

Latinos in the Courtroom

A Celebration of Hispanic Heritage Month

BY AMBER GONZALES (GUEST AUTHOR)

Introduction



As CBA president, I consider it my duty to provide you with insight into our great state, and I believe it's essential for voices from across Colorado to be heard. Indeed, one of the greatest

strengths of the CBA is our ability to bring people together, share ideas, and find success through one another. As such, I've invited leaders from around the state to serve as guest authors for my monthly presidential columns, to share their messages in the spirit of belonging and progress. My hope is that by listening to each other and considering each other's perspectives, we can begin to define our collective pathway to success—where our knowledge and insights can lead us to a better tomorrow. In this vein, I'm pleased to introduce this month's guest author, Colorado Hispanic Bar Association President Amber Gonzales, who will share some important legal victories in Latino history.

—Judge Nathaniel Baca

Latinos—the fastest growing demographic in the United States—have played a pivotal role in American history. But our contributions to critical jurisprudence in the fight for equality are not widely known. This October, in celebration of Hispanic Heritage Month (September 15 to October 15), please join me in recognizing the many ways in which the Latino community has used the courtroom to change the face of our nation.

Latinos Then and Now

Latinos have been part of the fabric of Colorado history since before America became a nation in 1776. Families like mine are common in the Southwest—we can trace our roots back to this region for dozens of generations. Long before political boundaries separated nations, people lived on and moved across this land. Yet longevity has not begotten equality. Only a few decades ago, it was common to see signs throughout Denver reading “No dogs or Mexicans allowed.” My grandparents were hit with a ruler for speaking Spanish at school. And school segregation was alive and well in Colorado.

Today, there over 63.6 million Latinos in the United States, and nearly one in five Americans is Latino.¹ And, as the country's largest racial or ethnic minority, we have a collective buying power that's estimated to hit over \$2.6 trillion in the next year.² Despite our size and economic impact, however, we're still not being invited to the table. Less than 5% of C-suite positions or seats on Fortune 500 boards are occupied by Latinos.³ And when you look at Latina women in particular, those numbers dwindle to only 1%. Latinos do not fare much better in the legal profession overall. Only 5.8% of attorneys are Latino, and only 2% are Latina women.⁴

The Fight for Equality in the Courtroom

In modern-day America, Latinos are widely considered a distinct ethnic group—but that wasn't always the case. Throughout most of our country's history, anti-Latino segregation was not codified but existed nonetheless. Latinos often fell into a grey area: they suffered discrimination and segregation but were considered racially “white.” It wasn't until the 1950s that Latinos were

legally recognized as a distinct ethnic group. But Latinos have been fighting for equality and equity in the courtroom for far longer. A few of the most impactful cases are highlighted below.

1914: *Maestas v. Shone*

Here in Colorado, some 40 years before the landmark 1954 Supreme Court of *Brown v. Board of Education*, a local family challenged school segregation in the courts—and won.

In *Maestas v. Shone*,⁵ the plaintiff, Francisco Maestas, attempted to enroll his son Miguel in a school near the family's home in Alamosa. He was denied. The reason? The school was for whites only, and Miguel was Mexican American. Francisco was told Miguel would have to attend the “Mexican school,” despite Miguel being an English-speaking, US-born citizen and the “Mexican school” being farther away. Francisco and other members of the community filed a discrimination suit against the Alamosa School District superintendent and Board of Education. In March 1914, a ruling of unlawful race prejudice was delivered by the court, and the school board was ordered to allow the children to attend the school nearest their homes.

Though *Maestas* did not have precedential value, it is recognized as likely the first successful school segregation challenge.

1954: *Hernandez v. Texas*

A mere two weeks before it handed down *Brown*, the US Supreme Court issued another landmark case—though this one hardly has the same name recognition. In *Hernandez v. Texas*,⁶ the Court recognized that “[t]he constitutional guarantee of equal protection of the laws is not directed solely against discrimination between whites and Negroes.”⁷

The case dates back to 1950, when Pete Hernandez, a migrant agricultural worker, was indicted for murder by an all-white grand jury in Jackson County, Texas. Before his murder trial, Hernandez tried to quash both the indictment and the petit jury panel, challenging the county's systemic exclusion of persons of Mexican descent from jury service. The trial court denied the motions, and Hernandez was found guilty by the all-white jury and sentenced to life in

prison. The Texas Court of Criminal Appeals upheld the verdict, finding that “Mexicans are white people,” and therefore there was no abuse of Hernandez’s Fourteenth Amendment rights.⁸

On appeal to the US Supreme Court, however, Hernandez convincingly showed that the prevailing social attitude toward Mexicans in Texas proved that they were considered a different social group. The Court held that “[t]he exclusion of otherwise eligible persons from jury service solely because of their ancestry or national origin is discrimination prohibited by the Fourteenth Amendment.”⁹ Hernandez’s murder conviction was reversed, and he was granted a new trial before a jury of his peers, which this time included Mexican Americans.

