Americans and Latinos and some Asians sub-groups now entering classes in schools in California, where it has been studied most significantly.

I have yet to come across a study of the explicit impact of I-200, here at the University of Washington, and in institutions of higher learning and education here in the University of Washington overall. It's hard to argue that the rollback on affirmative action has not had a tremendous impact in limiting the will of many institutions of higher education to take seriously and to develop more strategic plans trying to diversify the nature of their faculty, and trying to increasingly diversify the nature of their staffs as well.

Why might there be a 'silver lining' in these areas? Or, how can we try to regain some understanding of the opportunities that - at one time, I think, many of us thought would be the case - our nation would have, and segments of our population would have, as a result of laws that were passed to desegregate our schools, and efforts by many different types of institutions to use affirmative action as a way to try to better educate their students, as a way to try to diversify their workforces?

There is a way of understanding the rollback on enrollment desegregation as having pushed many of us, who do work in the area of education, to have to reconceptualize our understanding of how we define opportunity disparity in education. There is a way in which... if you grant me the space here for just a minute. There is a way in which the simultaneous development of a standards-based movement in elementary and secondary education has opened up an opportunity for us to, I think, rethink educational rights and opportunity in more creative ways than the explicit enrollment 'desegregation, civil rights' logic allowed us to do.

Arguments are developed - many from some of our best legal minds here in the country
with regards to understanding education - not in terms of equality, but in terms of adequacy. They are trying to develop arguments that focus upon the understanding that equalizing opportunity - whether in terms of enrollment - or equalizing educational spending across districts that may have very different sources of funding is insufficient to address the actual difference in needs. It is also unable to address the way in which we understand, in education, that different students have different needs, and that different costs maybe associated with them, that is then manifested in disparities in standards-based achievement.

It provides us an opportunity to focus our attention on how to better understand and how to develop strategies. In other words, the rollback on enrollment-related segregation, gives us an opportunity to develop new and more insightful arguments, and perhaps, more long-lasting arguments, as to how educational opportunity disparity is in fact the key to trying to increase educational opportunity for all different segments of our population.

Please don't misunderstand me. Standards have all sorts of problems, and any standardized test can be infused with tremendous amounts of class, gender, culture and linguistic bias, but it is a measure that allows you to compare groups to one another. And when you get the patterns of disparities that these tests continuously exam, it opens up a space for us to engage in a much more realistic consideration as to what it is that we may need to do in policy, in practice, and through legislation to be able to address issues of the disparate educational opportunities that result from the patterns of enrollment resegregation that we have.

Similarly, with regards to affirmative action, it seems to me, despite the way in which it has limited the civic will of some segments of our society to expand opportunities in employment, in contracting and in university admissions, it has pushed many institutions - and I'm proud to say this one as an example - to do what I think, many of us thought affirmative action would do in the first place, which is to reconsider, reconceptualize and make, in fact, more comprehensive understandings of merit, understandings of qualification, and understandings of who has the capacity to achieve in particular institutions.

The comprehensive read of files for undergraduates who apply for admission to universities, for example, is I would argue, a positive, constructive response by institutions to reconceptualize what worthiness for admission means. And that is directly resulting from the rollback on civil rights with regard to affirmative action, where assumptions were made about an individual's capacities and incapacities, and the need for extra assistance on the basis of a person's racial or ethnic background.

The work that I do here at the University of Washington, one of my responsibilities, is to work strategically with deans and the provosts to try to increase the diversity of our faculty. The nature of diversity depends upon the particular department and the particular pattern - sometimes it's gender, sometimes it's race and ethnicity, sometimes it's international status. It depends upon the particular department and its culture and what its
The work that I try to do in that arena is a direct result of the rollback on affirmative action. I have to make and I have to work with deans to reconceptualize merit, to make merit more reflective of the reality of the intellectual worth that faculty members do. And it establishes a broader understanding, I would suggest to you, of what our capacities are, to not just do what is good because we have a call to conscience or the law requires us to do it. Consistent with parts of what Sandra Day O'Connor argued in the Grutter opinion, it is because having a more inclusive understanding of merit allows institutions to do better work than they have ever been able to do in the past. We need to build upon those sorts of conceptualizations.

