

Latinos and *The New Jim Crow*: Untangling Convergences  
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American exceptionalism. It's a conviction that reflexively comes to the mind of any leader who believes that the United States is, always has been, and always will be the greatest country on Earth. It's an obviously dubious assertion in most aspects of our lives, but there's one area where it's indisputable: the insatiable phenomenon of punishing and imprisoning its most marginalized residents. No other country incarcerates so many people, hands down such excessive sentences, or denies former prisoners human rights like the United States.

At first, it was labelled mass incarceration, using a neutral, academic vocabulary. For decades, other observers, viewing the retributive phenomenon through a racial lens, recognized that it worked to subordinate the African American community. But it wasn't until Michelle Alexander published *The New Jim Crow* that the country could understand, in a concise and accessible way, that the mass internment of African American men is the product of the nefarious legacy of nineteenth-century slavery and the twentieth-century segregationist Jim Crow laws—and what's more, it replaces them. The current situation for prisoners and former prisoners is so pernicious that there are currently more African Americans in prison than there were slaves under the yoke of slavery in the nineteenth century, and there are more African Americans stripped of their right to vote than there were in 1870 when the 15<sup>th</sup> Amendment promised former slaves equal access to the vote. Alexander posits that there is a racial caste system in the United States, even as the nation yearns to celebrate its supposed colorblindness following the election of President Barack Obama.

*The New Jim Crow* had an immediate impact in the media, among academics, and on the streets. Cornel West called it “the secular bible for a new social movement in early twenty-first-century America.” Michelle Alexander's comparisons with such horrifically anti-egalitarian eras were so successful that the country began to refer to the penal system in its entirety as “the new Jim Crow”—such was the influence of her synthesis. As a book published during a historic administration—when the first African American president personally affirmed the damage inflicted by being subject to racial profiling and the uncomfortableness of having that obligatory conversation

African American parents must have with their children to warn them of the potential racial violence that may come from encounters with the police force— *The New Jim Crow* engaged a favorable audience. The reforms made by the Obama Administration are the first steps toward dismantling the new Jim Crow.

Even with the importance of receiving a favorable reception in the news media and the government, the most immediate effects that *The New Jim Crow* enjoyed took place in the African American community. Reforms were already on the rise within the African American community that categorically denounced how the branches of the criminal justice system worked to suppress the development of its men. But Alexander, after ten years of research, arrived at a powerful and unadorned conclusion: the racial caste system in the country was never entirely eliminated, it was just redesigned. The Jim Crow laws of yesterday, with all their limitations on African American civil society, can today be found in the branches of mass incarceration. Michelle Alexander succinctly expressed these conclusions in a way that resonated with the very same community that lived it daily. She was not the first, nor will she be the last. But her arrival on the scene drew attention. It was a compelling affirmation of everything that community was talking about. It was the prototypical clarion call.

The Latino community has much to learn from *The New Jim Crow*, just as the country has much to learn about the historic and contemporary discrimination against Latinos. With its expert analysis of racial subordination, *The New Jim Crow* helps us rescue these experiences from obscurity. Latinos and Latinas alike are subjected to the worst manifestation of the criminal justice policies of the United States on a daily basis. Its salience is only dwarfed by the way America treats African Americans. As we've already pointed out, that profoundly devastating treatment is the legacy of slavery and Jim Crow. The counterpart in the Latino experience is a legacy of racialized dominance, conquest, imperialism and colonialism. It is what Juan González called the "harvest of the American empire."

By denouncing the discriminatory effects of mass incarceration, *The New Jim Crow* forces us to train our sights on the parallel consequences for Latinos and other marginalized communities. This is where we find the first key lesson that *The New Jim Crow* symbolizes for Latinos: the black-and-white

racial binary cannot adequately analyze the racist treatment by which the country's Latinos, too, are relegated. For years, Juan Perea has challenged his colleagues in academia to complete the analysis and discourse on racism in the United States to account for the legal, social, historical and political ways in which Mexicans—and, by extension, other Latinos—have suffered under the virulence of American racism precisely because they belong to a race that is different and hated by the majority of the country. Without downplaying the importance of understanding that binary in order to better understand the dimensions of white racism in the United States, Perea insists that such an analysis is insufficient, as it does not account for the voices, histories and experiences of Latinos. Within Latino communities, U.S. racism manifests itself in peculiar ways, at once different and familiar; failure to recognize it renders this history invisible.

This invisibility is especially present in the modern debate over the country's deleterious effects of the criminal justice system. Government data on arrests and imprisonments abide by the black-and-white binary: it was not until 2013 that the FBI included the category "Hispanic" in its reports on crime at a national level. In 2016, the Urban Institute reported we still do not have full knowledge of how many Latinos are under arrest, incarcerated, or on probation or parole—not all states collect data beyond black and white. According to the Institute's report, only 75% of states report the Latino population of their prisons, and only 70% of states do so in their reports on arrests. For example, the Institute says that Florida—with the country's third-largest Latino population—does not share data on how many Latinos are under arrest, incarcerated, or on probation or parole. The lack of data on the extent to which the penal system harms Latino populations reaches even the heights of academia. The National Research Council published a comprehensive volume on the state of incarceration in the United States by an all-star cast of the country's researchers and academics. The authors offer three explanations for their preference of basing their conclusions exclusively on black-and-white disparities: the disparities are more acute for African Americans, the history of slavery and Jim Crow lends more prominence to the disparities, and there is extensive literature on African American disparities. These justifications are understandable, but they perpetuate the impression that Latinos in the United States were never subjected to state violence or state-nurtured vigilante violence, that Latinos did not suffer *de jure*

segregation, and that present-day disparities in the penal system are not rooted in that history.

In *The New Jim Crow*, Michelle Alexander had the prescience to perceive these facts, for which reason she sounded another clarion call and invited us to explore the corresponding effects of mass incarceration for our communities: “It is not possible to write a relatively short book that explores all aspects of the phenomenon of mass incarceration and its implications for racial justice... For example, relatively little is said here about the unique experience of women, Latinos, and immigrants in the criminal justice system, though these groups are particularly vulnerable to the worst abuses and suffer in ways that are important and distinct... I hope other scholars and advocates will pick up where the book leaves off and develop the critique more fully or apply the themes sketched here to other groups and other contexts.”

In this essay, we accept her invitation and briefly outline four conclusions from *The New Jim Crow* that illuminate the convergences of the detrimental effects that are visited upon both the African American and the Latino communities by means of the exceptionally American impulse to nurture and promote mass incarceration.

### ***The New Jim Crow* and its Significance for Latinos**

Throughout the hemisphere, systems of economy, law and civil society operate to subordinate the descendants of Africans who were enslaved. Learning how Latin America confronts its own legacy in terms of the treatment of its black residents will help us understand how Latin Americans respond to racial marginalization in this country. Latin America and the Caribbean received ninety percent of the nearly 10 million enslaved Africans who were brought to the New World. The United States, by comparison, received only an estimated 5 million. There are currently about 150 million individuals of African descent in Latin America. However, recent surveys indicate that a significant sector of Latin America is of the opinion that racism does not exist in the region. These facts led Tanya Katerí Hernández to point out that this denial of racism has its roots in the myth of racial democracy in Latin America. The *mestizaje* /*mestiçagem* of the races in the region is synonymous with racial harmony, as all of its residents are indigenous, creole

or of mixed race. When comparing the systems of slavery in Latin American countries to those of the United States, and especially the supposed absence of racial codes, the residents of Latin America use the rhetoric of racial innocence, according to Hernández.