Hernandez broadened civil rights laws and established a precedent that resulted in successful challenges to education, employment, housing, lending, and voting rights discrimination faced by Mexican Americans and other minority groups.

1997: League of United Latin American Citizens v. Wilson

A major issue facing the Latino community today is immigration and the legal and social issues that surround it. Although anti-immigrant rhetoric has reached a fever pitch, it is nothing new in this country, nor is it directed only at Latinos.

In 1994, California voters passed Proposition 187 (dubbed by supporters as the “Save Our State” referendum), which restricted undocumented immigrants from accessing essential state services, such as education, healthcare, and social services. It also required teachers, healthcare workers, and others to report individuals suspected of being undocumented to Immigration and Naturalization Services, the predecessor to Immigration and Customs Enforcement.

Several Latino organizations promptly challenged the Proposition, including the League of United Latin American Citizens and the Mexican American Legal Defense and Education Fund. Due to their collective efforts, in *League of United Latin American Citizens v. Wilson*,¹⁰ the federal court in the Central District of California struck down key reporting and benefits-denial provisions of the Proposition

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as a violation of the Supremacy Clause and preempted by federal law.


Today, states such as Texas and Arizona continue to attempt to take immigration into their own hands. As they always have been,

Latinos are at the forefront of legal efforts to stop the inhumane treatment of immigrants.

Into the Future

Latinos have been fighting for equality and equity throughout history, but we are still underrepresented in important spaces, including the legal profession. The good news is that our numbers in the law are increasing. According to the Colorado Office of Attorney Regulation Counsel (OARC) 2022 annual report, 7.59% of Colorado attorneys are Hispanic or Latino. This is the highest number recorded in the years that OARC has been collecting race/ethnicity data.

With the efforts of groups like the Colorado Hispanic Bar Association and so many other mentoring and pipeline programs in Colorado, the representation of Latino attorneys will continue to grow—so that we can continue the march toward progress, becoming more visible both in and out of the courtroom.

For more information about the Colorado Hispanic Bar Association, including our calendar of events, visit us online at <https://chba.net>. 



Amber Gonzales is president of the Colorado Hispanic Bar Association and a litigator at Crowell & Moring LLP. This is her seventh term on the Board of Directors for the Colorado Hispanic Bar Association. Her community involvement also extends to representing clients on a variety of pro bono matters, including drafting position statements, family reunification for asylum-seekers, and litigation resulting from the denial of requests under the Freedom of Information Act.

NOTES

1. US Census, Population Estimates, July 1, 2022, <https://www.census.gov/quickfacts/fact/table/US#>.
2. “Purchasing Power of Hispanics in the U.S. Has ‘Clear Impact’ on Economy,” *Bloomberg Linea* (Dec. 27, 2021), <https://www.bloomberglinea.com/english/purchasing-power-of-hispanics-in-the-us-has-clear-impact-on-economy>.
3. “The Economic State of Latinos in the US: Determined to Thrive,” McKinsey and Co., (Nov. 14, 2022), <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/the-economic-state-of-latinos-in-the-us-determined-to-thrive>.
4. “ABA survey finds 1.3M lawyers in the U.S.,” *Am. Bar Ass’n* (June 20, 2022), <https://www.americanbar.org/news/abanews/aba-news-archives/2022/06/aba-lawyers-survey>; <https://hnba.com/latinacommission>.
5. *Maestas v. Shone*, Alamosa Cnty. Case No. 6 (Apr. 17, 1914).
6. *Hernandez v. Texas*, 347 U.S. 475 (1954).
7. *Id.* at 477–78.
8. *Hernandez v. State*, 251 S.W.2d 531 (Tex.Crim.App. 1952) (“Mexicans are white people, and are entitled at the hands of the state to all the rights, privileges, and immunities guaranteed under the Fourteenth Amendment. So long as they are so treated, the guarantee of equal protection has been accorded to them.”).
9. *Hernandez v. Texas*, 347 U.S. at 478–79.
10. *League of United Latin Am. Citizens v. Wilson*, 997 F.Supp. 1244 (C.D.Cal. 1997).