Finally, what does this all suggest about the opportunities we have today, and the responsibilities we have to try to regain a greater confidence and understanding of our civil rights and the opportunities that come from those rights. As a political scientist, of course, I'm very please that the two previous speakers - and I'm sure John will do the same - emphasis politics as a key.

Not legality, but politics as the key, I would suggest. I have to say that as a political scientist in order to maintain my membership as an officer of the Political Science Association. Politics, building coalitions, developing new policy images, reconceptualizing fundamental understandings of interest, fundamental understandings of group, fundamental understandings, I suggest to you not only for the public interest, but for our mutual self-interest.

At some risk in this audience of being a little less legal and a little more political, focusing not so much on 'zero sum' understandings of argument, but focusing when appropriate, strategically, on 'zero sum' understandings: 'I want to win, you have to lose. 'I want to get the opportunity, and it's going to cost you the opportunity that you're accustomed to having'.

When appropriate, pursue that of course. Rights are a fundamental component argued in 'zero sum' terms, are a fundamental component of establishing any opportunity for change. But, in addition, simultaneously as an additive fact, identifying arenas of reconciliation and attainment of mutual self-interest across previously understood contending groups, is I think, absolutely critical to having any opportunity to restore our civil rights today.

This idea of building a set of mutual interest coalitions and re-conceptualizing things like merit, things like educational opportunity, things like rights is within the best traditions of the history of the country. It is what James Madison argued in Federalist #10 when he talked about the evils of faction, we tend to understand it in terms of majority and minority. Madison was far smarter than that. I am not saying he was perfect in every way, but in this particular piece, he was much smarter than that. He said "A faction is a majority or minority that in fact pursues its interests at the cost of the permanent aggregate interests of the community."
Alexis de Tocqueville in his famous volume written in the 1830s, the French aristocrat, came and told us that one of the beauties of America at its best with all of its problems at that time and he had a tremendous emphasis on the evil of slavery and how that was going to lead to the downfall of the nation. When America was at its best, it was because its leaders had a capacity to define, argue and understand self-interest rightly understood, self-interest understood in terms of its reconciliation with the public interest.

To conclude, let me read to you a paragraph from a book that I like, a very nice read by Roberto Mangabeira Unger and Cornel West entitled The Future of American Progressivism and he is trying to develop an argument for how we develop our expectation, then they say the following: "To understand your country, you must love it. To love it, you must in a sense accept it. To accept it as it is, however, is to betray it. To accept your country without betraying it, you must love it for that in it, which shows what it might become." That's exactly where we are.

It is raising a set of expectations of ourselves and raising a set of expectations as to our capacity to convince those who may be opposed to us or as a political scientist, just enough of those who right now maybe opposed to us, to allow us to regain the majority position that I think, our nation was in when we were at our best in trying to establish civil rights for broader cross-sections of our country. Thank you very much.

[applause]

Lorena: Thank you Luis. And now we will hear from John Trasvia, who is going to give us a little bit of insight into what MALDEF does and what the national climate is in civil rights issues.

John Trasvia: What civil rights issue is, is the issue of torture, which this administration has rolled back a lot on and I think, one definition of torture is for activists like you to be sitting for around 90 minutes relatively mutely and silently.

[laughter]

John: So, I will be brief. You have heard from a number of great speakers already and I think, it is really we want to hear from you in the time, so I will be brief. But, I want to say this is the seventh packed in school I have been to. Stanford is my home school and unfortunately Stanford has been known more for its losses than for its victories. There was a thing with the Stanford band when they ran on into the field and back in the '82 game.

The other big Stanford loss was when Luis Fraga left Stanford. It is a great victory for your university to have Luis here. He is relatively new here. For those of you who haven't gotten to know him, he is a tremendous asset, he has a tremendous mind and really really committed to really strong change and really putting, I think, all of our principles, all of our values upfront and center for a 21st century education, 21st century institution. So, I
am really pleased to be here with Luis today and all of you.

In terms of MALDEF, we are the law firm for the Latino community. I have had a good time yesterday and today meeting with a number of community organizations, lawyers and others talking about some of the work that we are doing and yes there is a rollback on civil rights. But, I am ever optimistic about where we are going forward in this year, an election year and also preparing for 2009.