But life for Afro-Latinos was not as innocent or harmonious as one would think. There was a network of laws, rules, policies and customs in Latin America following the abolition of slavery that worked to reinforce the segregation of blacks and establish rules on immigration that exhibited clear racial preferences. *Mestizaje* in Latin America was not considered degenerative, as it was in the United States and Europe. What José Vasconcelos called the “the cosmic race” elevated the benefits of *mestizaje* following the Mexican Revolution, which ended in 1920. Vasconcelos developed the concept of “*indigenismo*” (a predilection for the history and culture of Indians of the Western Hemisphere) to counteract the preferences for white Europeans under the mandate of ex-president Porfirio Díaz. But *indigenismo* never accepted Indians from Mexico as equals, due to doubts about their loyalty to the country that lay below the surface. And for blacks, Vasconcelos’ *indigenismo* always operated to devalue their race because of negative characteristics that were associated with being black.

In Mexico, as in the rest of Latin America, the white race had the luxury of dominant genetic material, according to this thesis, and when they mixed with blacks, their positive attributes would dominate in the long run. *Mestizaje* in Latin America existed in tandem with policies and laws designed to whiten the population by favoring the immigration of white Europeans. Hernández points out that, depending on the size of the indigenous population, Latin American countries followed either whitening policies (Argentina, Uruguay, Chile, Brazil), *mestizaje* policies that included their black descendants (Colombia, Cuba, Venezuela) or *mestizaje* policies that included whites and indigenous populations to the exclusion of black residents (Ecuador, Mexico). What was common among these different variations was palpable anti-African sentiment. Over the course of twenty years, beginning in 1880, almost a million Europeans immigrated to Argentina by taking advantage of the laws designed to foment white immigration—the second largest European migration to the Western hemisphere after the migration to the United States. Afro-Uruguayans were systematically excluded from hotels, theaters, restaurants and cafes until the mid-twentieth century. In Venezuela,

the immigration of Afro-descendants was prohibited for decades. This was also the case in Costa Rica, Colombia, Mexico and Peru. In Cuba, the race war of 1912 was a massacre of Afro-Cubans, in which the use of force to execute whitening policies was openly implemented. Similarly, Dominican dictator Rafael Leónidas Trujillo ordered a massacre of more than 20,000 Haitian immigrants while encouraging European immigration and preferring the term “indio” (Indian) to refer to Dominicans of mixed race. In Puerto Rico, whitening was initially implemented using the U.S. Census, which reclassified mixed-race residents as whites at the beginning of the twentieth century.

By comparison, Latinos in the United States live within a racial framework that is at once different and the same. Historically, the first African descendants who came to North America and the present-day United States arrived with the Spaniards to conquer the continent: first, to establish the city of St. Augustine, Florida, and later, to live in present-day Arizona, California, New Mexico and Texas. Ultimately, Afro-Latino populations in the country have been largely Caribbean (from Cuba, Puerto Rico, the Dominican Republic and the coastal areas of Panama, Honduras, Colombia and Venezuela) since before the formation of the United States through the present day. Their mark on important events within the African American community can be found first in the Afro-Cuban cigar industry in Key West and Tampa, Florida, and later among Afro-Cubans and Afro-Puerto Ricans in New York. The Harlem Renaissance, jazz, Afro-Cuban jazz and the efforts to eliminate segregation in professional sports and the military after World War II show signs of Afro-Latino involvement. Nevertheless, like all other blacks, Afro-Latinos had to live in the segregated world of Jim Crow, which encompassed the military, public spaces, sport leagues, schools and the workplace. Athletes with the stature as baseball players Víctor Pellot (Vic Power) and Roberto Clemente from Puerto Rico had to tolerate and later protest the abuse to which they and their colleagues were subjected. Pellot was notorious for challenging conformists who kept silent in the face of Jim Crow. In one legendary story, he and several white members of his team were waiting to order at a restaurant in the South, when a waitress announced “We don’t serve negroes.” “That’s fine with me,” replied Pellot, “I don’t eat ‘em. Now bring me some rice and beans!” Afro-Latinos survived these insults and limitations in the spheres of civilian life in the same way that African Americans did. The most famous of them was the Afro-Puerto Rican Arturo Alfonso Schomburg, renowned as the leading African American historian and

bibliophile in the United States and considered the most enlightened and self-conscious of all Afro-Latinos in the country. Today, the digital, activist “Black Lives Matter” movement has garnered attention from the Latino community because, at the end of the day, Latinos too are black. Similarly, *Afro-Latinidad* in the United States, as in Latin America, reflects the transnational rejection of racism that exists within our own Latino communities and in countries that exploit the subordination of the black people. The continuum of efforts such as Pan-Africanism in the last century, the celebration of black culture during the Harlem Renaissance, the literary movement of Négritude and the multidimensional current of Afrocubanism places Black Lives Matter in a broader context and establishes the relevance of this militant incarnation for Latinos in the United States.

On the other hand, Latinos from the largest nationalities that make up the Latino majority in the United States—Mexicans and Puerto Ricans—lived through the worst of the systems of racial subordination that expanded their control over African Americans to include anyone who was not “white.” The first and worst manifestations of this racial hatred were directed at Mexicans from the southwestern and western parts of the country. Historians William Carrigan and Clive Webb and others have found ample evidence that the most terroristic form of racial violence of the Jim Crow era—lynching—was also used to murder Mexicans. Carrigan and Webb have used documents, Hispanic newspapers and other evidence to roughly estimate that thousands of Mexicans were murdered in these terrorist acts. Exact documentation is difficult to find since it was only newsworthy to the few Hispanic newspapers that existed at the time. Yet, with documentation, they have confirmed that a minimum of 547 Mexicans were lynched between 1848, after Mexico’s defeat in the war and the concession of its land to the southwestern United States, and 1928, when Rafael Benavides was the victim of what may have been the last Mexican lynching in defiance of the law. Lynching occurred repeatedly in Texas, California, Arizona and New Mexico, but also made their way to Colorado, Nevada, Nebraska, Oklahoma, Oregon, Kentucky, Louisiana, Montana and Wyoming. The overwhelming majority of victims were Mexican men. A notable exception was the lynching of Josefa (Loaiza) Segovia from Downieville, California, whose hanging drew a crowd of 2,000 cheerful witnesses. She was brought to swift “justice” for killing a drunken white man who had attempted to rape her. Frederick Douglass, the former slave and an icon of the abolitionist movement, said that if it had not been for her “caste

and Mexican blood,” Loaiza would have been exonerated for acting in self-defense. Lynching is a product of hate, hysteria and chaos, but it also happens with the state’s tacit consent, since sheriffs and state officials encouraged vigilantes to the point that they themselves were accomplices in the violence. Thus, few if any whites were convicted of lynching. The most atrocious band of vigilantes on all counts was the Texas Rangers, who committed acts of intimidation, displacement, murder and hundreds of acts of lynching. Today, the name Texas Rangers adorns a professional, major league baseball team –a symbol of the invisibility of the racist and violent treatment of Mexicans in the nineteenth and twentieth centuries.