I want to mention a couple other things where we have been active on the fight, but also again really express a sense of optimism. One of the issues right now that we are facing in Congress and potentially in some of those state legislatures, is an issue called "birthright citizenship." That is if you are born in a country, you are a citizen of that country. There are those in Congress who would like to undo that, notwithstanding the fact that the 14th amendment makes clear "all people born and naturalized in the United States subject to the jurisdiction of the United States are United States citizens."

A 110 years ago the United States Supreme Court ruled in a case called Wong Kim Ark. Wong Kim Ark was Chinese-American man. He was born in San Francisco in 1872. He took a trip, he came back to San Francisco Bay, Federal officials tried to keep him out. They said because of the Chinese Exclusion Act. He was a young man. He was only about 22 years old, early 1890s. He said "I am not coming in, I am coming back. San Francisco is my home." They said, "Well, your parents aren't eligible to become citizens, you are not allowed into the country."

He had to go all the way to the U.S. Supreme Court to gain back what was his birthright, his citizenship in the United States by virtue of being born here. And it is not just the 14th amendment case, it goes all the way back, 400 years ago, this year, in 1608, in the Roland Kelvin's case, Anglo-American case, was adopted by this country. You can either have a system where people are citizens because their parents were citizens or you can say because they are born in the country.

And without this birthright citizenship, we will have a permanent underclass of individuals who will be creating a fiction that they will be citizens of a country, either they will be stateless or they will be citizens of a country where they have never resided. There is some effort and some legislators tried to move forward, tried to undo to repeal or cut back on the 14th amendment and it has been the law of the land. We struggled over this principle for African-American struggle over the principle with Native Americans. It took the case of Wong Kim Ark to one would think fully decide back in the 1890s and 1898. We are still at it and this is one of the issues that we are going to continue to fight a rollback. We have really strong support against the rollback, but it is one that you may be hearing more about this coming year.

A second issue is in the area of language. There was an effort last year and the Congress tried to take away the authority into the civil rights act in 1964, take away the authority of Equal Employment Opportunity Commission to get involved, to enforce the law on language discrimination in the workplace.
It was a case of two women workers in the Salvation Army in Massachusetts. Salvation Army put in a requirement that workers had to learn English. The women didn't learn English and in time. Their job was to store clothes. They didn't need to be able to know English well in order to that job. They were fired. The EEOC recognizes as a case of... an issue completely unrelated to their job qualifications or the job needs.

There are some cases where language either unaccented English or English proficiency is a bonafide in qualification for the job, such as air traffic controller, such as a dispatcher, such as somebody working in a surgery room, but in a lot of other jobs, English is not a requirement.

And to limit people's rights because of their ability to speak English is something that under the Civil Rights Act of 1964 is a violation of national origin discrimination. And I have to say some members of Congress and I have to say it was a bipartisan acquiescence for a while said, yes lets take away the authority of Equal Employment Opportunity Commission on this aspect of national origin discrimination.

It appeared a compromise was coming into effect, which would have limited the authority of the EEOC. That is when the Hispanic caucus stood up and others stood up and said look we have been patient on immigration reform. We let the things go by, we are not going to let this one go by and bipartisan, finally the democratic leadership in the house and senate blocked the amendment that would have taken away the authority of the EEOC. There is a new bill that had been introduced by a member of Congress from Montana. It is called the Common Sense English Language Act or something along those lines, which we will try to bring back this issue again, and it is one of the issues that is one of our top priorities legislatively this coming year.

Another area where we are working to fight off a rollback on civil rights is the blurring of the line between local law enforcement and federal law enforcement, when it comes to the area of immigration. Very clearly in the constitution, the federal government is in charge of immigration, not state governments, not local governments.

I am sure you have heard about a number of local communities, local cities and towns that have passed anti-immigrant ordinances. Some of them require landlords to check people's immigration status, file the leas with City Hall as if City Hall would know what to do with it. City Hall doesn't have access to the INS databases, but it is a way of not only limiting housing opportunities, it is also the real agenda of our opponents on this to kick kids out of school because if parents can't establish residency in school, then the children can't go to those schools.

It is way around the Plyler vs. Doe decision of 1982 that says that all children are allowed to go to public school irrespective of their citizenship status or their parents' citizenship status. The good news is that every judge has looked at this anti-immigrant ordinances at the local level whether they are Clinton-appointee or Bush-appointee, a state court judge or a federal court judge, across the country every judge has stopped these ordinances and
But moving forward, we now have issues at the state level. I know the issue of driver licenses is potentially coming up before your legislature this year. We have a traditional view about driver licenses. If you know how to drive, you got to get a driver's license; period. And our opponents on the other side would leave us with the situation: if you are driver and you get hit by a person who has no access to a driver's license, therefore, no access to insurance, what you are left with, what do they tell the people. Well, this is in the cause of fighting illegal immigration. There is no benefit to people within the state to deny people driver licenses because of their immigration status.

And as a security measure frankly, there are other non-U.S. documents that people can use to get onto an airplane, so there is really no connection between driver's licenses as an ID document and driver's license for the very purpose of being able to drive legally and safely.

I promised to be brief and I will, but I do want to say that I am optimistic about 2008 and 2009. We have all heard frankly because CNN and Lou Dobbs and a few others have drummed it into everybody's heads over the past year that immigration is the big issue for the campaign.

Well, the initial indications are that - although it put Senator McCain at a tremendous risk in his own campaign - the initial indications are looking at the votes that those who are the democratic candidates are pretty much clustered around principles of comprehensive immigration reform and the republican candidates, while they are attempting to appeal to one sector of their party, those who have been very strivingly on the enforcement side that Tom Tancredo wing of the party and Duncan Hunter right behind him, they have both left their parties nomination fights.

And in South Carolina, a state that has a growing Latino population and growing anti-immigrant sentiment, we are dealing with some of the local governments there. Senator McCain won that race and generally the polls indicate that immigration is not a voting issue. There was an effort in Prince William County in Virginia in 2006 to try to ramp up hostilities against illegal immigrants in the communities. Republicans in the state senate thought this was going to be the issue that would allow them to keep the state senate, instead the democrats got their biggest gains in the Virginia state senate, their biggest gain since 1992. Democrats now control the state senate in Virginia.

That doesn't mean that the immigration issues are over there, but it does demonstrate that even in some jurisdictions, where you would think immigration would be a big issue, it doesn't translate into votes for candidates. So, as we look through the rest of this year, my sense is that immigration as a Willy Horton type issue will fade. Unfortunately, our supporters, our friends and some of the legislatures are definitely afraid of 30-second ad running against them and we have gotten less courage and less commitment on some of these issues.
I think, we have to continue to make the case and make the religious case, the business case, the education case, the national interest case for immigration. At MALDEF, it is not enough to just say, well immigration reform is good for the immigrants, it is good for MALDEF, it is good for the Latino community. It is good for the nation and it is essential for the nation as the nation gets older and as we need more workers, to give legal status to those who are playing by the rules. Second is to treat them with fairness, so they can have rights and they will be less exploited. And that is one of the fundamental issues that we are looking at in 2008 and 2009.

So I am optimistic, but more so I would very much like to hear from all of you in the remaining time we have today and enjoy being here with you today.

[applause]

Lorena: OK. So, we have a few note cards here, so we will start going through the note card as well. And I am going to have to apologize in advance, but I am going to have to leave in about five minutes because I actually have a hearing at two o'clock. But, I will begin the questions at a minimum and if not, our President-elect, Nicole McGrath has agreed to take over my responsibilities as a moderator in the event that we'd run a little bit long.

So Pramila, I will address this question to you. It reads "How did the democratic presidential hopefuls come down on immigration issues, also what is the name of the human rights report on family separation that you referenced in your presentation?"

Pramila: As John mentioned, they are clustered mostly around the core principles of comprehensive immigration reform, which include legalization and a path to citizenship for the 10 to 12 million undocumented immigrants. They all support that. They all support worker protections, but what that actually translates into is very confusing once you get down to the details of guest worker programs and what actual worker protections would be there. But, certainly the last bill that was introduced last year into the senate did have some worker protections there for guest workers. There is a lot of discussion around future flow.