Mexicans, and by extension Latinos, suffered the effects of de jure segregation in schools and public facilities under a legal system styled after Jim Crow. As neither blacks nor whites in the eyes of the law, Mexicans were marginalized, excluded and vilified. In his research, Ian Haney López documents how the country’s racial regime worked to reward the white race wherever citizenship, naturalization or immigration were concerned. The Constitution limited citizenship by naturalization exclusively to whites. This constitutional principle motivated many immigrants from different continents to obtain court declarations proving their whiteness. One specific case, the 1935 Citizenship Petition of Timoteo Andrade, caused a diplomatic breach between the United States and Mexico when the court drew the preliminary conclusion that that Mexicans, being of mixed race, were not white. For Mexicans, the categorization of white or non-white was complicated by the Treaty of Guadalupe Hidalgo of 1848, which gave U.S. citizenship to any Mexican resident of the southeast or east of the country who wished to obtain it. It was clear that in every sense, being non-white in the eyes of the law had serious consequences, as was reflected in the popular understanding that a single drop of black blood was enough to classify anyone as negro and subject them to state subordination.

These racial codes were premised on a black-and-white binary, so their application to Mexican and Latino communities eventually ended up in the courts. Sylvia Méndez, an activist and educator and the daughter of a Mexican father and Puerto Rican mother, has spoken personally about the education system and the importance of education for Latino communities today. To speak with Sylvia Méndez is to speak with Latino history. As a girl in California, she and her sisters were barred from enrolling in public schools

with white children in Westminster, California, and had to attend what was called the “Mexican school.” Her father, Gonzalo Méndez, joined other parents in filing a lawsuit on behalf of 5,000 students of Mexican descent who could not attend white schools because of their race and color under the California law. Two of the country’s most famous civil rights lawyers, Thurgood Marshall and Robert Carter, supported Mendez’s attorneys and presented supplemental arguments before the court that detailed the sense of inferiority that segregated schools instill in marginalized children. The federal court agreed and ruled that school segregation was unconstitutional in 1947—nine years before the Supreme Court made the same ruling in *Brown v. Board of Education*, the case that dismantled the segregated public school system on a national level.

In San Bernardino, California, representatives of 8,000 Mexicans and Puerto Ricans challenged their exclusion from a public park and swimming pool on the sole basis of their Latino ethnicity in the case of *López v. Secombe*. Segregated public pools were common in California; they were reserved for whites and may have been open one day per week for “Mexican Day.” In the San Bernardino lawsuit, the judge ordered the integration of the entire park and felt obligated to address Mexicans’ and Puerto Ricans’ hygiene: “This Court finds as true that all of your petitioners are of clean and moral habits not suffering any disability, infectious disease, nor have they any physical or mental defect.”

But in 1954, in *Hernández v. Texas*, the Supreme Court ruled—for the first time—that there was a legal basis to challenge the racial treatment of Mexicans in the country under the 14<sup>th</sup> Amendment’s equal protection clause. In Texas courts, officials in charge of selecting juries to determine defendants’ guilt or innocence had been simply refusing to select Mexican-Americans. Of over 6,000 people who sat on juries over the course of 25 years, not a single Mexican-American was offered the opportunity to practice this civil service. Pete Hernández was convicted of homicide and challenged the constitutionality of the makeup of his jury. The constitutional right to equal protection was born at the close of the Civil War in the 19th century—concurrent with the abolition of slavery—but it had never been interpreted by the Supreme Court as protecting Latinos. With rare exceptions in which federal courts protected the rights of Chinese residents, in the middle of the twentieth century, the legal system, in all its forms, recognized only new two

racism: black and white. Hernández's case broke that binary. The Supreme Court enumerated several aspects of Mexican life in Texas that were subject to the segregationist protocol: county-wide polls that confirmed the popular belief that Mexicans were not white, segregated schools, restaurants with signs that announced, "No Mexicans Served." Not even the courthouse in which Hernández was tried was spared: there, the bathrooms were separated according to the same rules. One bathroom had no sign and the other had two that read, "Colored Men" and "Hombres Aquí" (Men Here). In this context, it was easy for the court to conclude that Mexicans were "distinct" from whites and to provide them with constitutional protections.

Distinct. Foreigners. Immigrants. Juridically "other." Latinos know the racist reality in the United States well; that is why Michelle Alexander's condemnation in *The New Jim Crow* resonates so clearly with them, too.

### **Latinos and Criminal Justice**

Our penal system today is characterized by an institutional racism that itself is inherited from overt acts of racism such that it is broken, corrupt, and unmoored from the search for truth or justice. To the contrary, it is anchored in partiality, given that it consistently produces racially skewed outcomes in every encounter with Latino or African American suspects and defendants. By a large margin, this country is first among all of the world's countries in both the absolute number of persons imprisoned (2.24 million) and the proportion of its population in prison (716 per 100,000). The United States houses nearly five percent of the world's population, but almost 25% of the world's prisoner population. Behind those walls, the number of Latinos is disproportionately high. National incarceration rates show that one in every 245 whites is in prison, compared to one in forty-one African Americans and one in ninety-six Latinos.

*The New Jim Crow's* observations on institutional discrimination are reflected in the Latino community neighborhoods, as noted below:

**Zero tolerance policing:** The tactics used by police to ensure public safety have been in the national spotlight for the last ten years. The proliferation of mobile technology in smartphones has contributed to the debate surrounding fair treatment of civilians by the police. Years ago lawsuits that integrated

African Americans and Latinos into the police force brought some relief to our communities. Strategies to establish links between the police and the community had finally seen the light of day and are one of the few positive elements of those years.

Now, decades after the destruction caused by the “War on Drugs” declared by President Richard Nixon, our urban police forces cloak themselves in a preventative program. This program is based detaining and searching civilians without probable cause or reasonable suspicion that a criminal act has taken place. It is called Stop & Frisk.

The tactic is characterized by massive and frequent detentions. Youth gathered on street corners automatically assume the “position” whenever a car of undercover police approaches. The position is to turn around, face a wall, place your arms above your head and spread your legs – all to facilitate the pat down search which is imminent. To be detained, searched and ordered to produce identification, even within feet of your apartment building, was so common that many youth reported experiencing it five to six times per month. The vast majority of detentions were subject to the documentation of a special form, completed by the police that indicated the facts of the encounter and its results.