There is not as much attention as we would like to see paid to the due process issues and particularly around deportation issues, judicial discretion, some of those other key pieces have not been as much of the part of the debate as we would like to see. And then finally, the family reunification piece, everyone supports the elimination of backlogs for people who are trying to get their families here, but there were attempts in the last congress to actually take out the family reunification piece.

Barack Obama is the only one of the top three Presidential candidates that in a debate you probably saw actually voice his support for driver's licenses for undocumented immigrants and there is an op-ed that is down here with the materials that I wrote about, that was published in the Seattle Times a couple of days ago about the presidential candidates, exactly what John was talking about the fact that immigration is not the key
issue that people are thinking about. It should free up space for both elected officials and presidential candidates to really be strong on the fact that immigrants are here building economies and we need to treat them with dignity and respect and rights.

**Lorena:** Thank you. I will direct this question to Josh and if others on the panel also have some insight on it, feel free to chime in. The question is "Could you comment on the need to defend and restore both civil rights and civil liberties, which also has been under attack and in particular, are any of you familiar with the violent radicalization in Homegrown Terrorism Prevention Act that grants broad authority to congress to conduct fishing expeditions into the left wing of progressive political movements.

**John:** I am not actually familiar with that act and the campaign is focused on civil rights issue, so we don't focus on civil liberties issues, but there is obviously many intersections between civil liberties and civil rights. And we have seen drastic rollback not only on issues of torture and long lectures, but also as it relate to issues of protection against government surveillance without warrants and eavesdropping. And oftentimes we see those intersections and oftentimes the judges that seem to think that sort of thing is OK are the same ones that are doing the rollback in other areas too. Somebody want to jump in on that legislation, I just don't know about it, sorry.

**Lorena:** Luis. How can we push Democrats to be more bold in pressing urgent education reforms?

**Luis:** It depends on their district. [laughter] We've got to appreciate that there are those Democrats who can be more bold in certain areas because of the nature of their constituencies, and those who can't. The way I think, the best argument to be made is to argue it in terms of investment. Education isn't about equality. Education is about investing in the nation's future. And we have to be better, I think - and some of us try to do work in that area - in articulating with, not just argument, but with data.

The evidence that exists that greater educational attainment on the part of any subset of our population can be directly linked to greater economic growth, or limiting the nature of economic decline, and that, given the internationalization - and it's difficult to argue, but - given the internationalization of labor, the only way in which employment opportunity is going to be widespread in the United States, is to the extent that we have an increasingly formally educated workforce. It's not going to exist otherwise, and wages are not going to be able to compete effectively with wages in the developing world.

So, the way of articulating I would suggest to Democrats is, to articulate it in terms of investment. But, also articulate it in terms of, if you want to be smart about helping the nation be a rich nation for your children and your grandchildren, invest in your children, and your grandchildren, and their peers. It's not about those of us who are adults now. It's about what we can determine to be the responsibilities we have to provide important opportunities for our children, and our grandchildren. And I wonder about the extent to which Democrats, and Republicans who choose to pursue it, might get more traction in articulating educational opportunity in that way.
Pramila: I just wanted to add one thing to that. On our New Americans Initiative, actually it is very much an important comment, because we are framing that as an economic and community development initiative. Because in looking at strategies and coming up with recommendations on how to integrate immigrants - which includes looking at the educational disparity, it includes looking at workforce opportunities - those are about investing in Washington's future and in our economic development.

And I think that even though it's a little bit strange for some of the immigrant rights folks, frankly, to think about it that way, it is absolutely the way we need to position it, in order to make that very crucial argument about investment now. So, you'll see that framing coming a lot more, as well.

John: And broadening it also beyond immigrant integration into just workforce readiness in general. And we will be supporting legislation at the federal level that talks about immigrant integration, but it goes beyond that. Because there continue to be inequities and shortages in education, for native-born individuals as well, across different communities.

And we can't just come in and say, "Oh, we need this for immigrants." Again, that assumes that the other inequities historically are gone. And they are not. Part of the legislation that we'll be pushing in Washington, D.C., will provide tax credits for businesses who teach, before work or after work, English and GED training programs.

Lorena: OK. And this question is posed to anyone on the panel. The question would be, "Could any of the panelists who addressed this topic regarding changing the message describe how this can be done effectively without lowering the level of the debate, using the characteristics we see the Right Wing media pundits using? For instance, mischaracterization of the issues, or sensationalism. Unfortunately, these tactics have been very successful in grabbing a hold of public attention. Could each of you perhaps briefly address what ideas you have on changing the message?"

Luis: I'll jump in really quickly and briefly. When we, I think, as a panel are talking about changing the terms of the debate, we don't mean a race to the bottom. We mean a different kind of messaging. And we could actually learn a lot from what the Right has done effectively. If you look at a recent book by Drew Westen called, "The Political Brain," he's gone through and he's studied various campaigns and what works and what doesn't work. And generally, he uses the example of Democratic messaging in presidential elections and why that fails.

And it's because many folks think that voters are these rational people who are going to look at all the facts and all the issues, and then make a rational decision. Well, that's not really how people act when they go in the voting booth. They vote with emotion and they act with emotion, and they use a different part of the brain to make those types of decisions. And the messaging can be tailored more to those types of issues. And so, they use the example of Bill Clinton as being a really good person in terms of being able to reach that part of your brain. And Kerry, not so good at it.
Pramila: Yes, I would really agree with that. And we're doing polling that is looking at how people respond emotionally. What are the positive characteristics that people can respond to on immigrants and immigration, for example, in our case. So, I think that it is really important that we're putting forward positive messages.

And I see there's a hunger for that out there. People want to be reconnected with their values. They want to be reconnected with the idea that we are in this country fighting for what we believe to be our country, our rights, our notions of equality, or fairness, or justice. And most polls show that, consistently. Even on the issue of immigration. Even if you phrase it the way that Josh talked about, how many of the questions are phrased. "Illegal aliens." I mean, how much more distancing can you get? But even then, what you see is that people do commit themselves to those values that they hold very close. And it is an emotional issue.

Luis: I would argue that some of the terms that we've heard already, you know, investment, a future for our children, I think, is very significant. I wonder about whether use of the term "smart" might be useful. That is, to respond to a claim that someone may make as being maybe politically viable, but not particularly smart, because it doesn't take into account these other sorts of issues. The comment that was made about the way in which voters vote by emotions is absolutely true. But, among the reasons American voters vote so much by emotions is because we have such a low level of political discourse generally. So, there's a question about what the right balance should be between them.

What has always amazed me as a political scientist is the extent to which - and there's been a little bit written about this - the Democrats get the messaging wrong. And I don't understand that [laughter] because there are firms on Madison Avenue who can tell you whether it's going to work or not, and who it's going to work with.

So, the science of polling, the science of developing understandings on the basis of focus groups. Testing with strategically positioned segments of the electorate, whether a message of hope, or a message of competence, or a message of waves of undocumented immigrants coming in. Whatever the message is, we can find out who that works with and who it doesn't. Is it that the Republican pollsters are just that much smarter than the Democratic pollsters, or what? I don't get it.

And with the amounts of money that our two leading Democratic candidates have now to invest in all sorts of things, I would recommend that they spend a little less on television ads, and much more on having a really good set of pollsters out there to be able to test out what all of these different possible messages are. And target that for the strategic understanding of what they need as critical minimum winning coalitions in key states, to be able to have the sort of support that's going to perhaps allow them to be more competitive than they otherwise would.

John: And I think, on the immigration issue we have a strong case to make. And I think, we can appeal to people's values; we can also appeal to their basic self-interest. And I
think, sometimes basic self-interest wins out over higher-minded values. But, talking about who's going to be paying into the social security system; that every time we educate people we're educating people as future taxpayers; and that immigrants are contributing to the society in some of the most dangerous and difficult jobs. So, there are elements of an argument that make a difference to people, and it's really not just the same cast of characters making the argument. We have to expand the "we" so that we have businesspeople, people in all walks of life, making the case for responsible immigration reform.

**Lorena:** Well, that will conclude our Question and Answer portion of today's lecture. Thank you so much on behalf of the Latino Bar Association for your commitment to coming today and becoming more educated and asking great questions and thank you...

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