Stop & Frisk is part of a police policy known as “Zero Tolerance,” and its subcomponent, “broken-window policing.” The lack of tolerance manifests itself in a specific focus on misdemeanors that—so the theory goes—will expose criminals with serious or violent records, or arrest warrants that were never enforced. The list of misdemeanors is practically endless: spitting on the sidewalk, taking the subway without paying the fare, riding a bike on the sidewalk, drinking in public, begging, jaywalking, walking a dog without a leash, loitering, and so on. Every effort was made to improve productivity, as Zero Tolerance Policing came at the same time as technological improvements in police stations, which made it possible to study the profession with metrics. According to this public safety model the goal was to prevent crime through brief-but-frequent stops. In most cases, “productivity” translated as quotas by the police, since failure to meet them resulted in disciplinary action.

New York City is a classic example. In fact, it is the world capital of excessive policing. In 2002, about 97,000 people were subjected to stop-and-

frisk. In 2011, that number rose to over 685,000. The primary justification for so many detentions, according to police records, is incomprehensible: “furtive movement.” It is for this ambiguous behavior that hundreds of thousands of New Yorkers living in urban areas are detained and harassed by the police every year.

There is no doubt that Latinos have felt the impact. The first major study on the policy was conducted by then-Attorney General Elliot Spitzer, whose innovative report from 1999 analyzed over 175,000 incidents and confirmed that the detention of African Americans and Latinos were less likely to end in an arrest. That is to say, it was more efficient to stop whites because the probability of finding drugs or guns was higher. However, the police continued stopping Latinos and African Americans in order to meet their quotas. Years later, stop-and-frisk reports by the New York Civil Liberties Union (NYCLU) concluded that almost 90 percent of blacks and Latinos stopped were innocent of any criminal infraction.

In a successful flurry of activism, lobbying, leadership and litigation, African Americans, Latinos, and others managed put the brakes on Stop & Frisk in New York. The media was forced to cover the litany of abuses against communities of color. Young people participated through social media, art, music and poetry, and by filming the daily abuse. Civil rights lawyers filed three separate suits to put an end to the practice. Members of the city council representing the most affected communities demanded legislative changes to supervise the police commissioner. A federal court declared the program as implemented in New York, decidedly unconstitutional—and the city appealed. The political calendar gave mayoral hopefuls the chance to campaign for or against Stop & Frisk, and the new mayor, Bill de Blasio, dismissed the appeal as promised. But even more successful was the certainty that there was no risk to public safety: statistics confirmed that the number of stops dropped significantly at the same time as violent crime continued to decline. New York Latinos were present and active in every phase of this success, along with African American, Muslim, Asian, gay and transsexual communities.

**Racial profiling:** After the Mexican-American War ended in 1848, the race-based treatment of Mexicans as foreigners in their own land within the territory that was transferred from Mexico to the United States continued without limitation. The fact that the Treaty of Guadalupe Hidalgo empowered

nearly 75,000 Mexicans to choose American citizenship did nothing to change the scorn for Mexicans. Years later, in 1929, at the start of the Great Depression, the racial profiling of Mexicans would not distinguish between citizens and non-citizens, and President Hoover ordered the forced repatriation of nearly two million Mexicans—mostly citizens. This illegal mass deportation was repeated in the 1950s, as part of the offensively-named forced repatriation program “Operation Wetback,” which sent three million Mexicans to Mexico—hundreds of thousands of them American citizens who had been subjected to racial profiling.

Today, racial profiling is a characteristic of modern police monitoring despite the restrictions of a constitutional paradigm that demands the opposite: individualized suspicion. Though they are thousands of kilometers apart, the conservative state of Arizona and that bulwark of liberalism, New York, had something in common in 2013. In Maricopa County, Sheriff Joe Arpaio won national fame for harassing Latinos based on nothing but their appearance; in New York, Police Commissioner Ray Kelly harassed black and Latinos by means of four million (!) stop-and-frisks, 88% of which ended without an arrest, citation or fine. That year, federal judges on both sides spoke out against the police systems in both states. In Arizona, Judge G. Murray Snow ruled that “the policy of considering whether or not a person appears to be Hispanic as proof of being in the country legally” was unconstitutional. In New York, Judge Shira Scheindlin was even more concise: “The Equal-Protection Clause [of the fourteenth amendment to the Constitution] does not permit race-based suspicion.”

Latinos are always trapped in this web of “driving while brown” or “walking while brown.” In one of the first cases on racial profiling along the southern U.S. border, *U.S. v. Mallides*, a federal court dismissed criminal charges against the defendants after a policeman admitted that his attention was caught by a vehicle full of several “Mexican-American appearing males” who were “sitting very erect” and who had not turned around to look at the patrol car. In another case, the renowned conservative judge Richard Posner let the deflated this police sophistry by noting that police will describe your actions as suspicious whenever they want to stop or arrest you “whether you stand still or move, drive above, below or at the speed limit, you will be described by the police as acting suspiciously should they wish to stop or

arrest you. Such subjective, promiscuous appeals to an ineffable intuition should not be credited.”

Latinos have turned to the courts as a last resort, in order to halt excessive police vigilance. In Frederick County, Maryland, a Salvadorian worker, Roxana Orellana Santos, was approached by police for no reason other than eating her lunch in public. In East Haven, Connecticut, Latino workers were subject to fabricated accusations and sometimes arrested for trespassing on private property, even when standing in front of their own apartments.

Litigation, however, is but one tool to combat abuse. The recent debate over local police militarization is a good example. In August 2014, just days after tanks bought by the federal government traversed the streets of Ferguson, Missouri, to disperse African-American protestors who were challenging police abuse, an MRAP (Mine-resistant, ambush protected) tank that cost \$689,000 was used in Rochester, New York, to disperse a group of Puerto Rican “revelers” after a Puerto Rican parade. Once again, suspicion based on belonging to a particular group (the basis of racial profiling) dictated the local police’s reaction in a Latino neighborhood. Much more than a lawsuit is necessary to reverse such an over-the-top reaction.

**The myth of criminality and the corresponding criminalization of Latino immigration:** Immigration in the United States is a fully criminalized activity, with all of the unsavory side-effects that that entails, including abusive privatized correctional facilities. American agriculture and the construction and food industries draw Latino labor because they need it to do jobs that Americans simply will not do. This reality is the motor that has driven the criminalization of Mexican and Latino immigrants and the proliferation of Latino defendants in federal courts. The American Bar Association’s Commission on Hispanic Legal Rights and Responsibilities has documented that Latino immigrants account for forty-six percent of the total number of cases in those courts in 2009.

Two related events are feeding this new criminalization. The first is the Obama Administration’s mass deportation program, with a record of 2.5 million deportations, more than any previous president. The mantra “criminals, not families,” which has been used to describe the administration’s

deportations, is particularly cruel in that it is erroneous on several counts. In 2014 alone, 137,983 people without any criminal record deported. Since 1996 government has essentially merged two separate systems: immigration enforcement and criminal justice systems in order to seamlessly increase deportations. The merging of the two has been called “crimmigration.” There is no doubt that the most onerous effects of this deportation records have fallen on Latino families, including those with children who are citizens. Four and half million children in the United States are citizens with at least one undocumented parent, and a large majority is Latino. About seventy percent of deportees under the Obama Administration were Latinos, and ninety-six percent of those were Mexican. With ample justification, Janet Murguía, president of the National Council of La Raza, declared President Obama the “deporter-in-chief.”

The second reason behind the criminalization of immigrants is the wave of anti-immigrant laws that have been enacted since 2006—first in Hazleton, Pennsylvania, then in Alabama, Arizona, Georgia, Illinois, South Carolina and other places. These state measures criminalize the “presence” of undocumented immigrants and encourage “self-deportation” in the name of the states’ sovereignty from federal authority.

Many of these laws’ worst aspects have been revoked by the courts. But the damage has been done. It’s a principle that’s accepted without criticism that being undocumented is a crime. In fact, to the contrary, technically it is a civil violation without criminal consequences, though it would not seem that way, as the result is tormented incarceration. Likewise, the stereotype that immigrants are inherently criminals emerged years before the idiocies of presidential candidate, and now, president-elect, Donald Trump, and it will surely survive him as well. Undocumented immigrants are inevitably criminals, according to this theory. The problem with this theory is that it runs contrary to all evidence. Latino men between the ages of 18 and 39 born abroad are seven times less likely to commit a crime than Latino men of the same age born in the U.S. This pattern repeats itself for Mexicans and other Central Americans. In fact, research now points to trends in immigration assimilation that show that first generation immigrants show very little propensity for criminal behavior but that subsequent generations begin to show patterns of offending that mirror native born communities.

But the country buys into the myth and allows itself be swayed by stereotypes.

**For Profit Prisons:** The correctional system is another example of the institutional racism that has particular effects for the country's Latino population. Today a network of prisons is managed by private corporations whose earnings are bought and sold on the stock market in the country's financial sector. To make matters worse the federal government guarantees a minimum of 34,000 immigration detainees per day with fixed monetary sanctions if the quota is not met. Clearly, compliance with the quota becomes easier with excessive policing. For many activists for-profit prison systems are incompatible with respect for prisoners' human rights. And yet this is the modality in the country's detention centers that are managed by Immigration and Customs Enforcement (ICE), where thousands of men, women and children are held for reasons, and in conditions, that threaten their human rights. Since 2010, ICE agents have been obligated to meet the quota of 34,000 immigrant detentions per day. No other branch of U.S. law enforcement has been subject to such a legal mandate.

The private sector has been the biggest winner in this perverse arrangement. The Corrections Corporation of America and the GEO Group now dominate the sector, managing over sixty-two percent of all beds reserved for immigrants in detention. The growth in profit that these two corporations enjoy has exceeded 68% to \$195 billion for the Corrections Corporation of America and 244% to \$144 billion for GEO Group, all to the delight of their investors. These centers and the prisons managed by the Bureau of Prisons, where immigrants are segregated from the general incarcerated population, are packed to capacity, dirty and dangerous. Safe in the knowledge that their inmates will eventually be deported, these prisons do not provide access to rehabilitation or education programs and their solitary confinement rate exceeds that of the general population. Conditions are even worse in processing centers: those held there call them "hieleras," (ice boxes) because the agents keep the air conditioning at full blast, take away warm outer clothing, and never turn off the lights in order to disorient the population.

In August 2016, the Department of Justice announced its plan to eliminate all contracts with private prison companies because the rate of

abuse and violence against prisoners in those centers is higher than in government-run prisons. Both corporations launched a counter-attack: it's because the prisoners are from Mexico, and Mexicans are predisposed to violence, said GEO Group. Such is the extent of unsubstantiated criminal stereotype. Community activists in Texas documented the opposite: the majority of immigrants imprisoned by the Bureau of Prisons had not been accused of any violent crime or of gang membership. They face only one charge: illegal entry into the country.

With this much cash on the table, profit and a lack of truth dominate the immoral arrangement between public institutions and private corporations.

**The media's silence:** Criminal justice reform has garnered national attention in the past few years, and the Obama Administration's efforts signal the beginning of the end for the new Jim Crow. President Obama's visit to a federal prison—the first such visit in history—was an important indicator of the importance he places on reforming mass incarceration. Political leaders from both parties have made legislative proposals to address sentencing reform. Legalization of marijuana, now in eight states, plus Washington, DC, has had immediate positive effects of reducing the number of arrests and incarcerations for people of all races. However, the tragedy of so many African Americans being shot by the police, whose deaths have been filmed for the world to see, is what demands reform in the use of force, prosecutor investigations, and the role of the courts in balancing risks and rights.

Throughout this debate, the experiences of the Latino community are nearly imperceptible, especially in the media. The lack of Latino reporters, editors, and managers in the country's newsrooms has enabled a convenient simplification for the press, which has reduced the collective interests of African Americans and Latinos into two cut-and-dry categories: immigrant abuse is an exclusively Latino issue, while police abuse is strictly the concern of African Americans. In July 2016, in just five days, the national media reported on the death of two African Americans shot by the police: Alton Sterling in Louisiana and Philando Castile in Minnesota; during that time, six Latinos were killed in a strikingly similar fashion and received virtually no coverage. They were Raúl Saavedra-Vargas, in Nevada, Pedro Villanueva, Anthony Nuñez, Fermin Vincent Valenzuela and Vinson Ramos in California,

and Melissa Ventura in Arizona. Three of these victims were supposedly armed, and it has been alleged that of those three, two carried knives. The other two were merely driving vehicles. It doesn't matter. The media opted for the convenient route and the use of police force in Latino communities was relegated and forgotten. The failure here is enormous. It has been estimated that 195 Latinos were killed by the police just in 2015 – a number that surely underestimates the total number for the simple reason that data on Latinos is not completely reliable. Between 2007 and 2014, half of the individuals who died in Los Angeles in encounters with police were Latinos. Some of these shootings were caught on video, but even this could not increase their coverage in the news. Antonio Zambrano-Montes threw rocks at police vehicles in Pasco, Washington, but the video footage shows him running from the police and turning with his hands up at the moment they shot him. His death was condemned by the Mexican consul, but criminal charges were never filed against the police. Consequently, the name of Zambrano-Montes was virtually unknown to the media.

Several factors contribute to this lack of coverage. There is a national leadership vacuum among Latinos—no single person has become a household name, as several African American leaders have. The tradition of African American churches as centers for mobilizing toward social justice and fair treatment has no equivalent in the Latino community. For example, it is rare to see a Catholic church taking on that role. One quarter of the Latino community does not have U.S. citizenship and, among them, undocumented Latinos are cautious witnesses—if they will be witnesses at all—when they cooperate in investigations into police abuse. And as mentioned above, data on arrests and incarceration of Latinos is not universal or required in police bureaucracies, which contributes to the lack of focus on Latino victims.

What is not lacking is Latino resistance to violent episodes. Today, state violence takes many forms, ranging from capital punishment (a sentence that is itself a product of biases determined by the races of both culprit and victim) to police shootings of young unarmed men. The shootings, however, produce their own response as the violence of the state beckons the violence of the streets. This has long been known in Latino communities from the Zoot Suit Riots in Los Angeles in 1943 to the police crackdown after garbage fires were set by the Young Lords in New York City in the seventies; or from the riots provoked by police in the 70s in East Los Angeles when Mexican-

Americans protested the death toll in Vietnam to Newark, New Jersey in 1974, where mounted police attacked Puerto Ricans who were playing dominoes. The riots started by Latino communities to resist police abuse includes also occurred in Coachella, California in 1970, Albuquerque, New Mexico in 1971, Camden, New Jersey in 1971, Miami, Florida in 1990, Washington, DC in 1991 and Anaheim, California in 2012. One study calculates that two thirds of these Latino riots since the 60s took place in Puerto Rican communities, and that New Jersey had the plurality with seventeen.

These riots did not penetrate the national consciousness because, once again, the black-and-white binary eclipses Latinos' own narrative in the country while the media refuses to investigate them in depth. The largest riot, however, took place in 1992, in South-Central Los Angeles, considered the worst urban riot of the 20<sup>th</sup> century. Four white police officers were acquitted after brutally beating an African American man, Rodney King, with nightsticks in an encounter that was caught on video. This incident sparked a riot in which fifty persons died and over two thousand sustained injuries. Nearly all media, with the exception of some local newspapers, reported on the riot as an exclusively African-American occurrence, along with accompanying images of tense encounters between African Americans and Koreans. What was not reported was that, in a city that is 40% Latino, half of the arrests, too, were Latino; one third of those killed were Latinos; and many Latino-owned businesses were damaged. One could say that the 1992 riot in Los Angeles was not one of blacks versus whites, but, instead, a Latino riot. Some attribute Latino participation as fortuitous, suggesting that they were taking advantage of the chaos begun by the acquittal of the white policemen. But others suggest that the verdict revealed deep concerns within the Latino community (including many Central Americans), which was suffering under the same economic conditions that depress their communities as well.

Ultimately, Latinos' invisibility in news coverage and analysis has less to do with their reaction for protesting abuses and more to do with the black-and-white binary that permeates every aspect of the criminal justice system.

**Felon Disfranchisement:** Felon disfranchisement is an amalgamation of laws—some of which have been effect for centuries—that strip the essence of citizenship, the right to vote, from a segment of the population. Presumably still citizens, persons with felony convictions become even more invisible by

these laws. In the United States 48 of 50 states have some form of felony disfranchisement. Only Vermont and Maine allow prisoners to vote from their cells, as does Puerto Rico to the south and Canada to the north, and as does South Africa and Israel. Nearly all of the forty-eight states that deprive prisoners of the right to vote extend the deprivation to individuals on probation or parole. In 2016 it was estimated that state laws barred six million citizens from voting in the national elections. This includes hundreds of thousands of Latino votes that are lost.

For Latino citizens, as for African Americans, felon disfranchisement silences the voice of prisoners and former prisoners and dilutes their collective power in the political arena.

In no other country in the world are such laws so punitive and retrogressive. The United States is the only nation in the hemisphere that permits permanent ineligibility to vote in several states. Every crime, without distinction, that carries a sentence of a year or longer could result in the permanent loss of the right to vote. Puerto Rico and Canada are exceptions within the hemisphere as well, since felon disfranchisement during incarceration is common in Central and South America. Extending this disability after incarceration is practiced in Chile, Costa Rica, Cuba, the Dominican Republic, Mexico and Uruguay. By contrast, Panama, Paraguay, Peru and Venezuela limit the limitation to the length of the prison sentence.

The damage done by such laws falls disproportionately on the African American community, but the loss of votes and political power also plagues the Latino population. The numbers do not reach the same extraordinary levels as in the African American community, but even with the problems in gathering accurate data, there are some estimates that place the loss of Latino votes at half a million in California, Texas, Florida, New York, Nebraska, North Carolina, Virginia and Washington.

Starting with Abnan Ramírez in the seventies, Latinos, alone or in coalition with African Americans, challenged the constitutionality of felon disfranchisement. Ramírez did this in California in the case of *Richardson v. Ramirez*, which made it to the Supreme Court before the case was rejected on the grounds that the text of the 14<sup>th</sup> amendment to the Constitution allows for some form of felon disfranchisement. Other suits in Florida, Washington, New

York, Massachusetts and New Jersey included claims by Latino petitioners. So far, the courts have not proven themselves to be a favorable place for this reform but some incremental progress has been made in the legislative branch.

Nonetheless, the institutional interest of the government in continuing to maintain felon disfranchisement continues as well the diminution of the collective political strength of blacks and Latinos.

### **Latinos and the War on Drugs**

“I’m not afraid of dying, I don’t see myself dying from a disease, suffering. There are no guarantees in life. Even though this process has hit me hard and I know that something bad could happen to me, I’m not going to be quiet. They can’t silence me anymore and they can’t unmake the strides we have made. These days, my worst enemy is time: the chance that our story might be forgotten, that it might become just another file in the archive.” These are the words of María Herrera, the mother of Jesús Salvador and Raúl, who were “disappeared” in Guerrero, Mexico in 2008, as small businessmen kidnapped at the time with three others. Their family searched for them since governmental authorities failed to do so. They were unsuccessful. After a while, her other two sons, Gustavo and Luis Armando, returned to run the business. In 2010, they were stopped at a military checkpoint in Veracruz for having license plates from Michoacan. That is what they told their mother in their last conversation. They never came back. All of this is a result of the extortion and terrorism against innocent civilians that emanates from the War on Drugs. Mrs. Herrera, along with her fifth son, Juan Carlos Trujillo, continue the search and today help other Mexican families to find their loved ones through their organization, Familias en Búsqueda (“Searching Families”). Standing in front of the United Nations, in 2016, having just arrived with the Caravan for Peace, Life, and Justice, Mrs. Herrera insisted in a firm voice that her four sons did not disappear, “they were disappeared.”

To appreciate the history of the War on Drugs from the Latino perspective, you must begin in Central and Latin America, in order to fully comprehend the horror of its devastation, the loss of so much human potential, the damage done to its social fabric, and the depth of the insatiable

appetite to consume illegal drugs in the United States. There is no law, military force, or border wall in existence that can prevent the transportation of a natural product that can be grown at a minimal value in one country and be sold in the north at a thousand percent increase. It is the simple economic force of supply and demand. Today, the clearest and most concise voices advocating true drug policy reform—from mothers, activists, and ex-presidents— come from Central and South America. It is time we paid attention.

The Global Commission on Drug Policy, which includes former presidents of Chile, Colombia, Mexico, and Brazil, published a critical report in 2014 that detailed the colossal failure of the War on Drugs. These same leaders had pointed out that the last United Nations convention in 1998 concluded with an unrealistic agreement—a call for a drug-free world. That utopic plan denies that drugs exist in the world, commented César Gaviria, former president of Colombia. Now, the debate is different and the deaths, crime, and waste of money do not justify the failed repetition of prohibition, incarceration, and penalization.

According to the Commission, the reality today is that drug production and consumption continue to increase, despite the resources being dedicated to the prohibitionist paradigm. To the contrary, the current regime seriously jeopardizes global health and safety. Drug users receive punishment rather than medical treatment while public safety is ravaged by criminal organizations that control the production, transportation, and sale of illegal drugs. The current policy undermines human rights and promotes discrimination against women, young people, and ethnic minorities in particular. International law prohibits imposing the death penalty to anyone accused of only drug-related crimes, but thirty-three countries continue applying it and more than a thousand people are executed annually. Women suffer disproportionately when arrested for drug-related crimes, representing 68 percent of all the women incarcerated in Argentina, 70 percent in Costa Rica, and 66 percent in Peru. The prohibitionist model, instead of reducing criminality, leads to very major increases in prices for addicted users. The value of retail drug trafficking comes to \$332 billion, more than the grain, wine, beer, coffee, and tobacco markets combined. The current policy also undermines the development of countries and endangers communities that are vulnerable to corruption and violence. At the same time, government

resources are feeding those countries' military sectors and diverting resources from other needs, such as health, education and social services.

Those foreign leaders, compared with their colleagues from the United States, know that the problem requires drastic and innovative alternatives. The ex-president of Mexico, Ernesto Zedillo, said that it is not enough to focus on the demand for drugs by consumers. We have to focus on production and it is necessary to permit experimentation and evolution in market regulation, as Uruguay did with cannabis. Portugal offers another example, and the former Portuguese president, Jorge Sampaio, declared it a complete success. When they shifted the focus to the health of drug users, Portugal eliminated criminal consequences and was able to decrease the number of addicts, thereby increasing the use of medical treatment for addiction, decreasing the number of AIDS cases, and reducing the rate of mortality due to drug use.

Marijuana occupies a special place in the country and throughout the hemisphere. In Mexico, where marijuana, like everything, was found in pharmacies before the revolution, the prohibitionist regime did not arrive on the scene until 1926. The model was the United States, which had begun to export its heavy-handed anti-drug doctrines to fulfill its latent desire for Puritan morality. In the United States, marijuana had always been associated with Mexicans. That natural plant that grows wild in the countryside of Durango, Sinaloa, Chihuahua, and Sonora, bestowing health benefits, came to the United States with the post-revolution migration of Mexicans. Its prohibition in the United States had nothing to do with the plant itself, or with its mind-altering and malady-alleviating properties. To the contrary, it had everything to do with the people who used it. Notice the oddity of how the United States changed the lexicon from the word *cannabis* to the word "marijuana." As the word "*mariguana*" was common in Mexico, the new penal laws adopted the lexicon, starting with El Paso, Texas—the first place to adopt a law prohibiting its use. But the convenient and denigrating association between the herb and Mexicans did not end there. The head of the Federal Bureau of Narcotics, Harry Anslinger, was obsessed with eliminating marijuana. For him, it would be easier to convince Congress of the dangers of marijuana if he could conjure alarming images. The word "marijuana" signified something strange, simultaneously invasive and Mexican. In that sense, it was much better than the word "cannabis," which was used throughout the world. "Marijuana causes more violence than any other drug," testified Anslinger.

“The majority of smokers are Negroes, Hispanics, Filipinos, and musicians,” he concluded. Today, that position is absurd. But in 1937, fear and xenophobia reined and Congress included marijuana in the same category and with the same level of punishment as other illegal drugs such as heroin and cocaine.

The consumption of marijuana in the United States reached historic levels in the 60s, 70s, and up to today, where legitimate reports confirm that whites in the country consume and sell marijuana at higher rates than their Latino and African American counterparts. Ex-president Clinton admitted to having smoked but inexplicably not inhaling. President Obama said he did it when he was young. The brash ex-mayor of New York, Michael Bloomberg, admitted not only that he smoked, but that he enjoyed it, and later he functioned as the boss of the world capital for marijuana arrests. In California, the rate of arrests for possession between 2006 and 2008 was approximately triple that of whites demonstrating that heavy-handed, selective drug enforcement was a national issue.

The War on Drugs is also a war on immigrants. In accordance with the Immigrant Defense Project, one in every four deportations due to a crime—in other words, 250,000 annual deportations—involve people whose most serious crime was a conviction for drug-related infractions. Last year, Human Rights Watch released a report on the deportations, noting that “thousands of families in the United States have been destroyed in recent years by the detention and deportation due to drug-related crimes.” The overwhelming majority of these families are Latino. The positive changes that recently improved drug policy also have to impact any future immigration reform. It makes no sense to deport thousands of people due to crimes related to drugs, especially when some of the most serious offenses are related to the possession of marijuana—now legal after the 2016 elections in eight states in the country. New laws have to consider new realities. But we have to wait for immigration reform—the very reform that Obama could not achieve. Meanwhile, there are stories like that of Raúl Valdez, who moved from Mexico to a Chicago suburb with his family when he was only one year old. Despite being a legal resident, Raúl was deported in 2014 for a drug-related crime. His crime was possession of marijuana with intent to distribute, which constitutes a felony. Despite having remained in jail only 60 days, he was quickly deported to Mexico. The story of Mr. Valdez is not unique since drug crimes are the fourth leading cause for deportations.

The fact that many people come to the United States fleeing the terrible war on drugs that exists in their own countries illustrates how intertwined immigration policy and drug policy truly are. Mexico in particular has suffered the horrible consequences of sharing a border with the United States and having to accept the worst of the terror of the cartels and the corruption and violence of the government. In 2006, the Mexican government decided to use its military forces to combat drug trafficking. The violence increased so drastically that the number of deaths attributable to the cartels, the police and the military, since then has been calculated as somewhere between 60,000 and 100,000. Now the cartels do not limit themselves to drug trafficking; rather, their control permeates industries and criminal practices in various ways. PEMEX, the nationalized state-run oil company has reported losses in production up to 40% due the thefts by the cartels. The ranches in Michoacán have to ask for the narcos' permission to bring their cattle to the market. The same is true for auto part dealers in Guerrero. Central Americans crossing through Mexico to reach the border are harassed on a daily basis, and the Mexican Human Rights Commission reported that 11,000 have been kidnapped by cartels in a single year. The brutality and violence is constant and in broad daylight: 72 Central Americans forced off buses and later killed in Tamaulipas; 300 bodies in mass graves in Durango; fifty-two dead in a fire in a casino in Monterrey; forty-three students "disappeared" in Ayotzinapa; thirty-five bodies placed on a highway near a mall in Veracruz in the middle of the day; extremely high murder rates in Juarez. The violence has also forced brought internal displacement within the country to more than 281,000 people.

For these reasons, the Mexican people have demanded that the United States drastically reform its policies—sometimes from Mexico and sometimes on American terrain. Former Mexican president Vicente Fox called for the end of the War on Drugs with the prescience to note that one day humanity would see the rejection of the prohibitionist paradigm as the best alternative. In 2012, a grass roots Mexican delegation came to the United States to echo that call. It was the Caravan for Justice and Peace that united activists and the families of the victims of the violence caused by the drug trade. In the United States, Latinos have the highest rate of incarceration for non-violent drug trafficking offenses. Thousands of years of Latino lives are wasted in the mass incarceration and prison industry that feeds off this selective and discriminatory war on drugs. In Central and South America, and in the Caribbean, the death toll is reaching inconceivable heights. Thousands and

thousands of weapons made in this country cross into Mexico to exacerbate an atmosphere already full of unreasonable violence—violence that almost never interests the media in this country. Clearly, the destruction brought about by the War on Drugs knows no borders.

“We came to civilize the big players,” wrote the renowned poet and activist Javier Sicilia, the leader of the Caravan for Peace and Justice who also lost a son to the senseless violence of the drug trade. The caravan traveled more than 6,000 miles and visited more than twenty cities, concluding at the United States capitol. In New York, the world capital for marijuana arrests, the Mexican caravan did not receive an audience with the mayor. They were ignored, and the administration did not even answer their letters. The reception in city hall was given by a single elected official, City Councilwoman Melissa Mark-Viverito, along with a group of activists who had questioned the logic of American policy in this area. On the steps to city hall it was impossible not to feel the palpable emotion of the Mexican mothers as they recounted their experiences. The dead demand that we give them a chance for peace, they told us. They are the ones, the innocents, who demand an end to this war. Behind them the portraits of their beloved family members filled our vision, along with details of their last days on Earth. There were also bright, impressive signs that read, “We need poets, not machine guns” and “Until the day that justice and peace kiss.”

Standing for best that unites a movement of transnational solidarity, the Central American Caravan for Peace, Life, and Justice of 2016 brought together colleagues from the Caribbean, South America, and African American and Latino communities in the United States, and came to New York to witness the UN debates. Those men and women represent the true voices calling for change and comprehensive reform. And that call begins with the resistance fighters in communities of color in each of those places. These activists know that the War on Drugs is a war against people of color and other marginalized communities. They know about the disparities that exist in the ways drug laws are applied for both African Americans and Latinos. In the United States, drug use is also measured by the prevalence of its use over a lifetime. These government surveys show that the lifetime use of illegal drugs by Latinos (38%) is lower than that of whites (51%). Nevertheless, Latinos with only 17% of the U.S. population are more than 48% of the drug cases processed in federal courts and more than 20% of the drug-related prisoners sentenced in state prisons. In criminal courts Latinos are more likely to be

subject to higher bail or to be denied bail, all because of their association with the drug trafficking cartels.

When the special session of the UN—the UNGASS—on the global policy began in April 2016, more than a thousand leaders from Latin America and the entire world signed a joint letter to UN Secretary-General Mr. Ban Ki-Moon that demanded the end of the prohibitionist policies and the beginning of true reforms: “The drug control regime that emerged in during the last century has proven disastrous for global health, security, and human rights. Focused overwhelmingly on criminalization and punishment, it created a vast illicit market that has enriched criminal organizations, corrupted governments, triggered explosive violence, distorted economic markets and undermined basic moral values...Humankind cannot afford a 21<sup>st</sup> century drug policy as ineffective and counter-productive as the last century’s. A new global response is needed, grounded in science, compassion, health and human rights.”

In the United States, it is fair to ask when we are going to hear these voices for reform. If we go with the American presidential campaign of 2016, it won’t be soon. The problem is not what they said; it’s what they failed to say. None of the candidates, nor President-elect Donald Trump spoke about the investment of billions of dollars in the War on Drugs—easily one of the greatest failures as a domestic program that we have seen in our time. Their silence says it all. But this silence won’t even approach the magnitude of the silence of our dead and of the lives of thousands of African Americans and Latinos from this country who have been lost. Their voices demand attention.

### **The Role of Civil Rights Institutions**

It is embarrassing to admit that “the gains of the civil rights struggle, stopped and never made it over the prison wall” to cite the words of Joseph Hayden, who was one of my clients in a suit to have the right to vote returned to prisoners in New York. He was right. There are few lawyers who dedicate themselves to improve the conditions in which our imprisoned fellow humans must live in what are now unprecedented numbers. Michelle Alexander outlines several priorities of our respected civil rights institutions in the past twenty years, and the issues relating to the War on Drugs, felon disfranchisement, the obsession with excessive sentencing, and the dysfunction of our police, prosecutors, correctional-facility supervisors and criminal courts are conspicuously absent.

The truth is that everything *The New Jim Crow* reveals about the African American community in this regard, applies doubly to the Latino community. In the past ten years, immigration reform has taken center stage on the Latino agenda, and rightfully so. Latino immigrants have been transformed into the country's latest villain; states and municipalities have put laws in place that are excessively intolerant of a segment of the nation that came only to work and live in the shadows.

Recently, reforms to the criminal justice system have garnered the attention of the institutional nucleus of the Latino community and its leaders: the National Hispanic Leadership Agenda, a coalition made up of forty key organizations within the Hispanic community. The NHLA issued an agenda of public policy priorities for the Latino community in 2016—an event that occurs only once every four years. That year, the influential coalition's priorities included a series of essential reforms to civil rights and the criminal justice system. Many of the issues addressed in *The New Jim Crow* are included, in addition to several issues that are at the junction of immigration policy and criminal justice.

The election of Donald Trump to the presidency brings an enormous challenge to the progress made in the Obama administration that showed signs of beginning the dismantling of the worst elements of the new Jim Crow for all marginalized groups in the country. It is difficult to predict what is in store in criminal justice since the president-elect spoke only in generalities and avoided providing details to his policy agenda. For the Latino community, preserving adherence to constitutional principles will be directly challenged in the first years of the new administration. Stating that he will deport the “criminals” among the undocumented residents who live in the country, a number he categorically states reaches 2 to 3 million, has been a repeated refrain for this president-elect. What constitutes a crime is the operative question since that standard already is engrained in the policies of the current administration. What has been clear is that the private prison industry is doing very well – their stock has gone up since the election. Another troubling campaign promise is Trump's vow to be a Law and Order president. He also erroneously championed Stop & Frisk as an effective public safety measure. In short, the preliminary signs reveal an administration that will uphold the use of force by law enforcement, promote private sector

incarceration, engage in preventative policing strategies, exhibit loyalty to the police first and foremost, and disdain an active Department of Justice that will use its resources to confront civil rights abuses. In other words, we are in a period of retrenchment and consolidation of the few reforms we have previously gained.

The National Hispanic Leadership Agenda's positions are extraordinarily important in terms of how any federal administration will develop national policies, especially those of the new Trump administration. The fact that the NHLA set this policy agenda publicly and with specificity will help to coalesce various efforts in the capitol.

But the activism necessary to reform criminal justice already had a precedent in the streets and in the communities, riots, and spaces of a Latino activism that did not have to wait until its institutional colleagues stopped sleepwalking.

That activism—that resistance—does not need formal invitations. It exists organically. It breaths resistance and grows naturally so that it can combat injustice. And as you read through the acuity of Michelle Alexander's synthesis in *The New Jim Crow*, and as you recognize how her conclusions resonate with the concerns and battles of the Latino community, that activism will continue its march towards inclusive justice.

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